The Evening Post Job Printing Office, Inc., 156 Fulton St., N Y.

New Jersey Court of Errors and Appeals.

Between

PHILIP HILTON,
Complainant-Respondent,

AND

JOSEPH HILTON,
Defendant-Appellant.

On Appeal from Decree in Chancery.

BRIEF FOR APPELLANT.

This is an appeal from a final decree enjoining the defendant, Joseph Hilton, from using the name "Hilton" or "Hilton's", either alone or in association with another word or words, for any purpose whatsoever, in any clothing business operated or conducted, directly or indirectly, by the defendant, competitive with the clothing business operated or conducted by the complainant, trading under the name and style of "The Hilton Company", and particularly from using the word "Hilton" or "Hilton's", either alone or in association with another word or words, to describe or designate any retail clothing store or stores, or the clothing therein sold, or the business therein operated or conducted, now or hereafter operated or conducted, directly or indirectly, by the defendant in any city or cities in which the complainant, trading under the name and style of The Hilton Company now operates or conducts a retail clothing business.

New Jersey State Library

The decree further awarded costs, and a counsel fee of $1,000. to the complainant (p. 27).

The parties are brothers, and had been associated in the retail ready made clothing business for several years, conducting it under the name of "The Hilton Company". It seems to have been started (p. 453) in a modest way by the defendant and a third brother, Isaac Hilton, in 1896, with a small store on Market Street in Newark. At that time Philip was not connected with it. It was then conducted under the name of "I. Hilton". Philip became connected with this business in 1901 (p. 454), but it continued to be conducted under the name of I. Hilton until 1904. Meantime, and in 1903, a store was opened in Philadephia under the name of "The Hilton Company", which latter name was also adopted in Newark in 1905 (p. 455), and a larger store taken on Broad Street near the corner of Market, in well known clothing Row. The purpose of using the firm name of "The Hilton Company" was "to make it look like a large concern" (p. 455, line 8)—"We were trying to make the Hilton Company as large as we could, and we never used anything else but The Hilton Company." (*Id.* line 30.) On May 9, 1914, they opened a store on Fourteenth Street in New York City, and on August 1, 1914, they opened a store on Nassau Street, half way down the block from Fulton, in New York City. This was followed in November of the same year by a store in Providence (p. 250, line 10). Stores were also located in Pittsburgh, Chicago and Boston, and in each of these places the business was invariably conducted under the name of "The Hilton Company", for the purposes already adverted to. On page 414, line 25, Mr. Younker says: "It was always the idea to impress the public that this is a great big concern, and the 'Company' was really more than the 'Hilton' part of it." Indeed, one of Philip Hilton's most enthusiastic witnesses, Miss Young (p. 567) says that the concern knowingly secured a false credit rating of $300,000., and when the partners later

dissolved, Philip, the complainant, inserted an advertisement in the Newark Star Eagle of October 31, 1916 (contained in the black book of defendant's exhibits) announcing both by picture and phrase the connection of Mr Frank J. Murray with the business, signing the advertisement "The Hilton Company, Philip Hilton, President." Mr. Murray admits (p. 241), that the concern is not incorporated, and Mr. Hilton is not its president. There is no contradiction of any of this evidence, so that the complainant both before and since he separated from his brother, has continuously adopted the name "The Hilton Company", with the idea of getting the credit arising from such a name. Even that name had not acquired sufficient vogue in Newark to prevent the concern, in 1910, from abandoning it, and using the title "George Watson & Co.", whose business, located next to the Newark store, had been purchased in that year. For four years thereafter the business was conducted in Newark under the name George Watson & Company, and ever since 1914, when the name "The Hilton Company" was resumed in Newark, it has always been concededly, so far as signs, etc., are concerned, there used in connection with the words "successors to George Watson & Co."

Barney Taylor left the concern in 1907 or 1908 (p. 266). He says (p. 260, line 32), that down to that time the concern manufactured about 5 per cent. of its stock, and purchased the balance, sewing thereon its labels, and making otherwise no distinction between the two sources of supply. No purchaser could tell the difference between the goods they manufactured and the goods they bought. John Brennan (p. 295) describes the similarity of treatment of the goods that were bought and those that were manufactured. Henry Aarons was in complainant's employ (p. 298, line 40) until 1915. He states (p. 299, line 19) that from 30 per cent. to 35 per cent. only of the complainant's stock was manufactured by them. Edward Warshauer (pp.

320–321), without specifying the proportion, says that large quantities were bought, labeled with the Hilton Company's label and treated exactly as if manufactured. To the same effect is the evidence of Cohen (p. 327, line 30). This witness, on page 328, describes the vast quantities of goods that were purchased from other manufacturers, labeled with the complainant's label and sold indiscriminately with the small quantity they then manufactured. Joseph Hilton (p. 456), states that in 1916 they had increased the proportion of goods they manufactured to between 65 and 70 per cent., but that previous to that year the manufactured portion never exceeded 45 per cent. The complainant offered some evidence by Mr. Jacobstein to meet this testimony. For some reason, however, he elected to give no figures anterior to 1915. He admits (p. 573) that the percentage of goods sold, but not manufactured, was in 1915, 5 per cent., and in 1916, 6 per cent. We have never been able to understand the basis of Mr. Jacobstein's "estimate", but in view of his silence as to the figures earlier than 1915, we can conclude that our testimony with reference to the small proportion of goods manufactured by the Hilton Company previous to that year is quite correct. Indeed, it is not contradicted.

We are not seeking to decry the character of the goods sold by the complainant. The average price of a suit of clothes sold by them was $18 (p. 464), and we have no doubt that for that price the clothes were staple, no better and no worse than those sold by other enterprises. In fact, it is uncontradicted, that clothes of this character are all alike, made from the same general patterns, with the same general linings and trimmings, and that in the absence of the manufacturer's label, no one could distinguish between the goods offered by any of the houses dealing in this character of goods. See, generally the evidence of Mr. Schyke (p. 375); Mr. Younker (pp. 445–447), and Mr. Joseph Hilton (pp. 471–472). Indeed, the complainant's own witnesses

admit that it was only after the comparatively recent time in which Mr. Roshay became connected with the Hilton Company that they did any particular manufacturing at all (Spang, p. 508).

Without in the least seeking to depreciate the functions of the complainant, the evidence leaves it plain that Joseph was more active in the conduct and management of the business than was his brother (see, pp. 259, line 25; 424, 437).

Without having a personal acquaintance with these two brothers, it is difficult to understand their relations. They undoubtedly had, for at least two years previous to the dissolution in June, 1916, quarrelled so that they seldom, if ever, addressed any remarks to each other (p. 554). Joseph is married and has nine children; Philip is a bachelor. Neither of them can read English.

In the month of May, 1916, negotiations opened for a dissolution of the firm, resulting in the purchase by Philip, on the 24th of June, 1916, of Joseph's interest, the latter signing a bill of sale (p. 9) by which Joseph conveyed to Philip—

> "All the estate, right, title and interest of the said Joseph Hilton, of, in and to the Hilton Company, copartnership business at Newark, New Jersey, and all other places (heretofore conducted by the said Joseph Hilton and the said Philip Hilton as copartners), *including all the name and good will of said business*, and all its assets, including also its money, accounts receivable, bills receivable, stock of merchandise, woolens, lining, trimmings, cloth, suits, overcoats and other garments", etc.

There is no room for doubt that Joseph, who, as we have seen, had a large family to support, and who is in the prime of life, to the knowledge of Philip fully intended to carry on the clothing business, to which his business life had been devoted. Pursuant to this purpose, a store, previous to the

filing of the bill of complaint herein, had been opened in Paterson, N. J., in Bridgeport, in Waterbury and in New York City. Manufacturing was also done at Newark. The complainant had no stores in Paterson, Bridgeport or Waterbury. As already stated, the complainant had a store on Nassau Street, half way below Fulton Street, and at the time of the filing of the bill the store of the defendant nearest thereto was at 243 Broadway, five or six blocks off. The complainant had a store near Broadway and Fourteenth Street, and another at Broadway and Thirty-sixth Street. The defendant has a store at the corner of Fifth Avenue and Thirty-third Street, and one in the well known ready-made clothing district at the corner of Broadway and Thirty-seventh Street. At the time of the filing of the bill the defendant contemplated opening a store at the corner of Nassau and Fulton Streets in New York City, which has since been accomplished, and also was negotiating for a store in Brooklyn, where the complainant also has a store. Each of these stores with which the defendant is connected has been opened under the name of "Hilton's", whereas all of the complainant's stores, as we have already seen, were and still are conducted under the name of "The Hilton Company". In November, 1916, the complainant filed his bill of complaint herein (p. 1), claiming that prior to June 24, 1916, he and his brother had been partners engaged in business under the name of "The Hilton Company", with stores in the several cities named, and alleging that they had manufactured the clothing for sale at such stores. The third paragraph of the bill read (p. 2):

> "3. In the course of such business and continuously during the periods above set forth, said partnership used the words 'Hilton' and 'Hilton's' alone and in combination with other words, as Hilton-made, Hilton sold, Hilton's cloths, &c., to describe and designate merchandise *manufactured and sold* by said partnership

and to designate and locate the places where said clothing was *manufactured* and the retail stores where said business was conducted. The said words were used variously by said partnership and appeared on its stationery, in correspondence, in advertising in the display and marking of goods, upon labels which were sewn into said clothing and otherwise in the manufacture and merchandising of its goods, the said words being used exclusively by said partnership during the periods aforesaid and not being used by any other person, firm or corporation in the business of *manufacturing* and selling men's clothing at retail."

The fifth paragraph of the bill of complaint alleged that the partnership had used the words "Hilton" or "Hilton's", and an emblem, described in the fourth paragraph, exclusively in advertising, manufacturing and merchandising its goods; and had manufactured and sold large amounts of the goods to which the said words and emblem applied, and had thereby secured a large and extensive market and patronage for the goods sold and manufactured for the firm, and distinguished and designated by said names among retail purchasers. That by reason thereof the said words "Hilton" and "Hilton's", alone and in combination with other words, and the emblem, were, by the public generally, and by purchasers at retail, understood to mean, and were applied to the merchandise and business activities of the said firm, and where the said business was conducted the said names came to have a secondary significance as descriptive of and solely applied to the business activities and products of said firm; that such products and merchandise were superior in style, value, fit and in other respects to similar products of other manufacturers sold for about the same price, and had a reputation among the public generally of being superior in said respects, which reputation was attached to and connected with the words "Hilton" and "Hilton's" on the said emblem.

The bill then set up the sale of June 24, 1916, and the fact (p. 5, line 20), that the complainant thereafter continued to conduct the retail clothing business under the name of The Hilton Company in the same place and in substantially the same manner as it had been previously conducted by the said partnership, using the same words to designate his merchandise and business; as the goods and business had been formerly manufactured, sold and conducted by the firm. The bill further alleged the fact of the defendant's opening of the stores in Paterson, and at Thirty-third Street and Fifth Avenue, in New York City, under the name of "Hilton's"; that he had adopted a trade emblem resembling that used by the old firm, wilfully and designedly to create confusion in the minds of purchasers and to lead them to believe that the defendant was manufacturing and selling the clothing of the complainant, and charging that the similarity in the use of the names and symbols, the method of advertising and display, had been with intent to deceive, and for the purpose of deceiving the public and purchasers of retail clothing, and of injuring the complainant, and to enable the defendant (p. 8, line 11) to enjoy the benefit of the large sums expended by the said partnership and the complainant in advertising said clothing, and the benefit of the reputation for *superior quality* that *the clothing manufactured* and sold by The Hilton Company deservedly had attained in the estimation of the public, and among the purchasers of retail clothing generally, and that thereby the business, trade and reputation of the complainant has been greatly injured.

The proofs demonstrate that the claim of the bill with reference to the similarity of the signs, labels, stationary, etc., of the defendant and those used by the old partnership, is utterly groundless. The black book of exhibits affords an ocular demonstration of this. The label of the complainant, which

is inserted in each coat, has a black background with a gray border, containing the words "Hilton's, Fifth Avenue and Thirty-third Street, New York, Newark, Bridgeport, Paterson and Waterbury", all in white. The complainant's label has, of course, a black background, with the emblem and letter "H" in yellow, together with the words, "The Hilton Company, New York, Boston, Philadelphia, Newark, Chicago, Pittsburgh, Brooklyn, Providence", all in yellow. It would be difficult to imagine more dissimilar labels.

The defendant's permanent wooden sign is a green background with gold letters and reads "Hilton's art-craft clothes. Brooklyn, Newark, Paterson, Waterbury and Bridgeport." The complainant's sign has an emblem at each end, a black background and the words "The Hilton Company" in large letters. A total dissimilarity is also shown in the stationery.

The proofs further demonstrate that there has been no imitation whatever in the window dressing or the store fronts of the complainant and defendant. (We are now excluding Paterson, which is out of the case, and which, as we shall see, stands by itself.)

We will not undertake to point out all the evidence with reference to the window dressing. Suffice it to say, as the Vice Chancellor found in his conclusions, a vogue or style has arisen among the sellers of ready-made clothing in New York, Brooklyn, Newark and elsewhere, to dress their windows in a practically identical manner so that the ordinary observer would fail to see any substantial difference between the windows of the complainant and his immediate neighbor in Newark, Stoutenburgh's, or of George, Broadway and Thirty-sixth Street, New York; of Horton's in Brooklyn; of Mack's, Broadway and Forty-eighth Street, New York; of Unger & Schwartz, Broad Street, Newark, etc. (see the photographs in the black book, and see also pp. 309, 329, 339, 354, 376,

388-390, 426, 439-441, 456, 480, 481). In other words, just as the windows of drug stores, department stores, etc., have grown to be quite similar, so ready-made clothing stores have finally adopted a similarity in dressing windows which is characteristic of all and peculiar to none. It, therefore, follows that the complainant's contention that the defendant imitated the Hilton Company's window dressings falls for lack of support.

The same thing is true with reference to the claim (not now, we believe, seriously urged) that there was an imitation of the store fronts. A comparison of the photographs in evidence will show how dissimilar the fronts are; and it is significant that the contractor who altered the fronts at Thirty-third Street and Fifth Avenue, Mr. Corrigan, swore (p. 271) that the defendant gave him no directions whatever as to the style of the alterations, beyond limiting the expense; and if the evidence of this witness, who is disinterested, on pages 272, 273 and 276, be examined, the distinctions between the several store fronts of the complainant and defendant respectively in New York City, will be made manifest. See also the evidence of Mr. Younker (p. 427).

We are not surprised, therefore, that when the Vice Chancellor came to write his conclusions, he ignored altogether the claim of the similarity in these several extraneous matters. He based his decree wholly upon the alleged unfair competition in the use by the defendant of the word "Hilton's", but expressly declined to find that the word "Hilton" or "Hilton's" had been so used by the old firm, as to have acquired a secondary meaning.

It is true that in an earlier part of his opinion he says (p. 20):

> "The signs while unlike in color and in material used, yet have such characteristics similar to those used by The Hilton Co. as that it cannot be said that there are any distinguishing

> features which would differentiate to the ordinary observer Hilton's Stores from the Hilton Co. stores. The window displays are practically identical. The evidence is that there are no marks which would be noticed by the ordinary observer distinguishing window dressings in stores of this nature. The show cards used while not identical are yet similar. It is so with the labels."

How there can be said to be any similarity in the signs, or how they could be more different, it is difficult to imagine; and the style of the show cards is like the other features of window dressing, characteristic of the trade, and has no peculiar imitation of the complainant's whatever. Indeed, the complainant has on most, if not all of his show cards, a crest all red, with gold color, whereas the Hilton crest was, when used, gold, blue and white (pp. 164 and 167). The defendant, however, in New York, has never used any crest on his show cards. Hence, it is that the decree absolutely ignores all the other features complained of, with such emphasis in the bill, and confines itself wholly to interdicting the use by the defendant of the word "Hilton" or "Hilton's", either alone or in connection with other words. The result is that the defendant is prevented from using his own name, either alone or in connection with other words, in the conduct of his own business, in spite of the fact that he is using no labels, marks or imitative devices of any kind or character similar to, or like those of the complainant; and in spite of the fact that the words "Hilton" or "Hilton's" have in the conduct of the complainant's business acquired no secondary meaning whatever. The Vice Chancellor, in his conclusions (p. 21, line 15) says:

> "The complainant's original claim seemed to be based upon the ground that the term 'Hilton's' had acquired a secondary meaning, and a large part of the argument was devoted to the question as to whether or not the proofs show that this secondary meaning had attached. The

> view that I take of the case renders it unnecessary for me to determine whether the complainant has substantiated its claim in this respect or not. The distinction has been drawn between the right of the complainant to enjoin the use of the name 'Hilton's', based upon the provisions of the bill of sale and the right based upon unfair competition. I think so far as this case is concerned, it is a distinction without a difference, because the same facts which would result in enjoining the use of the name because of the grant contained in the bill of sale, would induce the Court to enjoin its use because of unfair competition."

The narrowness of the grounds upon which the decision is based is conspicuous. The breadth of the decree based thereon, absolutely prohibiting the defendant from ever using in competition with the complainant his own name, whether alone or in conjunction with other words, even without any reservation of distinguishing marks, is just as conspicuous, and, as we submit, is fatally erroneous.

Before discussing the legal principles applicable to the case, it is proper that the facts surrounding this dissolution should be brought to the attention of the Court.

We have already commented upon the fact that the relations between the complainant and the defendant for two or three years had been very much strained. Notwithstanding this fact, the complainant seems to have been fond of the defendant's sons, Charles and Alexander, and on friendly terms with the complainant's wife, Mrs. Hilton. Even before the dissolution was effected the defendant's sons, both of whom were under age, had determined to go into the clothing business, and so a conference was arranged between Charles Hilton, Mrs. Hilton, and the complainant, which Charles describes as follows (p. 359):

> "Q. When was it, and what was the conversation? A. Pursuant to an engagement made by my mother, the early part of May my

mother and I met my uncle at the corner of Branford Place and Broad Street and took a drive, and during the course of conversation my mother told him I was going into business; he said he knew it; she told him to help me out as much as he could; he said he would; that is, my brother and I were going into business; he said he knew it, and he was going to help us out as much as he could, and during the course of conversation I cut in and asked him would he do any manufacturing provided I had the goods sent to him in my name; he said he would provided my father paid for it; that was agreed upon, and I had the goods sent in to the place and he manufactured it for me, and it was paid for by my mother; that is, something like eleven hundred dollars was paid for by my mother, and a small balance by my father.

Q. Did you have any conversation with reference to any names? A. I am coming to that. While we were riding I got talking to him about the name, and he said to me, that is, I said to him that Aleck and I were going into business and we didn't like to use Aleck or Charley Hilton, we wanted it to be both of us; I asked him what he thought of 'Hilton's'; he said, 'good, use it'. Naturally I went to the sign painter and had him make up signs. Right after that I placed the signs in the Paterson windows, telling the people of Paterson that Hilton's would open here in a short time, not knowing exactly what time we would open up.

Q. Did you have any other conversation with your uncle Philip after that? A. I did; the latter part of July or early in August my brother and I——

Q. Brother who? A. Aleck and I, we decided we would ask our uncle to loan us the advertising he used so successfully in Providence, and of course it would mean a whole lot less expense to us, we wern't so well financially fixed, my brother and I wern't; we didn't want my father to go to the expense, he wasn't there at the time, went away on a vacation, and only came where we were operating business, 841 Broad Street, came in occasionally, once or twice a week, sometimes not that; we thought we would ask him for the advertising he was using in Providence, because it was very suc-

cessfully used and we liked it, and it would save us a lot of money. We met him in front of the store, that is, I had gone to see him previously about different little matters before that, we met him in front of the store and I asked him whether he would let us use it, the advertising that they used in Providence; he said he would providing we wouldn't use 'The Hilton Company', but use 'Hilton's'. We agreed upon that, and he referred us to Sherman & Bryan, because he said he had only one copy, but referred us to Sherman & Bryan and they would give it to us, and we got it and inserted two or three insertions in the Paterson newspapers, and I placed signs in the windows of this advertisement, I myself took the other signs I put in previously out and put these in."

Mrs. Hilton (the defendant's wife) thus describes the interview (p. 408, line 24):

"My daughter called up Mr. Hilton and I made appointment with him to meet him at the corner of Branford Place and Broad Street. While we were riding I told him my sons were going in business; he said it was all right, it was very nice, and we were riding along and I asked him how about if he would help the boys out, and he said yes, he would do all he could for them; so I asked him to make up some merchandise for them; he said yes, if his father would be responsible for the goods, and I told him if his father would not that I would and after a while Charley said to him, 'Uncle, well, how about the name', he said to him 'I would like to call it "Hilton's"'; he said 'All right you can call "Hilton's" as long as you don't call it "The Hilton Company" '."

Alexander Hilton, the defendant's other son, thus testifies (p. 399):

"Q. When was it you had the conversation? A. Why my uncle had always manifested a great——

Q. When was it you had the conversation? A. In July and August, in the lat ter part of July or the first part of August, I don't quite

remember, but I was going to tell you further about it.

Q. Who was with you? A. My brother Charles.

Q. What was the conversation? A. Why Charles and I went down to see Mr. Philip Hilton relative to some advertising; my mother was sort of financing us at that time and we didn't have so very much money; we thought we could save money if we went down and got the advertising that Mr. P. H. had used in the opening of the Providence store, we would like that advertising, and Mr. P. H. always manifested a great likeness for Charles and I, and therefore we thought our chances that much the better. We met Mr. Philip Hilton in front of the Newark store, 791 Broad Street, and Charles asked him whether or not we could use that advertising which he had formerly used for the opening of the Providence store. Mr. Philip Hilton said that he would like to give it to us, but as he only had one copy he couldn't see his way clear, and therefore referred us to the advertising agent, Sherman & Bryan, on Fifth Avenue, New York; at the same time we asked Mr. Philip Hilton if we could use some sort of crest to make the sign look pretty, to make it more attractive, it is decidedly dead if you don't have some color in it; Mr. Philip Hilton said yes, he didn't care, and I subsequently went to Sherman & Bryan, the advertising agents, and produced that advertising, and inserted four ads in the Paterson papers before the opening of the store, and also had some window transparencies made, co-operating with the ads in the Paterson papers."

Philip Hilton, it is true, denies that any such conversations as the foregoing took place, but it is significant that prior to the dissolution The Hilton Company manufactured a large quantity of goods for the boys, the cost of which was paid to The Hilton Company by both Mr. and Mrs. Hilton (p. 361, line 12). The material for these clothes thus manufactured was billed to Charles M. Hilton, c/o The Hilton Company, 791 Broad Street, Newark, N. J., by Herring Brothers, Exhibit D-31, page 718;

and both Murray, complainant's General Manager, and Philip Hilton, knew that this manufacturing was being done (see pp. 552, 553). Moreover, immediately following the dissolution, at the express direction of the complainant, a notice was inserted in the Newark papers (Exhibit D-27, p. 714):

> "Announcement was made Monday that Philip Hilton and Joseph Hilton, trading under the name of the Hilton Company, with a chain of ten clothing stores and a factory had dissolved partnership. Joseph Hilton has withdrawn from the business. *The former intends to embark in the same business with his sons.*
> * * *
> The business will be conducted in the future by Philip Hilton personally under the name of the Hilton Company."

As early as May 17, 1916, the complainant signed a letter addressed to R. G. Dunn & Co., Exhibit D-11, page 710, in which he says:

> " We are informed that the report has reached you that The Hilton Company business has been incorporated, and that you desire to hear from us concerning reported changes in The Hilton Company business.
> In response to same, would say that The Hilton Company business has not been incorporated; no steps have been either taken or contemplated in that direction.
> The report that has come to you is doubtless due to the fact that Mr. Joseph Hilton's son, Charles Hilton, is about to start a clothing store in Paterson, and he caused to be incorporated a N. J. corporation of the name of 'Hilton's, Inc.', with a capital stock of $10,000., $1,000. of which has been subscribed."

Mr. Murray, complainant's General Manager, on July 12, 1916 (p. 580), procured and sent to the defendant a policy for $1,000. on the furniture and fixtures, and $6,000. on the stock that was being manufactured for the new enterprise, located in a

loft at 841 Broad Street, Newark. This letter is Exhibit C–168, page 696. It closes:

> "If your stock is moved you can return the policies to me and I can have them changed to the new location. Thanking you, and wishing you success, I am", etc.

Mr. Murray (p. 589), when asked what he referred to in wishing the defendant success, replied: "In his business enterprises." On the same page he was asked by the Court:

> "Then it was known to you and known to Philip Hilton at that time that Joseph Hilton was going to embark in the same business with his son? A. I believed that he was at that time.
>
> Q. So did Philip Hilton believe it, didn't he? A. I believe he did. Q. Did he say anything that indicated he did to you? A. Not that I recall, no, sir."

At this time Murray was General Manager of the complainant, and on page 590, line 10, was asked by the Court:

> "By the Court: Q. Mr. Murray, let me ask you this. Knowing that Mr. Joseph Hilton was going to embark in the same business with his son, what name did you think he would assume? A. I hadn't the slightest idea Mr. Vice Chancellor."

We are not surprised, therefore, that the Vice Chancellor disbelieved Philip's evidence that he knew nothing of the intention of the defendant and his boys to go into business.

The evidence shows that the defendant was somewhat overcome and very restless immediately following the dissolution, and spent most of the summer away from town recuperating, and not attending to business. Meantime, his two sons were preparing to start in business at Paterson, and we have already quoted the evidence of Mrs. Hilton

and the two sons, from which it appears that Philip expressed an entire willingness that the name "Hilton" or "Hilton's" should be used; nor was there the slightest limitation of such use to Paterson, as the Vice Chancellor concludes. You will search in vain throughout the evidence of Charles, Alexander, or Mrs. Hilton, for any such limitation. The complainant manufactured goods for 841 Broad Street, Newark, and Murray had it insured, stating in his letter (p. 696):

> "If your stock is moved you can return the policies to me, and I can have them changed to the new location."

Indeed, Philip swears (p. 531, line 25) that he had no idea it was intended to open the business at Paterson.

At the bottom of page 466, Joseph Hilton explains how the name "Hilton's" came to be suggested and adopted by the boys:

> "Well, the boys told me that their uncle Philip told them it is a pretty good name to use, and name stand for both of them, they didn't want to call it C. Hilton or M. Hilton, or, they wanted to make one name and they adopted the name of Hilton's."

Notwithstanding the fact that the Vice-Chancellor finds that Philip knew that the Paterson store was to be opened and consented to the use of the name "Hilton's" at that store, he nevertheless concludes (p. 26):

> "I do not believe that Philip ever intended to permit the use by Joseph or by the sons of the word 'Hilton's' in any way which would result in unfair competition. It is almost inconceivable. I rather assume that he thought that the use of the term 'Hilton's' in Paterson would not result in unfair competition with his stores."

What basis is there for this assumption? The gravamen of the bill of complaint is the fact that

the defendant did open a store in Paterson, which the bill alleges is directly competitive with the complainant's Newark store. A large part of the evidence was directed to the Paterson store, and it was not until the defendant showed that he had abandoned the Paterson enterprise as unsuccessful, that the Paterson feature of the litigation became academic, the opinion stating (p. 26, line 21):

> "The Paterson store has been discontinued, so that I do not have to determine whether I would enjoin the use of the word 'Hilton's' in Paterson."

and the decree provided (p. 29, line 10):

> "This decree shall not prevent the use of the words prescribed in Paterson, N. J., but application may be made on notice at the foot hereof for such relief as may be proper thereto."

Considerable evidence was offered by the defendant (pp. 284, 382, 429) to show that the traveling facilities between Paterson and Newark were such as to make it impossible for the complainant's contention, that there would be competition between the complainant's Newark store and the defendant's Paterson store, to be substantiated. So, evidence was offered by the complainant with reference to the circulation in Paterson of the Newark papers in which complainant's advertisements had appeared. The cross-examination of Alexander Hilton was largely directed to the character of the Paterson advertisements; and had it not been that the defendant, before the case was finished, abandoned the Paterson store, the complainant would never have abandoned his contention that Paterson was competitive with Newark.

Again, the Vice Chancellor was entirely mistaken in the supposition that the complainant's consent was in any way limited to Paterson, so that the feature of his opinion which gives to the complainant a right to enjoin the use of the name without

regard to the complainant's acquiescence in, and knowledge of, the fact that it was proposed to start a business under the name "Hilton's", is entirely unjustified by the proofs.

We have already directed the Court's attention to the fact that paragraph 6 of the bill of complaint expressly charges that the use of the words "Hilton" or "Hilton's" by the Hilton Company was such as to have given a secondary meaning to those words, and a significance as descriptive of, and solely applied to, the goods manufactured and sold by the old firm. We have also remarked that the Vice Chancellor (p. 21) refuses so to find. In the state of the proofs it would have been impossible for him to have found otherwise. The business was conducted, and purposely advertised and exploited under the name of The Hilton Company. Not a single witness is produced by the complainant to testify that the business was otherwise known, or that the words "Hilton" or "Hilton's" had acquired any secondary significance, or that the business was known as "Hilton" or "Hilton's". On the other hand, the witnesses Taylor (p. 263), Corrigan (267), Goldfob (385), Younker (414 and 421), Joseph Hilton (p. 455) and Baright (483) all positively declare that the business was known generally, and to them, as The Hilton Company, and that they never heard of its being known or carried on as "Hilton's".

The only evidence adduced by the complainants to show the use of the words "Hilton" or "Hilton's" was, first, advertisements in Boston, Philadelphia, Newark, Pittsburgh and Chicago newspapers, extending over a few years, in many of which, as descriptive of the stock offered for sale in the stores of the firm located in those cities, the words frequently appear in connection with marked off or reduced sales. No such advertisements were inserted in the papers of New York City (pp. 458-9) and we in this action are solely concerned with that place. No one denies the evidence of Joseph Hilton

(p. 459) and of Mr. Scheck (p. 496), that the market for an $18 suit of clothes is entirely local, and that an advertisement in a Chicago, Pittsburgh, Boston or Philadelphia paper will have no effect in building up a trade in merchandise of this character in other cities. For this reason evidence with reference to these advertisements in cities distant from New York, and in newspapers not shown to circulate there, was objected to (pp. 229, 237). Mr. Younker on page 422 was asked:

> "Q. Do you think from your experience in the business that advertising in Boston, Philadelphia, Chicago or Pittsburgh would have any effect in the papers in those cities, would have any effect in creating trade in New York City? A. Of course not."

The firm never advertised in magazines or periodicals having a circulation throughout the country. In other words, they never did what is known as national advertising (p. 467). Mr. Baright, who has been in the advertising business for twenty-four years (p. 482), states that the papers in Philadelphia, Boston, Chicago and Pittsburgh, in which these advertisements appeared, had a purely local circulation. To the same effect, Scheck (pp. 494–5). No one contradicts this evidence, so that we may ignore the money spent, or the phraseology used, in newspaper advertisements in these cities distant from New York, upon the question of secondary significance attached to the use of the word "Hilton's".

As said in *38 Cyc.* 826: the right to a trade name under which a business is conducted is usually of only local extent, and the name may be protected against use by others only in the locality where the business is conducted and the name is known. The right is co-extensive with, and limited to, the plaintiff's market; and in *38 Cyc.* 771, we find:

> "A secondary meaning may be acquired which is limited to a particular locality, and in such cases it will be protected in that locality." Citing cases.

In this respect the business of The Hilton Company, although conducted in several cities, is entirely different from one like, for example, Higgins Laundry Soap, which is sold by the maker to jobbers throughout the country, and nationally advertised. As shown in *Kaufman* v. *Kaufman*, 111 N. E. Rep. 691, customers at a retail clothing or men's furnishing store in a given city, are interested in an article of merchandise of too small a price to have any interest in what transpires in other localities with reference thereto. The same principle appears in

Eastern Outfitting Co. v. *Manheim*, 110 Pac. 23;

Hanover Star Milling Co. v. *Allen & Wheeler Co.*, 208 Fed. Rep. 513, affirmed 240 U. S. 403;

C. A. Briggs Co. v. *National Wafer Co.* (Mass.) 102 N. E. Rep. 87;

Theodore Rectanus Co. v. *United Drug Co.*, 226 Fed. 545.

The complainant also produced window cards, on some of which the words "Hilton" or "Hilton's" are accented, and seeks to have the Court infer therefrom that a secondary meaning had thereby been acquired. It is true that shortly before the filing of the bill, for obvious reasons, the complainant did make considerable display of the word "Hilton's" (p. 432), but an analysis of the evidence fails to indicate that there had been any such use of these cards prior to the dissolution as to have created a secondary meaning. Some cards were produced, and the witness Scott undertook to recall the years they, or others similar to them, had been displayed. This witness had collected these cards from Philadelphia (pp. 125–126) and other places, and before the hearing had written upon their back in lead pencil the years when he claimed they were displayed—admittedly a difficult thing to recall (p. 209, line 1). For example (Ex. C–98) was identified by Mr. Hanzer (p. 84), who says he is

"quite sure" that it was exhibited prior to June, 1916 (the date of the transfer). C-99 (p. 657) came into use in the Spring of 1916 (p. 114). No one gives any evidence with reference to Exhibit C–100 (p. 658), Hanzer (p. 85) saying that he had nothing to do with exhibits C–100 to C–111. The same thing is true of Exhibit C–101, Scott simply saying that Exhibits C-100 and 101 were displayed in the stores. When he does not state (p. 109). C-102 appears never to have been exhibited until the year 1916 in the Tubes (p. 115). Exhibit C-103 (p. 109), the witness Scott is uncertain about, but "thinks" it was early in 1915, and is "pretty sure" that it was displayed in some of their windows. C-104, "as near as Scott can remember", was displayed in 1915 (p. 110). C-105 was displayed in the Spring of 1916 (*id.*). C-106, "as near as I can remember," was displayed in 1915. C-107 "might have been displayed in 1916. It might have been displayed in 1915, I ain't sure" (p. 110, line 34). There is no evidence with reference to C-107. Scott says that C-108 (p. 110) was displayed even in 1914, or before that date. On cross-examination, however, at page 123, Scott having said that C-108 was displayed in 1914 in all the stores, including Newark, when confronted with the fact that in 1914 the Newark store was conducted under the name of George Watson & Co., admitted his confusion, saying (line 33), "Well, on these signs, I cannot pick out the one sign that was displayed at any particular time." Scott thinks C-109 was displayed in January or February, 1916 (p. 111, line 3). C-110 and 111, he thinks, he is not positive, were displayed in February or March, 1916 (p. 111). C-130, he thinks, was displayed over two years ago, 1915 (p. 111, line 30). C-131, he thinks, was displayed before 1914 (p. 112). C-132 was displayed in 1916 (p. 112). C-133, the witness (p. 192, line 32) cannot remember when it was displayed, but he thinks it was in 1915. C-134 was displayed before 1914, but where

we are not enlightened (p. 112). The same thing is true of C-136 (p. 113), and Exhibits C-137 and 138. This analysis shows how uncertain the witness is with reference to the time when exhibitions were made, and how few, if any of them, he pretends were exhibited any length of time prior to the dissolution, and how meagre is the evidence as to where they were displayed.

This is all the evidence the complainant presents, save the Tube advertising, to which we shall later advert, with reference to the secondary meaning attached to the word "Hilton's". We showed by Briggs (p. 311) that he, shortly before Scott testified, had been requested by Scott to select from the basement of the Nassau Street store several of these cards, and send them to Newark. He selected seven or eight, putting his name on the back of each, and he testifies that of all that he sent Exhibit C-130 is the only one the complainant produced. That had Brigg's signature on the back. He further says, that while he worked in the New York stores, "The Hilton Company" was all that appeared in the window (p. 313). Mr. Aarons, who worked for the complainant, swears (p. 300) that of all these exhibits he only saw C-100 and C-133 exhibited at one of the New York stores, and that was for a period of ten days or three weeks. Mr. Warshauer worked for the old firm as early as 1911. He says that he always observed "The Hilton Company", and only saw cards with "Hilton" in their windows, very infrequently, when there was a particular sale. After looking over all the exhibits, he picks out C–132 and C–107, which he remembers having seen displayed two or three weeks in New York on one occasion. Rikower was employed for years by the old firm as window dresser in New York. On pages 325 *et seq.* he picks out of all the Exhibits C–98–99–102 and 105, as being the only cards he ever saw displayed in New York, and they only for about four weeks in one summer. He

says that C-103 and 104 were too big for the New York stores, never exhibited there, and came from Philadelphia. All of these witnesses unite in the statement, as do Mr. Joseph Hilton and Mr. Younker, that this character of signs was only used very infrequently at mark-off sales which only occurred twice a year, lasting about a fortnight. As before stated, no one contradicts this testimony. (Supp. 160, 173, 174, 175, 207, 210, 302, 317, 415 and 446.)

It must be remembered that it is New York alone that we are here concerned with.

An interesting sidelight upon the complainant's evidence with reference to this matter is in connection with Exhibit C-139, a so-called transparency. Mr. Galway (pp. 207-8) undertook to identify it as being similar to one that he had seen in the store at Broadway and Thirty-seventh Street. At the bottom of page 208, although he was very shaky with reference to the matter, the Court permitted it to be marked against our objection. It turns out (Kipping, p. 154) that it was not painted until January or February, 1917, after the suit was commenced; that, too (p. 496), it was produced from a bunch like it in the possession of the counsel for the complainant, who had received a package from Mr. Murray, and that Murray (p. 497) said they had been prepared for use in Pittsburgh, but had never been used because the Pittsburgh store burned down.

In other words, the complainant tried to get the benefit of a transparency which he knew had never been used, as indicating the use of the word "Hilton's".

We do not feel called upon to go into the particulars at Paterson, for the reason already stated. Suffice it to say, that a lease was taken for a store there in the name (p. 283) of the defendant, with an arrangement to turn it over to his son Charley when the latter became of age. Following the permission which the complainant gave to Charley and Alexander, already quoted, the boys put up signs and inserted advertisements, as their testimony explains.

The store was opened early in September. No objection was made thereto until a letter from Mr. Hardin, complainant's counsel, dated October 4, 1916, forbidding the further use thereof, was received (Ex. C–153). Whereupon all the objectionable matters were removed from the Paterson store (pp. 431, 443–4, 466, 567). The Paterson store was the only one that had a shield upon its sign or in the window (p. 163). The complainant was unable to show that any of the crests which were put upon the window cards, and designed by complainant's witness, Solzer, without any suggestions whatever from the defendant, or any one on his behalf (p. 167), were ever exhibited in New York.

As we have already seen, these crests were of a different color from those of the complainant, and they were never used in New York. Charles Hilton, manager of the New York Store, the salesman, Mr. Younker, Joseph Hilton and McGovern all agree upon this. The complainant's witness, Jacobstein, is the only one who undertakes to testify with reference to the matter, and on cross-examination (p. 226), he admits he is not certain that he did see them.

All that remains is the advertising in the Tube trains and Tube stations. This was brought about by a contract dated May 11, 1915, Exhibit C–86 (p. 643), providing for advertisements to be inserted for six months in the cars of the Husdon & Manhattan Railroad Company. It was not until January 15, 1916 (Exhibit C–88, p. 646) that any arrangement was made for show case room in the stations of the company, and it was not until February 9, 1916, three months before negotiations opened for the dissolution, that a contract was made for show case room in the Thirty-third Street Station (Ex. C–91, p. 649). These contracts seem to have been renewed on April 26, 1916 (Ex. C–93, p. 650).

Surely, advertising commenced so recently prior to the dissolution as was that done in the Tubes can have no effect upon creating the alleged second-

ary meaning which the bill relies on as having existed and been created for years previous to the dissolution. Moreover, as shown by Mr. Baright (p. 488), such advertising is designed to reach and does, in fact, reach suburban travellers to New York, and not residents of New York. No one contradicts this.

We, therefore, conclude, with the Vice Chancellor, that there is no evidence upon which a secondary meaning can be said to have grown out of and around the words, "Hilton" or "Hilton's". Indeed, the proofs fall entirely short of establishing what the cases all hold is necessary in order that a word shall have acquired a secondary meaning. In *38 Cyc.* 769, 770, this requirement is succinctly stated:

> "If the plaintiff proves that the name or word has been so exclusively identified with his goods or business as to have acquired a secondary meaning, so as to indicate his goods and his alone, he is entitled to relief against others' deceptive use of such terms. If he fails in such proof he is not entitled to relief."

In accordance with that requirement, the bill alleges a long continued use of the phrase in question, from which the secondary meaning is alleged to have arisen. All that we find in the evidence is a sporadic use, descriptive of mark-off or discount sales once or twice a year. No one has testified to the existence of such a secondary meaning, or that the name "Hilton" or "Hilton's" had any special reputation or value in connection with the complainant's business. The situation is exactly like that adverted to in *Dunlop* v. *Dunlop*. Appeal Cases 1907, page 438:

> "The complainants have not proved that they have any exclusive right in connection with the sale of those articles to the use of the name Dunlop, nor have they proved that the name in question has any special reputation or value in connection with such minor articles."

It is most significant that when the complainant came to purchase the interest of the defendant he makes no mention whatever of these words, but confines the transfer entirely to the name—The Hilton Company. No permanent sign is produced, or shown ever to have existed, containing these words. On the contrary, they always bore the firm name, in this respect differing from Stoutenburgh's or McGregor's. On July 3, 1917, the complainant sends out warning notices to the trade against the method of conducting business by the defendant (Ex. D–2, p. 703), in which he says:

> " All our stores use the full original name of THE HILTON COMPANY."

As long as ten or twelve years previous thereto the correspondence of the firm (Exs. D–5, D–10) constantly used a letter head containing the words " The Hilton Company " alone. In the notice of dissolution, published two days thereafter (Ex. D–27, p. 714) the complainant stated:

> " The business will be conducted in the future by Philip Hilton personally under the name of The Hilton Company."

In the notice of the reduction sale in Newark, consequent upon the dissolution (Ex. D–28, p. 715) the enterprise is styled " The Hilton Company, successors to George Watson & Co." In the notice filed by the complainant with the County Clerk on June 26, 1916, immediately following the dissolution, undertaking to comply with the provisions of the law, the complainant solemnly declares (Ex. C–170, p. 698):

> " The name under which I am transacting and intend to transact business hereafter is 'The Hilton Company '."

In none of these documents is there a word said with reference to " Hilton " or " Hilton's ".

Hence, like the Vice Chancellor, we are compelled to decline to conclude that the proofs bear out the

allegations of the bill, that the secondary meaning had grown up around, or attached to these words.

The Vice Chancellor further states in his conclusion (p. 21, line 22), speaking of the argument:

> "The distinction has been drawn between the right of the complainant to enjoin the use of the name 'Hilton's', based upon the provisions of the bill of sale, and the right based upon unfair competition. I think so far as this case is concerned it is a distinction without a difference, because the same facts which will result in enjoining the use of a name because of the grant contained in the bill of sale, would induce the court to enjoin its use because of unfair competition."

He then concludes that it is unnecessary to show a fraudulent intent on the part of the defendant, stating (p. 23, line 38):

> "Expressed briefly, I think the rule is 'unfair competition is fraudulent conduct'.
>
> Examining the facts in the light of the rules of law hereinbefore referred to, it seems to me that it cannot seriously be argued that the use by the defendant of the name 'Hilton's', in the manner it is used in connection with stores in close proximity to those of The Hilton Company, cannot but lead to the conclusion and tend to injure the good will of the complainant, his interest in which the defendant sold to the complainant. * * * (p. 27, line 1). Upon the ground of unfair competition, and because it is an attack upon the good will of The Hilton Company, the use of the term 'Hilton's' by the defendant to designate his stores, which are in competition with those of The Hilton Company stores will be enjoined."

The figures (p. 675) of business done since the dissolution, corroborate the allegation of the bill (p. 5, l. 40), that the patronage of complainant has increased since the dissolution.

I.

The Vice Chancellor's conclusion that the defendant's use of the word "Hilton's", amounts to unfair competition (in the absence of evidence of fraud, or that that word had acquired a secondary significance), and is also an improper interference with the complainant's good will, is erroneous.

This is not a case of the adoption by the defendant of some trade-mark or symbol resembling the complainant's. It is the case of the dissolution of a firm, and the continuance by the retiring partner of a similar business under his own name. The Vice Chancellor concludes, that regardless of whether the name has been so associated with the old business that it has acquired a secondary meaning, and is generally accepted as indicating the goods of the old concern; and regardless of any intent on the part of the new partner to palm off his goods as those of the old concern; the mere use by the retiring partner of his own name in his own business, which competes with the old business, is a violation of the rights which the old concern secured, by having obtained a contract from the retiring partner in which he sold the good will of the business.

We respectfully but confidently insist that there is no rule of law that will sanction the Vice Chancellor's view.

Bear in mind, here is absolutely no imitation of labels, stationery, or anything done by the defendant, other than the bare use in his business, which is conducted with unimitating signs, unimitating labels, and unimitating stationery, of his own name. We must remember that, as already shown, and as the Court finds, the complainant knew the de-

fendant intended to pursue the same line of business. In the bill of sale no covenant is inserted preventing him from so doing. The evidence of Charles and Alexander Hilton, and Mrs. Hilton (which the Vice Chancellor evidently believed) plainly shows that all the complainant cared to prevent in the proposed new business was the use of the words "The Hilton Company". He never suggested to them that he had any mortgage upon the words "Hilton" or "Hilton's". On the contrary, he expressly sanctioned its use. Hence we can understand when later the contract was drawn by his counsel, all that it provided with reference to the matter was "the name", which, of course, was "The Hilton Company". With that express provision in the contract, how can it be said that the paper covered any other names or words that had been sporadically used by the business, although with insufficient frequency or length of time to give to those words a secondary meaning. Not having a secondary meaning they were mere fanciful phrases, with no particular significance, and hence if they were intended to pass by the bill of sale, so as to prevent their use by a vendor who has the natural right to use his own name, they certainly should have been mentioned. No doubt other words had been sporadically used by the Hilton Company in connection with their business but had not acquired a secondary significance. Does a transfer of the good will of that business include every such word, without being specifically mentioned, and thereafter prohibit the vendor, who by baptism has the natural right to use it, from so doing? It may be that a well defined trade name, *i. e.*, one by reason of the secondary meaning it has acquired, as publicly associated with the goods of the old concern, will pass in a conveyance of the good will of a business in the absence of any express reference thereto. Here we have a transfer of "the name and the good will". No one can pretend, and the Vice Chancellor himself does not hold, that the words

were included in the phrase "the name". They must then be spelled out of the words "good will". Our contention, of course, is, applying the adage *expressio unius, exclusio alterius*, that the contract having referred specifically to the name nothing else than that can be held to have been conveyed, even if the word "Hilton's" had acquired a secondary meaning and was in fact a trade name.

In *Bellows* v. *Bellows*, 53 N. Y. Supp. 853, it was held:

> "While it is true that a person may by proper assignment convey the right to use his name in any business, yet such an assignment must be an unequivocal and direct conveyance of such right, and such right would not pass under the ordinary phraseology of a general assignment for the benefit of creditors."

In view of the phraseology of the deed in question and the express mention (in addition to "good-will" and "other assets") of "the name", the judgment of the Court of Appeals of Tennessee in *Fite* v. *Dorman*, 57 S. W. Rep. 129, is important. There the Court concluded, from the language used in the deed of transfer, that there could have been no doubt of the intention of the retiring partner to convey the good will of the business from which he was retiring, and the Court so held. It added, however:

> "But this must be qualified to the extent of holding that, in so far as that good will was connected with or dependent upon the use of the old firm name, it only passed under the express terms of the contract between the parties concerning the name; that is, it could not, under the facts of this case, be held that the use of the partnership name passed as an incident to the transfer of the good will. Though it be conceded to be a sound proposition of law, as to which we say nothing at this point, that a right to use the partnership name will pass to the continuing partners, on the sale to them by a retiring partner of a going business and its good will, yet there can be no

doubt that the partners among themselves may make the use of the name a subject of contract between them, and that upon their having done so the contract itself will control, and not the presumption of law referred to, if there be such a presumption."

In *Hazelton Boiler Co.* v. *Hazelton* (Ill.), 30 N. E. Rep. 339, there was an assignment by a member of a firm to his partners of all his right, title and interest in and to the business and its assets, profits and emoluments, without making any mention of any trade-marks or trade name. It was held that the use of these general words was insufficient to pass to the old enterprise the right to use the defendant's individual name, and that the purchasing partner was not entitled to prevent the vendor from using his name without artifice in a new business. The court says:

"It is undoubtedly true, as was held in Frazer *v.* Lubricator Co., 121 Ill. 147, 13 N. E. Rep. 639, that where a party sells out an established business, and with it his own name, to be used in connection with such business, his vendee will acquire a right to the use of the name, and the vendor cannot afterwards assume it in carrying on the same business. That case, however, differs essentially from this in the fact that there the vendor, in the instrument by which the business was sold, expressly authorized the vendee to use his name as a trade-mark, or as indicating the material or product theretofore manufactured by the vendor, and conferred upon the vendors the exclusive authority to use his name for such purpose. But in the present case there is no reference in the instrument by which the business was transferred to the use in connection with said business of the vendor's name, either exclusively or otherwise. The transfer of the exclusive right to the use of said name is sought to be made out from the mere fact that said instrument assigned *all the assignor's interest in the assets of the business, and trade-marks and trade names*, if such there were, are claimed to have been a part of the assets assigned. The right of a man to use his own

name in connection with his own business is so fundamental that an intention to entirely divest himself of such right and transfer it to another, will not readily be presumed, but must be clearly shown. Where it is so shown the transaction will be upheld, but it will not be sustained upon doubtful or uncertain proof. All the circumstances surrounding the execution by Hazelton of the assignment of his interest in the business tend to negative the assumption that any property in a trade-mark or a trade name was within the contemplation of the parties; and the evidence, to say the least, leaves it doubtful whether the firm, at the time such assignment was made, had any property rights of that character. We therefore think that the intention on the part of Hazelton to divest himself of the right to use his own name in any business in which he might see proper to engage is not shown with such clearness and certainty as would justify the courts in undertaking to enforce it."

In *38 Cyc.* 768, we find:

"Words or names which have a primary meaning of their own, such as words descriptive of the goods, or the place where they are made, or the name of the maker, and which are not capable of exclusive preparation as a trade-mark, may nevertheless by long use in connection with the goods or business of a particular trader come to be understood by the public as designating the goods or business of that particular trader. Such words have both a primary and secondary meaning. In their primary descriptive sense they are *publici juris*, and all the world may use them in such a way as not to falsely convey the secondary meaning, for this would constitute unfair competition, as tending directly to pass off the goods or business of one man as and for that of another. That is what is known as the doctrine of secondary meaning. This perception by the courts was the genesis of the law of unfair competition as distinguished from trade-marks. In all this class of cases, where the word, name, or other mark or device is primarily *publici juris*, the right to relief depends upon the proof. If

plaintiff proves that the name or word has been so exclusively identified with his goods or business as to have acquired a secondary meaning, so as to indicate his goods or business, and his alone, he is entitled to relief against others deceptive use of such terms. If he fails in such proof he is not entitled to relief."

See also:

Vitiscope Co. v. *United States Phonograph Co.*, 83 Fed. Rep. 30, opinion by Judge Kirkpatrick.

American Washboard Co. v. *Saginaw*, 103 Fed. Rep. 281, opinion by Mr. Justice Day.

The recent case of *Briggs Co.* v. *National Wafer Co.* (Mass.), 102 N. E. Rep. 87, illustrates the distinction we are here making, and shows that a party cannot be protected in the use of a name against another entitled thereto, when it has not, in the plaintiff's use of it, acquired a secondary meaning.

"As a matter of sound reasoning, it seems difficult to extend the rights of the plaintiff beyond the ground on which those rights are rested. Its whole case depends upon the fact that the words 'Boston Wafers' have acquired in the trade a secondary meaning by which they signify not merely or necessarily that the goods were made in Boston (Wotherspoon *v.* Currie, 42 L. J. (N. S.) Ch. 130, and L. R. 5, H. L. 508) but that they were made by the plaintiff. Where the words have not gained that meaning, no rights of the plaintiff are infringed by the defendant's use of them. The defendant has the right to imitate the labels and wrappers of the plaintiff where this involves no infringement of a trade-mark and no attempt to get the benefit of the public's desire to have goods made by the plaintiff. Flagg Mfg. Co. *v.* Holway, 178 Mass. 83, 59 N. E. 667. Where the secondary meaning of the words was unknown, no purchaser could have understood them in any but their primary sense, and no purchaser could have been deceived by their use. Columbia

> Mill Co. *v.* Alcorn, 150 U. S. 460, 463, 14 Sup. Ct. 151, 37 L. Ed. 1144; Parsons *v.* Gillespie (1898), A. C. 239. The gist of the action is not the harmless use of the particular words and symbols, but the appropriation of the plaintiff's business. Rains & Sons *v.* White, Haucke & Co., 107 Ky. 114, 52 S. W. 970; Banzhaf *v.* Chase, 150 Cal. 180, 88 Pac. 704; and see Clarke Thread Co. *v.* William Clark Co., 56 N. J. Eq. 789, 40 Atl. 686; Baker *v.* Baker, 115 Fed. 297, 53 C. C. A. 157; J. F. Rowley Co. *v.* Rowley, 193 Fed. 390, 393, 113 C. C. A. 386. See also the reasoning of Loring, *J.*, in Cohen *v.* Nagle, 190 Mass. 4, 16, 76 N. E. 276, 2 L. R. A. (N. S.) 964, 5 Ann. Cas. 553, *et seq.*)."

The same Court in the more recent case of *Batchelder & Co.* v. *Batchelder*, 107 N. E. Rep. 455, protects the right to use one's own name in a competing business, saying:

> "The right to use his own name in earning a livelihood should not be taken away, and, being under no contractual obligation to the plaintiff to refrain from soliciting customers wherever he can find them, so long as he does not represent himself as being either the C. H. Batchelder Company or the plaintiff corporation, it has not made out a case for equitable relief. Gilman *v.* Hunnewell, 122 Mass. 139."

But in view of the absence of a finding of fraudulent intent in the use of the word, and of a secondary meaning attached to its use by the old concern, there is no foundation whatever for the claim that the conveyance by the defendant of his interest in the good will of the old business prevented his use of his own name in a competing business. It is perfectly well settled, that a retiring partner, on the sale of his good will, having made no covenant not to engage in the business, cannot be prevented from exercising the right to so engage in the same business, even as a rival to his vendee. The vendor of a good will, not having restricted himself against carrying on the business, is permitted by law to

push a rival business wherever he chooses, even if this does interfere with the business he has sold.

Newark Coal Co. v. *Spangler*, 9 Dick. 354;
Richardson v. *Peacock*, 62 Eq. 597 (E. & A.);
Snyder Milk Co. v. *Burton*, 10 Buch. 185 (E. & A.).

Here all the authorities are reviewed, and it is declared by this court that:

> "The rule of the English courts thus established is that a person who has sold the goodwill of his business may set up a rival business, but is not entitled to solicit the custom of those who previously dealt with him."

Furthermore, it is the undoubted rule, that in the absence of fraud or of proof that the name of the defendant, who has sold his good will, has acquired a secondary meaning, which would be misunderstood by the public in the event of the defendant using his own name, he may in such rival business undoubtedly use that name. The distinction is between the adoption of a label or symbol similar to one that has been adopted; the unnecessary adoption of a corporate name; and the mere use of one's own name in competition with a former business, which may have been conducted under that or a similar name, in the absence of fraud or an intent to palm off the new man's goods as those of the old, and of a secoddary significance having been attached to the name itself. It is submitted that not a single case can be found, in the absence of these elements of fraud, or secondary meaning, where, notwithstanding the sale of the good will of a business, the vendor has been prohibited by the courts from using his own name in a competitive business. The foundation of the decisions of this Court in the *Rogers cases*, 67 Eq. 646, and 72 Eq. 933, was the express finding of fact that the word "Rogers" had by a user of nearly half a

century in connection with the manufacture by the complainant, or its predecessor, acquired a secondary significance in the trade. Mr. Justice TRENCHARD, in delivering the judgment of this Court in the latter case, said:

> "When this suit was originally before the Court the Vice Chancellor found that the name 'Rogers' had acquired a secondary significance in connection with the manufacture of silverware. In his opinion, reported in 66 N. J. Eq. (21 Dick.) 120, he uses this language: 'The complainant is the successor of several companies which have been engaged for many years in the manufacture of silver-plated ware, and which all derive their title from three brothers of the name of Rogers, who were among the first, if not the first, to apply the art of electroplating to its manufacture. They gained a reputation for their products, and the name "Rogers" has acquired a secondary significance in connection therewith.'
>
> That finding of fact is, in our judgment, fully warranted by the evidence.
>
> While a personal name may not constitute a technical trade mark, yet where an article has come to be known by that personal name, one may use that name, even though it be his own, to palm off his goods as the goods of another who has first adopted it, and by which appellation the goods have come to be known, when the use of his own name for such purpose works a fraud. If he uses his own name it must be used as not to deprive others of their rights, or to deceive the public, and the name must be accompanied with such indications that the thing manufactured is the work of the one making it as would unmistakably inform the public of the fact."

The cases cited by him in support of the foregoing proposition were, without exception, cases where either there was shown to exist a fraudulent intent by immitation of signs, labels or symbols, in addition to the mere naked use of the name, or else the name itself had acquired a sec-

ondary significance, with the result that its use by the defendant, even if it were also his name, must necessarily result in confusion, and lead the public to suppose that in purchasing the latter's goods they were acquiring those of the former. In other words, the foundation of the rule is that no man can use his own name in the pursuit of a business competitive to one, the good-will of which he has bargained away, when such use will enable him to palm off his goods as those of the old business. In both of the ROGERS cases fraud was found to have existed, in this Court, and it was because of such fraud that the determination was to restrain the use of the word "Rogers" in the proposed manner. The accuracy of the reasoning of VICE CHANCELLOR STEVENS as to the propriety of a man's being permitted to use his own name, in a business competitive with another with which he was formerly connected, in the absence of such fraud, was not questioned by this Court. On the other hand, Mr. JUSTICE SWAYZE, 67 Eq. 647, in delivering the judgment of this Court, expressly said: "We have nothing to add to the accurate statement of the law by the Vice Chancellor". The Court below, in the case at bar, holds that regardless of fraud, or of secondary meaning, the mere use of one's own name in a competitive business will be enjoined. Mr. JUSTICE SWAYZE, in the *Rogers* case, 67 Eq. 646, says:

> "The question involved is not the right of an individual to use his own name. That question *sometimes* presents difficulties which can only be met by permitting the use of the name in such a way that it shall not amount to misrepresentation as to the goods sold thereunder."

Obviously that accurate jurist realized that these questions were not always presented.

In *Burgess* v. *Burgess*, 3 DeG. M. & G. 896, the Court said:

> "But when a defendant sells goods under his own name, and it happens that the plaintiff

has the same name, it does not follow that the defendant is selling his goods as the goods of the plaintiff. It is a question of evidence in each case whether there is false representation or not."

In *Reddaway* v. *Banham*, L. R. Appeal Cases, 199 (1896), LORD HERSCHELL said:

"The name of a person, or words forming part of the common stock of language may become so far associated with the goods of a particular maker, that it is capable of proof, that the use of them by themselves, without explanation or qualification, by another manufacturer would deceive a purchaser into the belief that he was getting the goods of A when he was really getting the goods of B. In a case of this description the mere proof by the plaintiff that the defendant was using a name, word, or device, which he had adopted to distinguish his goods, would not entitle him to any relief. He could only obtain it by proving further that the defendant was using it under such circumstances, or in such manner, as to put off his goods as the goods of the plaintiff."

In *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U. S. 169, Mr. JUSTICE WHITE says:

"Where the name is one which has previously thereto come to indicate the source of manufacture of particular devices, the use of such name by another, unaccompanied with any precaution or indication, in itself amounts to an artifice calculated to produce the deception alluded to in the foregoing adjudications."

The conclusion reached by Vice Chancellor Stevens, 66 Eq. 126, is

"I have thus far referred to cases in which the court was considering the right of a man to use his own name. While that right is fully recognized, it is said, in the later cases especially, and they are numerous, that it is the duty of the court to restrain a man from

> so using his name on or in connection with his own goods (if that name has come to be recognized as characterizing a rival trader's goods) as to suggest that those goods are his rival's goods and to pass them off as such."

Frequently in cases of this kind, as in the case at bar, the goods of the old concern owe their position and vogue in the trade as much to the activities and skill of the vendor partner as to the vendee, and his name may be valuable to him because it suggests his skill, or his financial ability, or something else which belongs to him. In the case at bar, no one would have the effrontery to suggest that the success of the old business, "The Hilton Company", was not due as much to the defendant as to the complainant. Indeed, what evidence there is outside of the evidence of them both, which is fairly reprerentative of the men, is decidedly in favor of the superior skill, activity and ability of the defendant (pp. 259, 260, 424 and 437). He was the older of the two; he was in the business longer, and, if necessary, reliance might be had upon the case of *Coffeen* v. *Brunton*, 5 Fed. Cas. #2947, where it was held: that if both complainant and defendant were concerned in getting up an article of merchandise, contributing to the compound as partnership action, that neither could claim the exclusive right to a label used by the firm after dissolution, and in a suit brought to restrain the use of such a label by one of the former partners, the court, upon such facts appearing, left the parties to establish at law their respective rights. The opinion states:

> "Where, as in the present case, there is a controversy between the parties whether both were not concerned in the establishment of the business, it is not a case for an injunction. The right of the plaintiff must be clear. If it be controverted, chancery will leave the parties to their remedy at law."

In *White* v. *Trowbridge*, 216 Pa. St. 11, 64 Atl. Rep. 862, it was held upon full consideration that where a partner transferred his interest in the good will of a business to his co-partners, it did not preclude him from entering into a similar business in the same town, in competition with the old firm, where there was no restriction in the dissolution agreement, and that the retiring partner by the mere transfer of the good will to his partner was not deprived of the right to use his own name in connection with such business, when there was in association with such use no artifice or fraud indicating an intent on the part of the retiring partner to palm off his goods as those of the old business. The Court said:

> " In the present case the contract for the sale of defendant's interest in the business was in writing, and we do not find in it anything which can be construed into an agreement by the defendant to refrain from engaging in a similar business under his own name. An agreement to retire from business, and not to resume it again, is in restraint of trade, and cannot rest upon mere inference. Hall's Appeal, 60 Pa. 458, 100 Am. Dec. 584. So long as the defendant does not attempt to sell his goods as those of the old firm, or represent that his business is a continuation of the old firm, he is at liberty to engage under his own name, honestly, and in good faith in the same line of business and in the same locality."

This case is approvingly referred to by the Supreme Court of the United States in *Herring Safe Co.* v. *Hall Safe Co.*, 208 U. S. 559.

In *LaPointe* v. *LaPointe* (Me.), 99 Atl. Rep. 348 (1916), there is a very full discussion of all these questions, and the exact limitations of the rule are plainly marked out. The opinion says:

> " The use of the name itself is not controlling. The manner in which it is used and the actual or probable effect are the vital questions. The gist of the action is not the employment of sim-

ilar words, but the appropriation of the plaintiff's business. * * *

A distinction should here be noted between the use of a family name as a trade name and certain trade-marks, designs or devices. The latter are arbitrary symbols, adopted to designate particular goods. They are associated with those goods and no others, and rivals are not permitted to imitate them. The device in W. R. Lynn Shoe Co. *v.* Auburn-Lynn Shoe Co., 100 Me. 461, 62 Atl. 499, 4 L. R. A. (N. S.) 960, is a fair illustration. But the use of a family name is quite different, and to prohibit its use throws upon the complaining party the burden of showing the deceitful practices which is the gist of unfair competition. * * *

If the use of the name be reasonable, honest and a fair exercise of his right, the user is not rendered liable for the incidental damage caused a rival thereby. The inconvenience or loss is *damnum absque injuria.* The injury which results from similarity of name alone is not actionable. But the offender cannot resort to any artifice or adopt any methods calculated to deceive the purchasing public. This is settled law. Brown Chemical Co. *v.* Meyer, 139 U. S. 540, 11 Sup. Ct. 625, 35 L. Ed. 247; Singer Mfg. Co. *v.* June Mfg. Co., 163 U. S. 169, 16 Sup. Ct. 1002, 41 L. Ed. 118; Elgin Natl. Watch Co. *v.* Illinois Watch Co., 179 U. S. 665, 21 Sup. Ct. 270, 45 L. Ed. 365; Howe Scale Co. *v.* Wyckoff, Seamans & Benedict, 198 U. S. 118, 25 Sup. Ct. 609, 49 L. Ed. 972. In the case last cited the court laid down the rule that, in the absence of contract, fraud or estoppel, any person could use his own name in all legitimate ways, and as a part of the whole of a corporate name."

Further:

"The Plaintiff urges, however, that Lapointe, although primarily a family name, has acquired a secondary meaning, and has become identified with the products of the plaintiff company. That it denotes not merely origin but quality, and it cannot be used by the defendant as a corparate or trade name, since that would necessarily create the impression that the defendant's products are those of the

plaintiff. It is true that family names do sometime acquire such a secondary meaning, as 'Roger's Silver' (International Silver Co. *v.* Rogers C. (C. C.), 110 Fed. 955), or 'Baker's Chocolate', Walter Baker & Co. *v.* Slack, 130 Fed. 514 (65 C. C. A. 138). *But the acquisition of such a secondary meaning is, in every case, a matter of proof, and the evidence here does not sustain the claim.*"

The Court's particular attention is directed to the following cases upon this subject of the right to use one's own name.

McLean v. *Fleming*, 96 U. S. 245;
Brown Chemical Co. v. *Meyer*, 139 U. S. 540;
Goodyear Co. v. *Goodyear Rubber Co.*, 128 U. S. 590;
Meneely v. *Meneely*, 62 N. Y. 427;
Turton v. *Turnton*, L. R. 42 Ch. Div. 128.

In *Williams* v. *Farrand* (Mich.), 50 N. W. Rep. 446, the plaintiff and defendant had, as partners, carried on business under the style of Farrand, Williams & Co. Farrand sold out his interest in the business to the plaintiff, and later organized in the same place a new firm, to carry on the same style of business under the name of Farrand, Williams & Clark. An injunction was sought to prevent the use of this name. The court laid down the following propositions:

"The following propositions must be regarded as established by the clear weight of authority:

1. Though a retiring partner may have assigned his interest in the partnership business, including the good-will thereof, to his copartner, he may, in the absence of an express agreement to the contrary, engage in the same line of business in the same locality, and in his own name.

2. He may, by newspaper advertisements, cards, and general circulars, invite the general public to trade with him, and through the same mediums advertise his long connection with the old business, and his retirement therefrom.

3. He will not be allowed, however, to use his own name, or to advertise his business, in such a way as to lead the public to suppose that he is continuing the old business; hence, will not be allowed to advertise himself as its successor.

4. The purchaser will not, in the absence of an express agreement, be allowed to continue the business in the name of the old firm.

5. That no man has a right to sell or advertise his own business or goods as those of another, and so mislead the public, and injure such other person."

The opinion then quotes the following from *Burgess* v. *Burgess*, 3 DeG. M. & G., page 448:

"Where a person is selling goods under a particular name, and another person, *not having that name*, is using it, it may be presumed that he so uses it to represent the goods sold by him as the goods of the person whose name he uses; but where the defendant sells goods under his own name, and it happens that the plaintiff has the same name, it does not follow that defendant is selling his goods as the goods of the plaintiff."

The opinion adds:

"Defendants are using their own names only. They went into business on Woodward Avenue, several blocks from the old stand. In every letter-head, bill-head, card, or advertisement in which their firm name appears they give the individual names of the members of the firm, the new place of business, and in no case have they represented that they are successors to the old firm. The bill-heads used by the old firm had a cut of the old stand on the left-hand corner, about three inches square. Those of the new firm contain no cut, and less than half of the amount of matter. It would be exceedingly difficult to prepare two bill-heads more unlike. The letter-heads of the old firm contained two cuts,—one of the old stand, at the left hand, and one of the Peninsular White Lead & Color Works, on the right. The dis-

> similarity is marked. The envelopes used by the old firm contain eight printed lines on the upper left-hand corner, occupying and inch and three-quarters of space. Those used by the new firm contain five lines, occupying about three-quarters of an inch in space. There has been no attempt at imitation in words or type."

Important cases distinguishing between the mere use of the same name by a person entitled to such use, and the fraudulent use thereof in connection with labels or other marks are:

> *Rogers* v. *Rogers*, (Conn.) 1 Atl. Rep. 807;
> *Rogers* v. *Simpson*, 9 *Id.* 305;

The latest case in the Supreme Court of the United States, to which our attention has been directed, is *Waterman* v. *The Modern Pen Co.* 235 U. S. 88. There the defendant was required to accompany the use of his own name "Waterman", in connection with pens, by distinguishing marks, expressly upon the ground that the same name "Waterman" had acquired a secondary meaning in its use by the plaintiffs and their predecessor for years. The opinion says:

> "After the finding of two courts and upon the evidence it must be assumed that the defendant had used the name Waterman in such a way as to mislead the public and to interfere with the plaintiff's rights unless the defendant had the right to use the name as matter of law because it was the selling agent of a firm calling itself A. A. Waterman & Co., and deriving its name from a man who started in business long after the plaintiff had acquired whatever rights it has. In support of this proposition the defendant lays hold of language in Howe Scale Co. *v.* Wyckoff, Seamans & Benedict, 198 U. S. 118, 140, and in other books, to the effect that courts will not interfere with the use of a party's own name 'where the only confusion, if any, results from a similarity of the names and not from the manner of the use'. But, whatever generality of expression there may

> have been in the earlier cases, it now is established that when the use of his own name upon his goods by a later competitor will and does lead the public to understand that those goods are the product of a concern already established and well known under that name, and when the profit of the confusion is known to and, if that be material, is intended by the later man, the law will require him to take reasonable precautions to prevent the mistake. Herring-Hall-Marvin Safe Co. *v.* Hall's Safe Co. 208 U. S. 554, 559. There is no distinction between corporations and natural persons in the principle, which is to prevent a fraud. *Ibid.* Howe Scale Co. *v.* Wyckoff, Seamans & Benedict, 198 U. S. 118. Donnell *v.* Herring-Hall-Marvin Safe Co., 208 U. S. 267, 273. In the Howe Scale Co. case, it was stated upon the same page with the passage quoted that 'defendant's name and trade-mark were not intended or likely to deceive'."

There, fraud was the gist of the conclusion.

In the leading case of *Chickering* v. *Chickering*, 215 Fed. Rep. 490, the defendant was only permitted to use the word "Chickering" by differentiating symbols, but the opinion is careful to say:

> "In this case the proof is undisputed, that in the course of years before this suit was begun Chickering Pianos had come to mean the product of the business founded in 1823 by Jonas Chickering,"

It was this business to which the plaintiff had succeeded.

The opinion of Lord Parker, in the House of Lords, in *Registrar of Trade Marks* v. *Ducros*, 83 L. J. (Chy.) 1, is quoted with approval, and says, referring to cases of this kind:

> "Equity has never imposed any limitation on the kind of word entitled to this protection, but in every case it has to be proved that the mark has by user become, in fact, distinctive of the plaintiff's goods."

The opinion in the Chickering case (*supra*) further says:

> "The refusal of the English Courts to enjoin E. G. Stanley Brinsmead from using his full name on the fall board of pianos at the suit to the old established house of John Brinsmead & Sons, Ltd. 29 Times Law Rep. 237, affirmed 29 Times Law Rep. 706 (1913) was due to the express finding that defendant had not been guilty of wrongdoing; that the form in which he placed his name on the fall board was conspicuously different from plaintiff's. While dealers had committed frauds in passing off defendant's for plaintiff's pianos, they had done this by telling deliberate falsehoods; defendant had not suggested or invited these wrongs by any act, and therefore was not responsible for them. The court said, however:
>
> 'If "Brinsmead" had been in large characters, and 'E. G. S.' in characters which might be overlooked, that would have been a dishonest use of his own name. Another dishonest use would be if he had so printed it as to imitate the writing and manner in which the plaintiffs had put their names on their pianos.'
>
> In other words, because that defendant, unlike the Chickering Brothers, had done nothing at all to produce confusion or deception, except to use his own name in a very distinctive way, there was no occasion for the intervention of a court of equity to enjoin him from passing off his goods as those of another, and, therefore, no need of determining just how such wrongful acts would be prevented with due regard to the rights of both parties."

Again:

> "When a proper name has come to acquire a secondary significance, their relative rights of the parties are adjusted by compelling those lawfully entitled to use the name in its primary sense to accompany such use by some clear and positive statement negativing any connection between them and those having the exclusive right in the secondary significance of the name."

Recent cases adhering to the distinction here sought to be made are

Schinasi v. *Schinasi*, 155 N. Y. Supp. 867;
Romeike v. *Romeike*, 167 *Id.* 235.

In this latter case the Court said:

> "The intent to obtain a part of plaintiff's trade by competition under a name similar to plaintiff's, does not constitute unfair trade competition, unless that intent was effectuated by some overt act constituting fraud, misrepresentation or deceit."

and it was held that the mere naked use, without either fraud, misrepresentation or deceit, of the same name did not justify an injunction.

In *Allegretti* v. *Allegretti* (Ill.) 32 N. E. Rep. 487 (referred to approvingly in the opinion of Mr. Justice TRENCHARD in the *Rogers* case, 72 Eq. 938), one partner conveyed to another his interest in the business previously conducted by both, and later started in to compete therewith, using his name "Allegretti". It was assumed that the transfer carried the exclusive right to use such trade-marks or trade names as had been used in the business. The opinion says:

> "It is hardly disputed that for a number of years 'Allegretti's' chocolate creams and confections, in the city of Chicago, were known to be the manufacture of the firm of Allegretti Bros. which was afterwards incorporated and became the appellee company. That firm, and later the appellee, had thus acquired a reputation in that particular business, and the manufactured product had acquired a trade name when associated with the business, which was of great value. The defendants had a right to open up their business under the firm name of 'Allegretti & Co.', provided they did so without 'any intent, act or artifice to mislead dealers in the market, or the public at large as to the identity' of the firm. Elgin Butter Co. *v.* Elgin Creamery Co., 155 Ill. 127, 40 N. E. 616. If they established their new business and sought

> to conduct it with the fraudulent and wrongful intention of attracting to themselves the custom intended for appellee, this is clearly a fraud upon the rights of the latter. Whether the business was carried on with such wrongful intent to deceive is the question of fact which was found adversely to appellants upon the hearing, and is the one we must determine from an examination of the evidence. From a careful examination of the whole record, we think the chancellor below, and the appellate court, were amply justified in their finding. The most that can be said is that the evidence is somewhat conflicting, although we are satisfied that it preponderates in favor of complainant."

Although it is not alleged in the bill, it may be argued that the fact that the defendant has many of the complainant's former employees, indicates a fraudulent intent in this connection. It is submitted no authority can be found which prohibits a person in the position of the defendant from employing former clerks of his partner. There is no evidence that any of them were enticed from the complainant's employ. We believe that every one was discharged. In fact, the complainant rather took pains to prove that fact, and to show bias on their part. See the evidence as to Brennan's discharge (p. 297); Briggs' (p. 314); Warshauer (p. 318); Cohen (p. 327); Rikower (pp. 341, 350, 428), and Younker (p. 544).

If there were any proof of our simulating the complainant's signs, labels, symbols or stationery, or advertisements, then there would be some basis for the claim of unfair competition. Mr. Joseph Hilton, on page 457, says that the label in the coat is the principal thing in business of this character. Not only is this uncontradicted by the complainant, but in his warning to the trade against our business (Exhibit D-3, p. 705), he says:

> "As an extra precaution against deception look for the above shield on the label of every

suit or overcoat before you buy. It is your only protection. Note our full name, THE HILTON COMPANY, sole makers of stylebilt clothes for men."

We therefore contend there is no ground whatever for any injunction, let alone the far-sweeping one that was permitted by the Court below.

II.

The complainant expressly surrendered to the defendant and his sons the right to use the words "Hilton" or "Hilton's".

We will not again cite the evidence of Charles, Alexander and Mrs. Hilton, already quoted. The Vice Chancellor improperly limited that evidence to Paterson alone, and concluded that it was preposterous to suppose that the complainant would ever have surrendered the use of the word "Hilton", where such use would, in fact, compete with himself. We have already shown that not only is there nothing in the evidence to indicate any limitations to Paterson, and that when complainant grew angry and filed his bill, he relied principally upon the business in Paterson as being competitive with Newark, but it was not until after the filing of the bill that the principal competitive store (Broadway and Thirty-seventh Street) of the defendant was opened (p. 437). No one contradicts Mr. Younker's evidence (pp. 435 and 433), that the defendant's Fifth Avenue store is in no sense competitive with the complainant's store at Broadway and Thirty-sixth Street. New York is so large as to be made up of distinct communities, and the constituency on Fifth Avenue is entirely different from that over on Broadway.

It is undisputed that the complainant knew that his brother expected to go into business. Every document in the case proves that the only thing about which he was solicitous was the preservation for himself of "the name" The Hilton Company; that which gave the appearance of a big business; that made it look like a corporation; the enterprise of which he signs himself President. In his bill of sale he showed no anxiety whatever with reference to the word "Hilton's". He, as the Vice Chancellor found, expressly cousented to its use in Paterson. Why consent there and object elsewhere? The failure of the Court to find that the word had acquired a secondary meaning is of immense importance as corroborative of the complainant's indifference about our use of it. He did not frame his bill upon the claim to control those words alone, but, as we have seen, expressly bottomed it upon the idea that in connection with our use of the word we had simulated labels, signs, store fronts, etc., thereby expressly endeavoring to bring himself within the well settled rules of law.

III.

The complainant's conduct has been deceitful and fraudulent, and he is not entitled to any relief because of that fact.

The complainant is not seeking to protect a technical trade-mark which is always attached to the article sold but a so-called trade name. His right thereto (it being the name of the defendant as well), if it exists at all, must arise from the fact that now and then sporadically he used temporary window cards upon which the word appeared. A glance at some of these cards, which are exhibits in

the case, will show that the business of the Hilton Company was thereon represented to be the sale of clothes which the enterprise itself manufactured. Running through all the advertisements, and these exhibits particularly, is a claim of peculiarity and exclusiveness of style in the Hilton clothes, which the company was able to secure by reason of its own designing, cutting and tailoring, and thereby secure a finer product for a cheaper price by saving the profit of the middleman. Exhibit C–73 (p. 631) speaks of "exclusive style at popular prices"; Exhibit C–74 (p. 632) speaks of "Hilton clothes, designed, cut, tailored and retailed by us". Exhibit C–75 (p. 633) says: "We design, cut, tailor and retail Hilton clothes". Exhibit C–80 (p. 638) says: "Hilton clothes come to you direct, combining all of the virtues of quality and style with the saving of the middleman's profits". Exhibit C–81 (p. 639) speaks of the goods being "designed by the Hilton Company—another evidence of Hilton leadership". Exhibit C–34 (p. 641) says: "Hilton clothes reflect both in fabric and style, as well as fit, the work of the costly custom tailor". Exhibit C–96 (p. 655) speaks of "An exclusive Hilton creation". Exhibit C–97 (p. 656) speaks of "Hilton made clothes for stout men possess that touch of individuality found only in the higher priced custom made suits". Exhibit C–98 (p. 657) says: "Hilton, in creating a series of Spring models that really meet the demands of younger men", etc. Exhibit C–100 (p. 658) speaks of "Actual savings made possible by Hilton designing, Hilton cutting and Hilton tailoring". Exhibit C–101 (p. 658) says: "By designing, cutting, tailoring and retailing Hilton clothes ourselves we are able not only to give you intensely individual creations, but also save you the retailer's part of the profit in the transation." Exhibit C–105 (p. 661) says; "The wholesale profit which we manage to save for our customers because we make Hilton clothes ourselves would be impossible", etc. Ex-

hibit C–107 (p. 662) says: "Hilton suits combine style and economy. We design and make them ourselves." This card is claimed to have been exhibited in 1914. Exhibit C–130 (p. 664) says: "The new dress coat is designed along new lines." Exhibit C–136 (p. 666), said to have been exhibited before 1914 (p. 113), says: "The Hilton Spring clothing is designed by a master designer who commands the highest salary paid to any designer in the country." This was before Mr. Foshay was employed. Exhibit C–137 (p. 667) says: "We *aim* to make clothes that are better than the average, and as good as the best". Exhibit D–27 (p. 714), the notice of dissolution, says: "The firm has achieved success as manufacturers and retailers of men's clothing. From a small beginning fifteen years ago, in a small store, it has grown to be one of the most prominent *manufacturing and* retail clothing concerns in the country".

Now, as we have already seen, it is not pretended that the Hilton Company ever solely manufactured its goods. Taylor swears (p. 260) that when he was there they only made about 5 per cent. of their output. Brennan describes (p. 295) how stock that was bought from other manufacturers was marked with the labels of the Hilton Company and sold, there being no distinction whatever between that which was so bought and that which was manufactured, and the public could not distinguish them. Aarons says (p. 299) that the proportion they sold of goods made by other manufacturers was, when he was there, from thirty to thirty-five per cent. Cohen describes (p. 328) the large invoices the concern received from manufacturers between 1906 and 1910, when he worked with it. He further says on page 329: "All our full dress stuff, evening clothes, full dress suits, tuxedos, were bought from Melsner & Bro., I think was the name; at that time the Hilton Company had not manufactured any, hadn't made their own full dress stuff at all." Mr. Schyke

(p. 375) said there was nothing distinctive or peculiar about the Hilton Company's clothes, the style, fabric, make up, trimming, etc., being exactly the same as others, and that they were undistinguishable (p. 377) from that of many of their competitors whom he names. Max Younker (p. 410) was connected with The Hilton Company from 1904 until 1912, and from 1914 to 1916. He says they bought and manufactured indifferently; that in 1904, 1905 and 1906 the average was about 50 per cent. of bought goods, and that after that it got down to 35 per cent. and then about 30 per cent. Joseph Hilton (p. 456) says that until 1904 they did not manufacture at all. In that year they commenced to manufacture about 5 to 10 per cent., and gradually increased the manufacture, which in 1916 had increased to about 65 or 70 per cent. Prior to that time it was about 45 per cent.

There is no contradiction of this whatever, except that Mr. Jacobstein, the complainant's auditor, undertakes to estimate that for the years 1915 and 1916 the company manufactured all but about five or six per cent.

Now, we can imagine no greater or more material falsehood than characterized the conduct of this business in this respect. Not only is the customer lead to believe that the goods they offered were the product of the complainant's own tailoring, skill, care and attention, but that the middleman's profits were saved, so that he got an article better than the ordinary ready-made clothing store affords, and cheaper, because the middleman's profits were saved.

By the complainant's own exhibits, as well as by the allegations of his bill in this cause, this claim is persistently made. The bill reiterates the claim that the complainant had acquired, through years of experience, a great reputation for the goods that he manufactured and sold. It now transpires that the claim that its goods were so manufactured by it is entirely untrue. That for years they did not manu-

facture it all; later increased it somewhat, but down to the very time of the dissolution bought indiscriminately from jobbers large invoices of goods, upon which it put its own label and sold them under the pretense that they were its own manufacture.

This is not all. We have already pointed out how the concern chose the name "The Hilton Company" "so as to look big; it gave the impression that it was a big concern." It also had a false line of credit up to $300,000. How, shortly after the dissolution, the complainant conspicuously announced in the newspapers (black book), on October 31, 1916: "Mr. Murray will direct the financial management of the company's manufacting plants and retail stores in Newark, as well as in other cities," signing it "The Hilton Company, Philip Hilton, President," and stating that Mr. Murray is the Treasurer.

The principles of law applicable to such a situation are well settled, and nowhere better than in this court. Whenever the course of conduct of a business has been fraudulent and deceitful, the owner of that business, and participant in the fraud and deceit, has not the necessary clean hands to receive equitable relief against one who he claims is violating his obligation with reference to that business.

The cases are all collected by Vice Chancellor Stevens in *New York & New Jersey Lubricant Co.* v. *Young*, 84 Eq., p. 469. The reversal of this case in this Court was not upon the ground that the principle he applied was incorrect, but because this Court found that there had, in fact, been no deceit in the use by the complainant of the words "non fluid oil", the evidence there making it plain that it was quite as correct to describe the composition called non fluid oil, an oil as a grease, concluding that a product composed of oil to the extent of 75 per cent. may be fairly called an oil, just as the ordinary water of our lakes and rivers, though possessing many other elements in its chemical composition beside H_2O is nevertheless correctly called water.

In *Nims on Unfair Competition*, Section 398, it is said:

> "Any general representations that the product is manufactured at a particular place, or by particular manufacturers are material."

In *Manhattan Medicine Co.* v. *Wood*, 108 U. S. 218, in the Supreme Court of the United States, the complainant sought an injunction against the alleged violator of one of its trade-marks. It appeared that it was, and for years had been, engaged in the sale of " Atwood's Genuine Physical Jaundice Bitters", which it described as manufactured by Moses Atwood, Georgetown, Mass. The fact was that Atwood had ceased manufacturing it, and for years it had been, in fact, manufactured by the Manhattan Medicine Company in New York. The defendant was denied relief in an opinion by Mr. Justice Field:

> " A court of equity will extend no aid to sustain a claim to a trade-mark of an article which is put forth with a misrepresentation to the public as the manufacturer of the article and as to the place where it is manufactured, both of which particulars were originally circumstances to guide the purchaser of the medicine."

Many English and Amerian cases are eited in support of that doctrine. To the same effect is *Holzapfel's Compositions Co.* v. *Hohtjens American Co.*, 183 U. S. 1. To the same effect is *Palmer* v. *Harris*, 60 Pa. St. 156, where the complainant's trade-mark indicated that the cigars which he sold were made in Havana although they were, in fact, made in New York. The principle was recognized in *Meridan Brittania Co.* v. *Parker*, with reference to the importance of truth in representations concerning the manufacture of articles offered for sale, but because the representation in this case was substantially true, an injunction was refused.

A strong case is that of *Siegert* v. *Abbott*, 61 Md. 276, 48 Am. Reps. 101, where the plaintiff manufactured and sold a cordial under the name of

"Angostura Bitters", with labels stating that it was prepared by Dr. Suegert, formerly at Angostura, but now at Port of Spain, and that the bottles bore the plaintiff's signature. The fact was that the doctor died before the suit, never lived at Port of Spain, and the bottles only bore the signature of the inventor. The plaintiff sought to enjoin the defendant from manufacturing and selling a cordial under the name of Angostura Aromatic Bitters, but it was held, in consequence of these misrepresentations, he could not maintain his suit.

To the same effect is *Prince Mfg. Co.* v. *Prince's Metalic Paint Co.*, 135 N. Y. 24, 31 N. E. Rep. 990.

In *Joseph* v. *Macowsky* (Calif.), 31 Pac. Rep. 914, it was held that the courts would not grant relief on a claim to the exclusive use of a trade name which contains a false representation, and calculated to deceive the public as to the manufacture of an article, and the place where it is manufactured.

In *Worden* v. *California Fig Syrup Co.*, 187 U. S. 516, 527, the Court said:

> "We find, however, more solidity in the contention, on behalf of the appellants, that when the owner of a trade-mark applies for an injunction to restrain the defendant from injuring his property by making false representations to the public it is essential that the plaintiff should not in his trade-mark, or in *his advertisements and business*, be himself guilty of any false or misleading representation; that if the plaintiff makes any material false statement in connection with the property which he seeks to protect, he loses his right to claim the assistance of a court of equity; that where any symbol or label claimed as a trade-mark is so constructed or worded as to make or contain a distinct assertion which is false no property can be claimed on it, or, in other words, the right to the exclusive use of it cannot be maintained."

See also:

Hazlett v. *Pollack*, 188 Fed. Rep. 494;
Uri v. *Hirsch*, 123 Fed. Rep. 568.

See the illuminating opinion of Vice Chancellor BERGEN in *Great Bear Springs Co.* v. *Great Bear Lithia Springs Co.*, 71 N. J. Eq. 595, where this principle was applied.

See also the opinion of Vice Chancellor GARRISON, in *Perlberg* v. *Smith*, 70 N. J. Eq., 638, wherein he says:

> "If, without regard to the source of manufacture or to any distinction of kind, brand, or make, this trade-mark of a retailer is placed indiscriminately upon every article of any given species, it can serve no other purpose than to show that the article is sold by that person; and, if a man is to be protected at all in this respect, he must lay a basis for such protection by adopting an arbitrary, fanciful designation of which he is the first user, and so obtain a technical trade-mark.
>
> I do not decide, because it is not necessary, whether there could be such a thing as a technical trade-mark which did not denote kind, brand, or make, but merely did denote the fact that it was sold by a certain retailer. If Perlberg, by adopting the words 'Eagle Shoes' to denote the shoes sold by him, sought to convey the impression to the public that he was retailing a particular kind, brand, or make of shoes under the name of 'Eagle Shoe', then he was conveying a false impression, and, upon familiar principles, will not be protected with respect thereto. This undoubtedly was his intention, and in his bill in this suit he pleads that 'he was the sole and exclusive agent for the sale of the said Eagle Shoes'. If such was not his intention, then I am at a loss to conceive of any principle upon which he may prevent another from making use of the term 'Eagle Shoes'. He has, as has been before pointed out, no exclusive right to the words 'Eagle Shoes'. He cannot successfully put forward any claim to prevent any one else from using those words. The utmost right which he may claim would be to prevent another from using those words in such a way as to palm off the goods of that other as the goods of Perlberg. This he may do if he shows the court that he has used these words in con-

> nection with goods in such a way as to identify the name and the goods; that is, that he used the name to denote a particular kind, brand, or make of shoes. This he has not done, because the proofs demonstrate that he applied the name indifferently and indiscriminately to all kinds of shoes, from every source, irrespective of their origin, kind, brand, or make, and that the term was meaningless, save to the extent that it meant the shoes sold in his store. Of course, if it were charged that the defendant so befogged the public by simulating the signs of the complainant's store, or changing the appearance of the exterior of his store to make it resemble the complainant's store, that people did not know into which store they were going, there would be some ground for action."
>
> *Rosenthal* v. *Blatt*, 80 N. J. Eq. 90.

In *Munn* v. *The Americana Co.*, 83 N. J. Eq. 309, the same principle was applied. There the complainants filed a bill to prevent the defendant from further continuing the publication of the American Encyclopedia under the name of the Scientific American Compiling Dept. The gravamen of the complainant's bill, as shown by the opinion of Mr. Justice SWAYZE, in this Court, was that Munn & Co. will be injured in their business reputation by the fraud of the defendant in palming off the book upon the public as a work connected with the *Scientific American*, yet that was the very scheme in which the parties joined for years prior to 1911:

> "We think the complainant cannot now be heard to complain of conduct in which it formerly joined, and by which it profited. * * * We think the complainant, when it tires of its bargain and seeks to enjoin the defendant from further profiting by the proposed connection, does not come into court with clean hands."

In the case at bar the complainant is seeking to enjoin the defendant from the use of a word which will, he claims, enable the defendant to palm off

his goods as the goods of the complainant, which name was acquired and has attained its characteristics by reason of years of conscious misleading of the public by both the complainant and defendant. As Mr. Justice SWAYZE said:

> "The court will not, for any delinquency of the defendant, lend its assistance to a violation of law, and so it will not assist one who has joined in an effort to deceive the public, to prevent his asssociate from continuing to do the very thing to which he has previously consented."

The Vice Chancellor seemed to think that this Court in *Johnson & Johnson* v. *Seabury*, 71 N. J. Eq. 750, in some announced a different doctrine. This, however, is not the fact, as its opinion in both of the later cases, the *Lubricant Company case*, 84 Eq. 469, and the *Americana case*, demonstrate. The Vice Chancellor also went to Nebraska and found refuge in the case of *Regent Shoe Mfg. Co.* v. *Haacker*, 106 N. W. 595, which, if it held contrary to the many cases hereinabove referred to, which it does not, would be swamped in the aggregation of cases of courts of last resort and of high authority holding the contrary.

With reference to the method of manufacture, Mr. Younker was asked by the Court (p. 448), "Do you furnish the patterns, or do the manufacturers produce their own patterns?" and his reply was:

> "Their own patterns, your Honor. I have to explain that in buying ready made clothes you buy them two different ways, in one way you buy them and the man has the goods on hand and another way you buy them when you want the goods delivered three or four months later and they show you samples, and that is what I want to bring out, that they are all made on the manufacturer's own patterns exactly and his own designing, own patterns by his own tailors."

Hence, there was no room for the application of the distinction recognized by the Supreme Judicial Court of Massachusetts in *Nelson* vs. *Winchell*, 89 N. E. Rep. 180–183:

> " He was a jobber and not strictly a manufacturer. But the shoes were manufactured by the defendants especially and solely for him and in accordance with his directions. He was to be himself responsible to purchasers as if he had been the manufacturer. He dictated the stock to be used and the way in which he wished the shoes to be made, and went to the defendants' factory to see that his ideas were carried out. He determined the design, the material and the workmanship of the shoes. In short, as he put it in his testimony, he controlled the manufacture of the shoes upon which his label was to be put. We see no reason to doubt the validity of his trademark."

Proof of Confusion.

It is interesting to note the paucity of proof presented in the case as to the existence of actual confusion. But one customer was called. He is Mr. Fortiun. He claims to have been for ten years a customer of The Hilton Company, and says he understands (p. 178) that he recently bought a suit from the defendant at 243 Broadway, happening to go up Broadway and noticing the similarity of the display, and seeing our sign " Hilton's " he went in and bought a suit. He admits he paid no attention to the signs and notices. That our windows had a display of shirts, collars, men's furnishing goods, which the complainant's windows do not. He further claimed (on p. 183) that he noticed a similarity in the signs, but when pressed he admitted he paid no attention to them. It would be difficult to imagine a more stupid and unobservant person than this customer. The courts have frequently held in cases of this kind, that they are not responsible for the stupidity of customers and blunders that unobservant people make.

In *Dunlop* v. *Dunlop*, Appeal Cases 1907, page 438, the Court said:

> " Well, of course, there are unwary people in this world, but I think that a man who employs his own name in carrying on his business has the right to regard the people whom he may attract as being capable of exercising and being in the habit of exercising thought; and I cannot differ from the judgment of Lord Low in which he says:
>
> 'Any one who took the trouble to think about the matter would see that the respondents' company was a motor company and the complainants' a tyre company. I do not think that the respondents are liable to have their business practically stopped unless they change their name simply because a thoughtless person might unwarrantably jump to the conclusion that they were connected with the complainers'."

Now, bearing in mind, that our windows in New York are decorated with men's furnishing goods (pp. 149, 181, 450, 452 and 467), as well as with clothes, and that the defendant does not sell them, and confines its business and window dressings to clothes alone, we see how apt is this quotation.

See also *Williams* v. *Farrand* (Mich.), 50 N. W. 446, already referred to, upon this point of confusion.

The rest of the evidence of confusion is made up entirely of statements made by complainant's clerks, of alleged conversations with customers, showing their suppositions that our store was the same as complainant's, and also the testimony of two detectives, who were successfully contradicted by denials of the alleged conversations, and by the production of suits of clothes which put the lie in the mouth of one of these hired investigators.

In this connection the opinion of Vice Chancellor Leaming in *Rosenthal* v. *Blatt*, 80 N. J. Eq. 90, is significant. He says:

> " These occurrences disclose some confusion which it is urged is to be attributed to a simi-

larity of the two trade names. It is quite possible that the confusion referred to has arisen from the use of the word 'London' as a part of the trade name of both contending parties; but such confusion is, in my judgment, to be more appropriately attributed to extreme carelessness and inattention upon the part of the customers who have made the specific errors referred to. Complainants have no property right to the exclusive use of the word 'London' in connection with their business. They are only entitled to protection against unfair competition by defendant; they are entitled to be protected against defendant passing his goods or business as complainants' goods or business, and the test is whether or not the public is likely to be deceived. Concrete instances of confusion which can only be appropriately attributed to extreme carelessness or inattention on the part of customers are clearly inadequate to establish a similitude which does not in fact exist. I am unable to believe that the name 'Page of London' used in the manner in which it is being used by defendant, is operative to deceive or mislead any reasonable person by reason of its resemblance to the name 'London Shop', or to improperly divert complainants' trade."

Upon this point *Williams* v. *Farrand* (Mich.), 50 N. W. Rep. 446, is instructive. There, in a case of this kind, where the evidence was confined to stupid mistakes, the Court said:

> "Defendants are not responsible for the blunders made by clerks, postal clerks, mail carriers, telegraph employes, or newspaper reporters."

We therefore for every reason urge that the decree below is erroneous and should be reversed, and that the bill should be dismissed.

Respectfully submitted,

SELICK J. MINDES,
ROBERT H. MCCARTER,
Counsel for Appellant.

March Term, 1918.

New Jersey Court of Errors and Appeals

Between

PHILIP HILTON,
Complainant-Respondent,

and

JOSEPH HILTON,
Defendant-Appellant.

On Appeal from Chancery.

Brief for Respondent.

The decree appealed from in this case was advised by Vice-Chancellor Lane on September 19, 1917, and restrains perpetually the defendant, Joseph Hilton, his agents, servants and employees, from using the name "Hilton's" or "Hilton," either alone or in association with other word or words for any purpose whatsoever in any clothing business operated or conducted, directly or indirectly, by the defendant, competitive with the clothing business operated or conducted by the complainant trading under the name and style of The Hilton Company, and particularly from using the word "Hilton's" or "Hilton" either alone or in association with other word or words to describe or designate any retail clothing store or stores, or the clothing therein sold, or the business therein operated or conducted, now or hereafter operated or conducted, directly or indirectly, by the defendant in any city or cities in which the complainant, trading under the name and style of The Hilton Company, now operates or conducts a retail clothing business.

New Jersey State Library

Copy of the decree is set forth in the Record, pages 27 to 29.

The opinion of the Vice-Chancellor is printed in the Record, pages 18 to 27.

The bill of complaint and answer will be found in the Record, pages 1 to 17.

The Pleadings.

The bill alleges, and the answer admits, that, prior to June 24, 1916, the complainant Philip Hilton and his brother Joseph Hilton, the defendant, were partners engaged in business under the name of The Hilton Company, selling men's clothing at retail, with stores in the City of Newark, N. J., New York, N. Y., Brooklyn, N. Y., Philadelphia, Pa., Providence, R. I., Pittsburgh, Pa., Chicago, Ill., and Boston, Mass., and in manufacturing clothing for sale at such stores; that the said business had been conducted under the name of The Hilton Company in stores in New York City for about eleven years, in Newark, in this State, since about 1907 (with the exception of the years 1910 to 1914), in Brooklyn since 1910, in Philadelphia since 1904, in Providence since 1914, in Pittsburgh since 1913, in Chicago since 1913, and in Boston, with the exception of about a year, since 1909.

The bill alleges, and the answer admits, that the volume of business during the last three years was over a million dollars a year. While not a part of the pleadings, it will interest the court to refer here to the distribution of the business by cities. The gross figures of the business for the years 1913, 1914, 1915 and 1916 appear in the record. (As to 1913 and 1914, pages 248 to 250; and as to 1915 and 1916 in Exhibits C. 151 and C. 152, printed on page 675

of the Record.) As to all the years the details of sales in the different localities appear. The total business in 1913 was $1,529,073.41, in 1914 $1,417,985.02, in 1915 $1,239,294.12, and in 1916 $1,316,546.14. It is also convenient to note here that from 1910 to 1914 the business in Newark was not conducted under the name of The Hilton Company, but in the name of a corporation, George Watson & Company, owned by the Hilton partnership, and the figures in 1913 and 1914 include the sales of that corporation.

The bill alleges, and the answer admits, that on or about June 24, 1916, Joseph Hilton, the defendant, conveyed to Philip Hilton, the complainant, all the right, title and interest of Joseph by a bill of sale of that date, copy of which is annexed to the bill of complaint (Record, p. 9). By this the defendant conveyed to the complainant "all the estate, right, title and interest of the said Joseph Hilton of, in and to The Hilton Company co-partnership business at Newark, New Jersey, and all other places (heretofore conducted by the said Joseph Hilton and the said Philip Hilton, as co-partners), including all the name and good-will of said business and all its assets, including also all its money, accounts receivable, bills receivable, stock of merchandise, woolens, linings, trimmings, cloth, suits, overcoats, and other garments and clothing manufactured, unmanufactured and in course of manufacture, in all its stores, factories, work-shops, store rooms, in transit and wheresoever situate; all its furniture and fixtures, store, factory, office and other equipment, tools, machinery and supplies of all kinds and wheresoever situate; also the building known as 793 and 795 Broad street, Newark, N. J., and the building known as 166-

168 Market street, Newark, N. J.; all its choses in action, and all its property and rights, privileges and advantages of every kind and nature, wheresoever situate and to whatsoever relating, intending hereby to grant and convey unto the said Philip Hilton, and his heirs, executors, administrators and assigns, all the estate, right, title and interest of the said Joseph Hilton of, in and to all the foregoing mentioned property and rights, and of, in and to any and all other property and rights of every kind and nature, wheresoever situate and to whatsoever relating, of and to which the said Joseph Hilton and the said Philip Hilton, as co-partners and as members of the firm and co-partnership trading under the name of The Hilton Company, are possessed or entitled, embracing also everything of and to which the said Joseph Hilton and the said Philip Hilton, as co-partners and as members of the firm and co-partnership aforesaid, are possessed or entitled, which has not been included in the various deeds of assignment bearing even date herewith and executed and delivered contemporaneously herewith. Together with the appurtenances to the same, or any part of the same, belonging and in anywise appertaining, and also all the estate, right, title and interest, claims and demands whatsoever of the said Joseph Hilton of, in, to, out of and concerning the above mentioned property, rights and co-partnership."

The complainant Philip assumed all the indebtedness, liabilities and obligations of every kind and nature of the co-partnership, and covenanted to save harmless the defendant from any and all obligation, liability, loss or damage on account thereof.

The bill alleges, and the answer admits, that since on or about September 9, 1916, in Paterson, New Jersey, and since on or about November 4, 1916, at 33rd street and Fifth avenue, New York City, the defendant opened stores for the sale at retail of men's clothing of substantially the same prices and general character as the clothing manufactured and sold by complainant, and has opened or announced the opening of similar stores in New York, N. Y., Waterbury, Conn., and elsewhere, and that in opening said stores and doing business therein, advertising his products, and in all the operations of merchandising them, defendant has been and still is doing business under the name of "Hilton's." The bill alleges that the use of the name "Hilton's" was continued by the defendant notwithstanding the protests of the complainant, and the answer admits the conduct of the business under the name of "Hilton's" and claims the right so to do.

This bill was filed November 18, 1916, and an order to show cause was contemporaneously advised by Vice-Chancellor Lane requiring the defendant to show cause why injunction should not issue in accordance with the prayer of the bill. On the argument under the order to show cause, because of the contradictory character of the evidence, the Vice-Chancellor expressed a desire to dispose of the case on final hearing rather than on order to show cause, and the case was thereafter referred to him and final decree made with restraint as above indicated.

Prior to the filing of the bill of complaint, under date of October 4, 1916, counsel for the complainant addressed a letter of protest and warning to the defendant. This letter is set out in full as Exhibit C. 153 (Record, pages 676 to

678) and is referred to by witnesses in the Record as the Hardin letter.

Discussion of Facts.

Philip Hilton is about forty-eight years old and his brother a little younger (Record, p. 538).

Neither one of them can read English. Neither one can write, except a signature. But notwithstanding this handicap they had succeeded as partners in the clothing business and had brought the volume and profit of their chain store enterprise, covering ten stores in seven cities, to large figures. The gross returns of the business have already been alluded to and particular reference will later be made to the locations of the stores, so far as necessary for this argument.

They fell apart as the result of a quarrel. When they first began to quarrel the record does not show, but their differences were acute in the early part of 1916. The defendant Joseph describes their troubles (Record, pp. 461-2) as culminating on May 5, 1916. The complainant Philip says that they were on bad terms for two years and did not speak to each other except when they had a fight.

The trouble between the partners unquestionably reached the breaking point because of occurrences surrounding the leasing of a store in Paterson by the defendant Joseph. The lease was signed on May 2nd, and on May 3rd there was a family row about which there is a good deal of contradiction in the testimony, and it can only be understood by reading the testimony of Philip (Record, p. 531, *et seq.*) and of Mrs. Joseph (Record, pp. 408, 614) and of the son, Charles M. (Record, p. 359). The testimony of

Miss Young, secretary of the firm (Record, beginning p. 556) should also be read in association with the controversy over the Paterson lease. Not only the lease was involved, but also the name "Hilton's."

If Philip was in the complacent mood described by Mrs. Joseph and her son Charles, and also by the real estate agent Apfelbaum (Record, pp. 280 to 282), as to the proposed business enterprise of the boys in Paterson, and so indifferent to what Joseph might do in Paterson, it is indeed strange that Joseph should have been contemporaneously wrought upon to offer to sell his interest in the partnership. If these witnesses are to be believed harmony reigned, not discord. Yet Joseph himself says that on May 5th Philip was threatening a receivership for the partnership.

The brief of appellant, pages 12 to 17, quotes copiously from the evidence of Mrs. Hilton and her sons and also from the testimony of Mr. Murray. We ask the court not to be content with extracts, but to examine the testimony not only of these witnesses but also of the complainant and the defendant.

In our view notice to Philip that the boys contemplated, even with their father's backing, going in the clothing business in Paterson is not at all inconsistent with Philip's insistence against the use of the name "Hilton's," and the sequence of events suggests at that time a state of friction between the brothers hard to reconcile with the Vice-Chancellor's conclusion that there was a consent on Philip's part to the use of the name "Hilton's" in Paterson. We shall have occasion later to again refer to the effect of the consent of Philip, conceding that it was given.

For convenience sake it has been thought better to consider this controversy at this point at a greater length than absolutely necessary for mere chronological reasons.

However difficult it may be from the testimony to know exactly what was said at these various interviews, in which the complainant and the defendant and the members of the defendant's family, and those immediately associated with the business participated, it is quite evident that the offer and acceptance referred to by Joseph (Record, 462-3), looking to the dissolution of the partnership and the purchase of Joseph's interest by Philip were the immediate sequel and consequence of the Paterson row.

But the trouble did not stop with the agreement of sale of May 5th, by which Joseph was to retire from the business. Later in May an effort was made by Joseph and his two sons to incorporate a New Jersey company under the name of "Hilton's, Inc." This was abandoned before the papers were completed. Joseph says that he was going to incorporate for the boys so as to limit them to a certain amount of capital, but that he found out that the incorporation would not do any good so he abolished the incorporation (Record, pp. 466; 476-7).

Miss Young tells us that Mr. Brady called to inquire about the corporation and that Joseph told him it had nothing to do with The Hilton Company; that Joseph also told her to telephone the lawyer, Mr. Bernhard, to stop the incorporation, declaring that if he had known it was to become public he never would have started it (Record, pp. 559). Joseph admits the call of Mr. Brady of the commercial agency of R. G. Dun & Co., and Mr. Brady produced a letter (Exhibit D. 11, Record, p. 710) ad-

dressed to the commercial agency by The Hilton Company by Philip Hilton, under date of May 17, 1917, written by Mr. Murray at the instance of Joseph (Record, p. 577, l. 37, to p. 578, l. 11). This letter informs the agency that Mr. Joseph Hilton's son Charles is about to start a clothing store in Paterson and that he had caused to be incorporated a New Jersey corporation of the name of "Hilton's, Inc." with a capital stock of $10,000, $1,000 of which had been subscribed, but that the corporation had no legal existence, the papers having been withdrawn because the parties had changed their minds about it. The letter also advised the commercial agency that there was an agreement in force between Philip and Joseph by the terms of which Philip would acquire the interest of Joseph in The Hilton Company by the end of the year, but that it had been decided to close the matter within the next few weeks, at which time Mr. Joseph Hilton would withdraw from the business.

Apparently this attempted incorporation, or the unexpected publicity attending it, precipitated further trouble between the brothers, for on the following day, May 18th, Joseph Hilton employed Mr. Robert H. McCarter, who at once wrote a letter to Philip Hilton repudiating the contract of May 5th (Case, p. 592). Philip at once brought this letter to the attention of Mr. Murray, who up to that time had represented both of the brothers, having been their general counsel and who had written the offer and acceptance representing the contract (Record, p. 463). Philip was informed that if there was to be a fight between the brothers Mr. Murray did not care to have anything to do with it, and Philip thereupon engaged Mr. Hardin. So,

immediately following the announcement of the attempt to form a corporation under the name of "Hilton's," notwithstanding that the attempt is abandoned, we find the brothers again at loggerheads with the agreement for the retirement of Joseph and the continuation of the business by Philip repudiated by Joseph and each of them engaging independent counsel.

The court has been spared the proceedings of Mr. McCarter and Mr. Hardin during the interval between May 18th and June 24th, at which time the transaction was finally closed by the delivery of a bill of sale and other papers at Mr. McCarter's office after the adjustment of a final difference, developed after the papers had been prepared, between Philip and Joseph as to patterns (Record, p. 627).

By this sale and purchase of every element of value in the partnership, including the name and good-will, and the retirement of Joseph, it might well have been hoped that the differences between the brothers were at an end and that, to quote from a letter in evidence, the "big schlamazzle" was over (Ex. D. 32, p. 719).

Nothing in the facts down to the time of the execution and delivery of the bill of sale, however closely analyzed, discloses any agreement or expectation on the part of either Philip or Joseph that Joseph should thereafter use the Hilton name in any clothing business into which Joseph might embark. This is so even if we eliminate from consideration Mr. Murray's evidence that Joseph called him on the telephone on June 23d and asked him whether Philip could be got to agree to the use of the name of J. Hilton Company in Paterson (Record, p. 583, l. 25), denied by Joseph (Record, pp. 617, 618).

Joseph, the answer tells us, then had no intention of going in business for himself anywhere, under any name, and did not make up his mind so to do until some time in September, as will hereinafter appear (Record, p. 465). And his sons corroborate him (Record, p. 362).

The utmost that can be got from the alleged appeals by Mrs. Joseph and her son to Philip, if Philip's denial be entirely ignored, is a permission to the boys only for *their* Paterson store, and it evidently was not expected that the Paterson enterprise would be a very large one, as the abandoned incorporation was for an authorized capital of only $10,000 with $1,000 subscribed.

It is true that in the announcement of the retirement of Joseph from The Hilton Company, published in the newspapers after the execution of the bill of sale, reference is made to the intention of Joseph to go in business with his sons (Exhibit D. 27, p. 714). *But no reference is made to name.* This article was prepared by Hanser, an advertising man, without supervision prior to publication, pursuant to a general instruction, and a copy was forwarded by him to Younker, the then manager of the Chicago store of The Hilton Company, with the postscript expressing the satisfaction of all concerned at the end of the wrangles between the brothers—"The big schlamazzle is over, thank heaven's"—this postscript containing the information in slang Yiddish that the big argument was over (Record, p. 627, Exhibit D. 32, p. 719).

Whatever may be claimed for this announcement as binding Philip to a knowledge of Joseph's intention to engage in the business in the future with his sons, it gives no indication of any name by which that proposed business was

to be conducted and cannot be twisted into a consent to a name. *And it should not be overlooked that if Philip then believed that Joseph was to go into business with his sons he was the victim of misinformation, as we have Joseph's own authority for the fact that at that time he did not intend to go into business at all and did not change his mind and conclude so to do until some time in September* (Record, p. 465). See also his answer (Record, p. 16, ll. 17-20).

Following the bill of sale there was notice to the trade of dissolution and the advertisement by Philip of his continuance of the trade under the old name.

In September we find Joseph avowedly active in the Paterson enterprise, assuming the ownership thereof and contemporaneously extending his lines into the City of New York.

His activities led to the letter of protest and warning written by counsel for the complainant under date of October 4th, herein referred to as the Hardin letter.

The bill asserted an element of injury, consisting of the imitation by the defendant of an emblem or crest used in the complainant's business on signs, price cards, labels and some forms of advertising.

The defendant concedes the use of this emblem in the early days of the Paterson store, but claims abandonment of the practice after receipt of the Hardin letter of October 4, 1916. Alexander Hilton (a son of the defendant) instructed Kipping, a maker of signs, to put the crest on the signs of the Paterson store (Record, p. 162, ll. 12 to 29). Harry Salzer, a card sign man, prepared price tickets with the crest for the defendant, and almost immediately thereafter received a rush order for plain tickets,

being told that The Hilton Company objected to the use of their trade-mark (Record, pp. 163 to 172; Exhibit C. 141, showing defendant's crest, p. 688; Exhibit C. 142, showing complainant's crest).

Charles M. Hilton, another son of the defendant, says defendant quit using the crest after the Hardin letter objecting thereto (Record, foot of p. 639). So also does Max Younker, defendant's general manager, fixing the time by the Hardin letter (Record, p. 431, ll. 12 to 35). Defendant himself says the signs were changed after the receipt of the Hardin letter (Record, top of page 496).

In view of the abandonment of the use of the crest on signs, etc., definitely announced at the trial, that particular claim of the bill as to the invasion of the complainant's right is not of present importance except to show that the defendant was guilty on his own confession, and that the guilt continued until after the filing of the bill.

The bill in this cause was filed on November 18, 1916, and there are in evidence photographs of the Paterson store (Exhibits C. 126 and C. 128) taken after the filing of the bill on the early morning of November 21, 1916 (Record, Cone, pp. 101-6; 120), showing the crest on the signs and on the display cards in the windows of the defendant's Paterson store. These pictures were taken more than a month after the receipt of the Hardin letter and more than a month after the defendant's witnesses insist the use of the crest was abandoned. But the pictures have an additional significance because of another picture taken later on the same day, about half-past six or seven o'clock, after the store had been closed (Record, Exhibit C. 127; Cone, p. 106).

In the last picture the display cards in the windows appear minus the crest, although the sign over the door still carries it. The cards carrying the crest were evidently removed from the window on that day after the first pictures were taken. The camera tells the truth without need of corroboration and does not succumb to contradiction.

There is much testimony in the case as to the store in Paterson but since the case was begun, indeed since the trial, the store in Paterson has been definitely abandoned. This purpose on the part of the defendant was not disclosed until near the end of the case (on July 27, 1917, dur- the testimony of Charles M. Hilton, Record, p. 372). Later in the case it was testified that the Paterson lease had been assigned with possession to be given on September 1, 1917 (Witness Pollack, Record, pp. 395, 397).

It was the claim of Charles M. Hilton and Alexander Hilton that they had procured from their uncle Philip permission to use the name "Hilton's" for a store that they expected to open in Paterson in the premises leased by the father on May 2d. The evidence relating to this lease has already been referred to. Philip denies any such consent on his part (Record, pp. 534-5-6. The defendant could not in conscience claim that the consent extended to him, as, according to his answer (Record, p. 16, ll. 17-20), the name was adopted by his sons when it was his intention to retire entirely, and according to his own testimony (Record, p. 465) he did not conclude to go in business himself after the sale to his brother, until about September 1, 1916, after the sons had completed all their arrangements and were about to open the Paterson store. The

sons say the same thing (Record, p. 362; p. 366). The sons also claim that they obtained, some time in August, permission from their uncle Philip to use for *their* Paterson store the crest subsequently used and admittedly imitative of the crest used by the old firm (Record, p. 399). The crest has already been referred to. Philip denies even a request for any such permission (Case, p. 536).

The answer admits, in connection with the opening of the Paterson store, advertising similar to that used by the complainant, claiming permission so to do to the defendant's sons and alleging abandonment when such permission was revoked by counsel for the complainant, reference being to the Hardin letter. A sample of the Paterson advertising is shown in Exhibit C. 157 and Exhibit C. 158 taken from the old firm's advertisements used in the opening at Providence and elsewhere (Record, pp. 399, 400). Philip again denies any such permission but again it is to be said that the permission is not pretended to have extended to the defendant (Case, p. 535).

The use of the crest and of the imitative advertising (except the use of "Hilton's") had been discontinued either because of the Hardin letter or the bringing of this suit, or of both, and the Vice-Chancellor has said in his opinion (p. 26, l. 23) that, the Paterson store having been discontinued, he does not have to determine whether he would enjoin the use of the word "Hilton's" in Paterson. While we cannot agree with the Vice-Chancellor in the weight given by him to the testimony of the defendant's wife and sons, in the matter of the consent to the use by the sons of the name of "Hilton's" for the Paterson store, the case is absolutely devoid of any

pretense of consent or permission by the complainant to the defendant to use the name at Paterson or any other place. His answer does not so claim, and neither he nor any other witness so testifies.

The defendant's support of his right to the name must be maintained independently of consent.

NEW YORK AND BROOKLYN STORES.

The Hilton Company had in the fall of 1916 three stores in New York City and one in Brooklyn. They were located as follows:

(1) 85 Nassau street, about two doors south of Fulton street. That location following the long maintenance of a store in the old Astor House, the removal having been forced by the destruction of the old building.

(2) Southwest corner of Broadway and 14th street.

(3) On the northwest corner of 37th street and Broadway.

(4) Corner Fulton street and Gallatin place, Brooklyn.

The sales of The Hilton Company in New York and Brooklyn were in 1913 $460,235.65, in 1914 $457,501.16, in 1915 $516,922.95 and in 1916 $541,068.45 (Record, pp. 248, 249; Ex. C. 151-152, p. 675).

While The Hilton Company had spent large sums in advertising (as to 1915 and 1916 see Exhibits C. 149 and C. 150, Record, p. 674) in Philadelphia, Newark, Chicago, Pittsburgh, Boston and Providence, in publications which are listed in Exhibit C. 148, there had been, with occasional exceptions, no advertising in New York City except in the cars and stations of the

Hudson Tubes. Advertising through this medium had been begun by The Hilton Company in 1915 under contracts, in the negotiation and execution of which defendant had participated, described by the witness Pleasant C. Miller (Record, pp. 63 to 83; contracts printed Exhibits C. 86 to C. 93, Record, pp. 643 to 653).

Mr. Miller, who was advertising manager of the Hudson & Manhattan Railroad Company and general manager for the Tunnel Advertising Company, produced specimens of the advertising matter, described the location of the cards in the cars and the show cases in the stations, and gave figures as to the passengers and people using the stations and trains. The agreement for advertising (Exhibit C. 93, p. 650) is itself based on the understanding that the average annual traffic in the Hudson Tubes is sixty million people (p. 653), and the value of this advertising is further illustrated in the opinion of the Vice-Chancellor by his testimony that he himself had observed the Hilton advertisements. The court was justified in saying that he knew of no more effective method of advertising.

It thus appears that, notwithstanding the absence of newspaper advertising, for a considerable period prior to and at the time of the sale and the opening by Joseph of the stores in New York, The Hilton Company was emphasizing to the people of New York the fact of its existence and the nature and quality of its merchandise.

It is to be noted that the Nassau street store of The Hilton Company is very near to the Hudson Terminal Cortlandt-Dey-Fulton street station, and that the Broadway and 37th street store of The Hilton Company is near to the up-town terminal of the Hudson Tube system. The Hilton Company store at the corner of

Broadway and 14th street is a little more than one block from the 14th street station of the Hudson Tube.

Prior to the letter of protest and warning of October 4th public announcement had been made by Joseph Hilton of his intention to open, under the name of "Hilton's," a store in New York City, and at the time the bill was filed the store at the southwest corner of Fifth avenue and 33rd street had been in operation by Joseph Hilton under the title of "Hilton's" for about two weeks.

The evidence shows that Joseph Hilton had planned this New York store as early as September 15th, on which date he had made a contract for alterations with Mr. Corrigan (Record, p. 269), so that Joseph's determination to return to business arrived at in September embraced New York and its scope.

Having made up his mind to return to business Joseph lost no time in attracting to himself as many of the employees of The Hilton Company as could be conveniently secured. Some of these he employed while still connected with The Hilton Company, others he got when out of employment, but by one means or another he had secured, by the time he had opened the New York store, Max Younker, his general manager, who had formerly occupied the same position with The Hilton Company and who was at the time of the dissolution of partnership the manager of the Chicago store of The Hilton Company, and the gentleman to whom Hanser had sent the *schlamazzle* letter; also Joseph Rikower, as window dresser, who had been assisting Mr. Scott, window dresser of The Hilton Company, in the New York, Newark and Philadelphia stores from July 5, 1915, and who left The Hil-

ton Company in the early part of November, 1916, for higher wages.

And by the time of the trial Joseph had other former employees of the old partnership—Abe Cohn, Edward Warshauer, Henry Aarons, John J. Brennen, Herbert Briggs and Barney Taylor, witnesses in the case.

He also sought, for the preparation of signs and advertising matter, the same people employed by the partnership. See testimony of Charles Kipping (Record, p. 153, *et seq.*) and Harry Salzer (Record, p. 163, *et seq.*).

Notwithstanding the warning letter of October 4th and the actual filing of the bill in this case the defendant proceeded with his program and, while it is true that he has abandoned the Paterson store, he has opened additional stores in New York City and in Brooklyn, and at the time of the trial the defendant had actually in operation in New York three stores and was about to open a fourth, and was contemplating a store in Brooklyn. Substantially all of his investment in New York and Brooklyn was after the warning and most of it after bill filed.

The defendant's store at the southwest corner of 33rd street and Fifth avenue has already been referred to and its location described. A photograph showing the signs and general appearance of the store, taken November 22, 1916, is in evidence as Exhibit C. 115 (Record, p. 103). An inspection of the photograph will show the conspicuous signs carrying "Hilton's" over the door and over each window, and the word "Hilton's" in large letters on the floor of the entrance. The word "Hilton's" in smaller letters appears on the show windows to the right and left of the entrance, about head high. Another photograph, C. 145, also taken November 22,

1916, shows the 33rd street side with a similar sign conspicuously displaying the word "Hilton's" in two places and also smaller "Hilton's" over one of the show windows. On either end of the sign on the 33rd street front appears a list of stores, "New York, Brooklyn, Newark, Paterson, Waterbury, Bridgeport," and a similar list of stores appears under "Hilton's" on the sign on the Fifth avenue front. Exhibit C. 146 gives a closer view of the Fifth avenue front. In all these the initial "H" appears on the window hangings.

The evidence shows that the defendant Joseph Hilton has no Newark store conducted under the name of "Hilton's" or otherwise, his only place of business in Newark being a manufacturing loft at 62 Springfield avenue carrying the sign, "J. Hilton, Man'fr of Men's Clothes" (see Exhibit C. 114). The evidence also shows that, while the defendant had planned a Brooklyn store and a Bridgeport store, neither had been opened at the time of the trial. Waterbury was not opened until December (Record, p. 467). The purpose to show a chain of Hilton stores is apparent.

The defendant's store at the southwest corner of 36th street and Broadway, established since the bill was filed but before the trial, opened in March, 1917, is located on the downtown corner of the first block below The Hilton Company's store at Broadway and 37th street, at the northwest corner. This location places the defendant's store between the uptown terminal of the Hudson Tubes and the complainant's store and enables the defendant to get the benefit of Hilton advertising in the tube system. The importance of this is illustrated by the complainant's adver-

tisement case in the 33rd street terminal tube station (Exhibit C. 92).

On this store of the defendant the sign conspicuously displays "Hilton's" on both the Broadway and 36th street fronts. It is true that the fronts of these two stores are not similar, but the conspicuous feature of the proprietary advertising on the signs of both is Hilton. The defendant's signs here again carry the list of stores, including Newark and Brooklyn. The complainant's signs refer to stores in Newark and New York and Brooklyn.

The defendant's store at 243 Broadway is on the west side of Broadway, opposite the Post Office, on the block adjoining the Woolworth Building, that building occupying the old site of the Astor House where for many years The Hilton Company had a store. A picture of the site, taken while the defendant's store was under improvement and showing the conspicuous Hilton advertisement, is shown by Exhibit C. 116.

That store was in operation prior to the trial, and the reference to the window dressing is applicable to it.

Photographs of the store after it was in operation were offered by the defendant as Exhibits D. 16 and D. 18.

The store planned by the defendant to be established in Brooklyn is to be located at Fulton and Hanover streets, a short distance from the complainant's store at Fulton street and Gallatin place (Record, p. 435).

The store planned by the defendant to be opened at the northeast corner of Nassau and Fulton streets, New York, is located diagonally across the street from the Nassau street store of the complainant, both being almost immediately adjacent to the Hudson Terminal.

For the convenience of the court the photograph exhibits of the complainant referred to have been distributed with the case, although not found in the record.

That the partnership had featured the name of Hilton in its advertising in the newspapers, in the Hudson Tubes, on its signs, and in the show cards in the windows, is abundantly established. Much time was spent by the defense in an endeavor to show, through the former employees of the partnership, now in the employment of the defendant, that the name Hilton had not been used in the business except when preceded by "The" and succeeded by "Company." But the effort was fruitless. Many actual specimens of show cards used in the various stores were offered in evidence. These show cards were most frequently used in association with special sales, seasonal in their character, and changing in type and matter with the seasons, and, being on pasteboard, they were not ordinarily preserved beyond their usefulness. It is, therefore, impossible to illustrate by exhibit every use of the name Hilton on card displays, and it was natural that many of the specimens actually produced should be of comparatively recent origin. Much fuss was made by the defendant at the trial (pp. 496-7) over the production of a transparency carrying the name of Hilton which had been prepared for use and which had not been actually used when produced at the trial, but which was used as a standard of comparison and so admitted by the court (Exhibit C. 139 for identification, Kipping, top p. 156; Exhibit C. 139, offered p. 209). The statement of counsel for appellant as to this exhibit on page 25 of their brief, in the next to the last paragraph on the page, is resented as unwarranted and discourteous.

Charles Kipping (Record, p. 153, *et seq.*), sign painter, testified that he had been employed by the partnership for eight or nine years and had done practically all of their large signs and transparent signs and general advertising signs, except card signs; that copies of said signs were preserved for a time but were then destroyed; and that he had on hand only one transparency of "Hilton's Half Price Sale," Exhibit C. 139, prepared in January or February, 1917; that on the transparencies prepared for The Hilton Company prior to November, 1916, going back three or four years, there was sometimes the name Hilton and sometimes not; that for the past four or five years he had prepared for The Hilton Company signs similar to C. 139, similar in that the word Hilton was used on the top line; that he had prepared half price sales signs more than once a year, probably twice a year, and that on such half price sales signs the name of Hilton appeared invariably; that sometimes he had prepared signs for other kinds of sales in which the name Hilton appeared, for instance, "Hilton's Quarter-Off Sale"; that they used Hilton in connection with clearance sales.

Harry Salzer (Record, p. 163, *et seq.*), show card writer, said that he had been employed by the partnership for about twelve or thirteen years in the preparation of card signs, window cards and price tickets, and designed the crest cards used by the partnership and also the crest cards used in Paterson by the defendant and abandoned. At page 172 of the Record he said that he had made the signs, Exhibits C. 133 to C. 138, Exhibit C. 98, C. 99, C. 102 to C. 111, for The Hilton Company. The matter on these signs is shown in the Record in the printing of these exhibits from page 654 to 667. All of them

carry in conspicuous type the word "Hilton," "Hilton's," "Hilton Policy," "Hilton Creation," and on Exhibits C. 95, C. 98, C. 99, C. 100, C. 101, C. 102, C. 103, C. 104, C. 105, C. 106, C. 109 and C. 130, the word "Hilton's" in commanding type is at the very top of the signs, and on others of them, such as C. 131, C. 133, C. 134, C. 135, and C. 137 the word "Hilton" or "Hilton's" appears either at the top or practically at the top. All of these signs were used in the Hilton stores. (Scott, Record, pp. 108 to 113; Ahrends, Record, p. 300; Briggs, Record, pp. 312 and 313; Warshauer, Record, p. 320; Rikower, Record, pp. 335 to 337.) The witness Gallway (Record, p. 208) testified to the use in the 37th street and Broadway store of the partnership of signs like C. 139.

The use of the name in this extended way over a period of years by the partnership makes impossible a claim that a like use of it by the defendant would not be in contravention of his conveyance of his interest in the name and goodwill of the firm. It also makes impossible the claim that, regardless of the conveyance, such use by the defendant would not be an invasion of the long established right of the partnership and of the complainant as continuing the business of the partnership.

It is exceedingly strange that the defendant should find it necessary to use, either with reference to his stores or in show cards and advertising, the name "Hilton's" inasmuch as the defendant himself was very positive that the name was of no importance for such use. The defendant himself (Record, p. 458) says that he never knew that "Hilton" or "Hilton's" had any significance with reference to the business of

the firm; on page 469, that the name is of no importance; and on the same page—

"Q You don't think it makes any difference what the name is over the door of a store? A No.

Q You think the business you are conducting now under the name Hilton's over your door would be just as profitably conducted if it had Jones over the door? A Yes.

By the Court.

Q Or Maxim's? A Yes."

So also Henry H. Aarons, manager of defendant's Broadway and 36th street store (Record, p. 308), who was formerly in the employ of the partnership as manager of the Chicago store (p. 308, l. 30), said that the name was of secondary consideration and of no importance on signs, that the average man would look at a suit of clothes at the first window that attracts him and if he finds a pattern or model that suits him he will go in, if it fits him he will buy it,—

"*By the Court.*

Q Your opinion is it don't make any difference what store it is? A Absolutely not."

Apparently this opinion was not shared in by Mr. Younker, the general manager of the defendant, who was translated to that place from manager of the Chicago store of the partnership. He says (Record, p. 427) all clothing stores are similar unless you are told who it is *or look at the sign;* (p. 428) no sane man would have two stores under the same name on the same block; and on page 446 replies to the question—

"Q The name over the door is of some importance then? A Naturally.

Q You agree to the proposition that goodwill is associated with the name attached to store sites, clothing store sites? A Some."

So Mr. Louis Allen, manager of the defendant's store at Paterson, in reply to questions by the Court, page 356:

"*By the Court.*

Q If you should see a window dressed as the Hilton's windows are dressed would you know it to be a Hilton store rather than a Hilton Company store, if the name was not up over the window? A No, sir.

Q It might be one or the other, or it might be Browning & King Company store? A Yes, it might be any up-to-date clothing concern."

From all of this, from even these divergent views, it is evident that the defendant, in order to establish a successful retail clothing business in New York and Brooklyn, did not need, if he had no thought in mind of appropriating to himself any part of the reputation then belonging to the name Hilton, or of the good will associated with the Hilton locations to establish such new business under that name. The use of his own name was not essential to the success of a new retail clothing enterprise and he was under no compulsion to use the name Hilton or permanently stay out of the clothing business.

The defendant and his managers, however, are in agreement upon the proposition that location is of great importance. Defendant says at page 456 there are three things essential, locations, goods and price.

General Manager Younker (bottom of page 420) says the first and most essential point of success in a retail business is location, and on

page 436 this colloquy occurred on cross examination.

> "Q Location you regard as of great importance, I understand? A Well, most importance.
>
> Q A location very close to a store of The Hilton Company is important location when you are looking for a store, is it not? A No, I don't think so.
>
> Q How does it happen that your selections have come so close to the places of The Hilton Company? A The Hilton Company usually get good locations, we are looking for good locations too, not because The Hilton Company has got them, because we want the best we can get."

While defendant himself says that all clothing windows are alike and are of little importance (Record, p. 457), Henry W. Schyke, a second-story expert called by the defendant, who, by the way did not use his own name but traded as "Woods Clothes Shop," lays great stress on window display as inducing passerbys to come in and buy (Record, p. 376). So again Charles H. Snyder (Record, pp. 380-384), a chain hatter and author of Snyderisms such as "Snyder says, you lay down with dogs you get up with fleas; you buy a hat of us and we will both be pleased," says that the success of a merchant in the cities of Newark, Paterson and New York depends a great deal on the attractions of the windows to draw the people in to buy, incidentally adding that location has got a whole lot to do with it in different cities, and finally enthusiastically agreeing with a question by the court whether the most important thing was not the established reputation for the satisfaction of customers, "That is the idea, yes, sir." There is much discussion

in the testimony about the similarity of the window dressings and much stress is laid by the defendant's witnesses and in the defendant's brief, on the impossibility of imitation, but it is to be remembered that the window dressing of the defendant is made by a man trained in the service of the partnership, and taken by the defendant from the complainant's employment. Even if the theory of imitation be rejected there remains the positive conclusion, referred to by the Vice-Chancellor in his opinion, of practical identity, *no difference appearing distinguishable by the ordinary observer.* The show cards used in the windows, as displayed in the photographs, carry conspicuously the word "Hilton's" and while not copies of the cards used by the complainants they are again so similar *as not to invite distinction by the ordinary observer.*

The defendant, however, and everybody else seem to agree upon the importance of the label, thereby meaning the tag customarily attached to every garment sold indicating its source.

The defendant (Record, p. 457), in response to the question as to the importance in the business of the label in the clothes, replied,

> "That is the main thing in our business, the label, the label in the coat.
>
> Q Why is that? A Because the man buying a coat, suit of clothes, and he wants to find out where he bought it, he always looks at the label, the first thing he looks at his label.
>
> Q From your experience in the business in Newark, or New York, or elsewhere, particularly Newark and New York, what would you say if you were able to estimate would be the proportion of old customers that you

have, that is, customers who return and those who come and only come once? A Oh, about thirty-five per cent.

Q Thirty-five per cent. what? A Of the old customers.

Q Thirty-five per cent. would be old customers? A Yes."

General Manager Younker (Record, pp. 433-434) says forty per cent. of the customers return again if satisfactorily served on the previous occasion; on page 445 he says that after twenty-four years' experience he couldn't tell a Rogers Peet suit from any other suit except for the label, *and that the advantage of the name in the business is when you get it on the label.*

Jacobstein, complainant's auditor, after an examination covering several years, estimates the customers of the Hilton firm who return at seventy-five per cent. (Record, pp. 522 to 527).

But whatever the proportion it is evident that the customers likely to return are a very important part of the purchasing public, and it is apparent that stores of the defendant closely related in location to the stores of the complainant are likely to reap a large harvest from such returning customers whether their return be due to the labels or whether it be due merely to a memory of location, and that both the name on the label and the location are of positive importance.

There is also in the record a considerable amount of testimony as to actual confusion of customers and actual deception of individuals into the belief that by trading at the defendant's stores they thought themselves trading at the complainant's stores.

Evidence of actual deception of this character is very difficult to get and is seldom completely satisfactory.

Two detectives employed by the complainant testified to express misrepresentation in the stores of the defendant as to their identity with The Hilton Company. (Record, p. 187; p. 213.) But, even if the testimony of these professional witnesses be entirely rejected, there is still in the Record, through the testimony of the managers, positive evidence of confusion in the public mind. (Record, pp. 138 to 148; 177 to 179; 194 to 201.)

There is no claim in this record that the clothing made or sold by the complainant is not of good material or design. The complainant continues the employment of a professional designer, Roshay, drawing a large salary, and employed by the partnership from 1912 to the time of the dissolution (Record, foot of page 471 to top of page 473). This designer was conceded by the defendant to be a good designer and, while the defendant regarded designers in general as a lot of bluffers, he admitted that it was customary in the trade to employ designers, and had himself employed one. Louis P. Newton, a designer of men's clothing for twenty years, testified to the high reputation in the trade of Mr. Roshay and the character of Hilton clothes as compared with goods sold for similar prices by other manufacturers (Record, p. 499 *et seq.*) Samuel Landow, a manufacturer of clothing for fifteen years, said that Mr. Roshay's reputation was second to none in the trade and that the clothes manufactured by The Hilton Company were fully up to the standard of other manufacturers (Record, p. 502 *et seq.*). Henry R. Spang, a designer of clothing for twenty-five years, said

that the reputation in the trade of the clothes manufactured by The Hilton Company was high and that Mr. Roshay was favorably known in the trade as a designer (Record, p. 507 *et seq.*). Max Younker, the general manager of the defendant and long associated with the sale of clothes by The Hilton Company, said there was no particular distinction between their clothing and the clothing sold by other manufacturers (Record, pp. 411 and 412). Henry W. Schyke, thirty years in the business and called as an expert by the defendant, referred to the Hilton clothes as "a pretty good class, they always sold in New York a pretty good class of clothing" (Record, pp. 374 and 375).

The Hilton partnership did not sell cheap clothes, the average sale's price of suits and overcoats during 1916 being about twenty-one dollars (Record, p. 526, line 22 to bottom of page). Defendant's general manager, Max Younker, estimates the average price of a Hilton suit of clothes sold in Newark at $18 or $19 (Record, p. 429, line 10). The Newark store is on "clothing row," so-called, on Broad street just below Market, and the evidence is that the clothes sold compare favorably with Stoutenburgh's, Marshall & Ball's and McGregor's. The brief of defendant, page 4, frankly admits the quality of the clothing.

And this case does not proceed upon the theory that the defendant is forcing upon the market a cheap grade of goods, the complainant conceding that the goods offered in the stores of the defendant are of substantially the same grades as in the stores of the complainant, and for that reason all the more likely to accomplish the diversion of complainant's good will.

It also appears in the case that records are kept of the sales and of the addresses of customers. These records are kept by a card system the purchases being original, and subsequent purchases being entered on the same card (Record, pp. 522 to 525). It also appears that while formerly these lists were kept by the New York stores they are now in headquarters at Newark (Record, foot of page 137). Notices were sent out in July, 1917, cautioning customers against confusing the complainant's stores with any others, and defendant has been kind enough to introduce as Exhibit D. 2 (Record, p. 703) one of these notices addressed to a New Yorker. The defendant himself told us (Record, foot of p. 468, top p. 469) that it was the practice of the old concern in New York and elsewhere to keep lists of the customers and to advise them of sales and other matters thought to be to the interest of the business. We may well hazard a guess that the defendant has not been altogether, for the advantage of his business, without information from these lists. Is that an unnatural inference when we find, as we do, the defendant's general manager Younker producing on August 1, 1917, for the supposed benefit of his present employer the letter Exhibit D. 32, which came to him in his capacity as manager of the Chicago store of the complainant? Was this letter the only thing he took away with him?

Grounds for Relief.

The bill filed in this case presents, on this argument, two grounds for equitable relief, on either one of which, under the facts, there should be an affirmance of the decree below. The first rests itself in the conveyance by the defendant, and the second is entirely independent thereof and would be available under the doctrine of unwair trade as against a complete stranger. Neither is abated by any failure on the part of the court to affirmatively recognize a "secondary meaning" in the Hilton name or crest as related to clothing.

The clothing sold by the partnership, now sold by the complainant, was never sold anywhere in New York but in the stores of the partnership. There is concededly little difference in quality between the clothing sold by the complainant and by the defendant. The defendant, by setting up stores near the stores of the complainant, carrying the same name, selling the same quality of merchandise, exhibiting window displays of indistinguishable character, successfully confuses his stores and the complainant's in the public mind and appropriates unto himself the good will of the complainant's name, reputation and location.

That the merchandise sold by the complainant is associated with the name under which and the places where sold is abundantly established by the evidence in this case, and every reason which supports the rule of secondary meaning secures the protection of a court of equity for the good will of an established business or of an established location. The large numbers of returning customers, whether brought back by the

location or by the name on the label or by recollection of satisfactory service, forcibly illustrate the value of good will.

Mr. Nims, in his book on Unfair Competition, says secondary meaning is association—nothing more (Sec. 37).

The court has not before it here the somewhat common case of merchandise known and recognized by its maker's name or by some trade title and widely sold throughout the country in stores not confined to the disposal of such merchandise. In such cases good will attaches to the specific article of merchandise rather than to the place of business where sold at retail and the methods therein pursued. But in this case, as in those cases, the rule of association of certain characteristics in the public mind requires recognition by the court of the proprietary right of the complainant in every element of value associated with the business. In this case there must be included every element of value created by a business long established under a widely known name, conducted in favorable locations, and pursuing methods resulting in satisfactory service to the purchasing public, all definitely contributing to the creation of that intangible but priceless asset of a going concern known collectively as good will.

Appellant, in his brief, contends that the complainant is not entitled to any protection in this case unless he can show a secondary significance of the word "Hilton's" in connection with the clothing of complainant, or that defendant had been guilty of fraud.

The cases he cites in this portion of his brief can be divided into three classes. First, where the circumstances or the contract between the outgoing and remaining partner did not indicate

any intention on the part of the retiring partner to convey the firm name in any respect. Of this class, *Fite* v. *Dorman, Hazelton Boiler Co.* v. *Hazelton* are good examples.

The second class of cases cited by appellant is of instances where the right claimed rested upon proof of secondary meaning in connection with the product or specified articles of merchandise of complainant, such as *Briggs Co.* v. *National Wafer Company, Waterman* v. *The Modern Pen Company, Chickering* v. *Chickering,* and our own Rogers cases.

Nothing established by either of these classes of cases militates against the relief which respondent claims in this case. The principles illuminated by the cases cited on appellant's brief are only other examples of the equitable relief which will be granted in the class of cases, of which the present is one.

The third class of cases cited is where on the facts presented the court did not find unfair competition. Of this *La Pointe* v. *La Pointe, Williams* v. *Farrand* and *Burgess* v. *Burgess* are examples. All unfair trade cases are governed by the facts, and decisions on a finding against unfair competition does not contravene the well established legal and equitable rules otherwise applicable.

The bill is broad enough to support for complainant's protection any equitable relief which the facts warrant.

I.

The good will of a business establishment will be protected against unfair competition as well as the products sold therein.

Relief from unfair competition is not confined solely to cases where "secondary meaning" as to the products can and must be proved. It is not necessary to show that the products of a given locality or stand had become favorably and widely known by a certain trade name in order that the stand shall be protected against unfair competition. The stand, the place where the goods are sold, the location itself has a good will to be protected regardless of the products sold. This distinction is seen and pointed out in *Perlberg* v. *Smith,* 70 N. J. Eq. 638, which differs thereby from this case. Complainant there was seeking protection for "Eagle Shoes," an article widely manufactured and sold, but which he had sold to the exclusion of other products for several years. The court could not find any exclusive right in the complainant to the use of the words, "Eagle Shoes," or that they had any "secondary meaning" denoting goods manufactured or selected by him and denied relief. Vice-Chancellor Garrison recognized, however, that although the product sold therein could not be protected, yet complainant's store or stand was entitled to protection, saying *obiter* (p. 646):

> "Of course, if it were charged that the defendant so befogged the public by simulating the signs of the complainant's store, or changing the appearance of the exterior of his store to make it resemble the complainant's store, that people did not know into which store they were going, there would be some ground for action."

In *Van Horn* v. *Coogan,* 52 N. J. Eq. 380, affirmed *per curiam id.* 588, one of the acts condemned as unfair competition was the display by defendant of complainant's store number, in front of its place of business, obviously to confuse the public as to the two stands.

Other cases in this state have recognized the fact that protection must be accorded to the stand, the place of business as such, which has a good will.

Cape May Yacht Club v. *Cape May Yacht & Country Club,* 81 N. J. Eq. 454. See also 82 N. J. Eq. 204.

Wilcoxen v. *McCray,* 38 N. J. Eq. 466.
Busch v. *Gross,* 71 N. J. E. 508.
O'Grady v. *McDonald,* 72 N. J. E. 805.
Rosenthal v. *Blatt,* 80 N. J. E. 90.

In the *Cape May Yacht Club* case, Backes, *V. C.,* said, p. 456;

> "The jurisdiction of courts of equity to prevent injury from infringement of trade-names has been liberally exercised and applied in all circumstances whenever it appeared that the name was an established, distinctive and valuable adjunct to an undertaking, whether used to distinguish manufactured articles, *a place of business,* or a corporation, commercial, or one formed not for pecuniary gain. All that is required to bring into activity the injunctive powers of the court, is to inform it that the complainant's trade is in danger of harm from the use of its name, by the defendant, in such a way, as is calculated to deceive the public into the belief that the defendant's affairs, in the respect complained of, are those of the complainant."

In *Wilcoxen* v. *McCray,* where two adjacent boarding houses went by the name of "Nor-

wood," Vice-Chancellor Van Fleet said at p. 468:

> "It is now perfectly well settled that it is the duty of a court of equity to protect a person in the use of a name which he has appropriated and so used as to render it valuable to him, whether he has used the name to distinguish articles manufactured by him, or applied it to a hotel where he has built up a prosperous business. If one person, by close attention to the comfort of his guests, and by his superior skill and energy, has given his hotel a wide popularity under a distinctive name, and made it a desirable resort to travelers, it is an obvious principle of justice, both to the proprietor of the hotel and to the public, that another person, engaged in the same business, should not be permitted to assume the same name, in the same town, and thus deprive the person who first appropriated the name and gave it its popularity, of a part of the patronage which would otherwise be attracted to his hotel."

In *Busch* v. *Gross,* which involved the name "Metuchen Inn," the defendant although occupying the very place made famous by complainant was enjoined from advertising it by the same name used by complainant.

In *O'Grady* v. *McDonald,* complainant, proprietor of "The Hotel Dominion" procured an injunction against the use of the name "The New Dominion" for a hotel a short distance away.

In *Rosenthal* v. *Blatt, V. C.* Leaming said (page 91):

> "'This court may appropriately protect a complainant against unfair competition when it is found that the defendant is conducting a business in such manner that there exists upon the part of defendant express or implied representations that the business

> conducted by defendant is that of complainant. The reputation and good will which a man acquires are property rights which are entitled to protection against wrongful invasion, and the public is entitled to protection against fraud. A trade-name appropriately used to designate a particular business of certain individuals will, in consequence, be protected. See 28 Am. & Eng. Encycl. L. (2d ed.) 345, 348.' "

but found as a fact that the name "Page of London" did not resemble "London Shop" so closely as to justify an inference of confusion.

None of the above cases went to this court, but they indicate a uniformity of decision of great force and apply principles that have been more than once adopted by this court.

The same principle has been announced and applied in other jurisdictions.

Howard v. *Henriques* (1850), 3 Sandf. (N. Y. Super. Ct.) 725, "Hotel Irving" protected.

Arnheim v. *Arnheim,* 59 N. Y. Supp. 948, a case very similar to the present, excepting the use of complainant's photograph.

Church v. *Kresner,* 49 N. Y. Supp. 742.

Lee v. *Haley,* 5 Ch. App. 155, 39 L. J. Ch. 284.

"Pall Mall Guinea Coal Co." held to infringe "Guinea Coal Co."

Weinstock Lubin & Co. v. *Marks,* 109 Cal. 529, 42 Pac. 124, 30 L. R. A. 182—Mechanic's Store infringed by Mechanical Store, Clothing & Dry Goods.

Nolan Brothers Shoe Company v. *Nolan,* 131 Cal. 271, 63 Pac. 480,—53 L. R. A. 384. The H. Nolan & Co., successor to Nolan Bros. infringed by Nolan Bros. Shoe Co.

Dodge Stationery Co. v. *Dodge,* 145 Cal. 380, 78 Pac. 879. Plaintiff's name infringed by J.

S. Dodge Co., although plaintiff did business chiefly as "Dodge's."

Samuels v. *Spitzer,* 177 Mass. 226, 58 N. E. 693.

Taunton Outlet Company infringes Manufacturers Outlet Company.

Viano v. *Baccigalupo,* 183 Mass. 160, 67 N. E. 641, Boston Peanut Roasting Company infringed by Boston Trade Peanut Roasting Company

Allegretti v. *Allegretti Chocolate Cream Co.,* 177 Ill. 129, 52 N. E. 487. Allegretti Chocolate Cream Co. infringed by Allegretti & Co.

International Committee Y. W. C. A. v. *Y. W. C. A.,* 194 Ill. 194, 62 N. E. 551, 56 L. R. A. 888.

The foregoing cases merely establish that the same principles of unfair competition so often applied to articles of merchandise will be enforced in relation to business stands.

In each case the good will of the establishment was protected. In the present case defendant by the very terms of his bill of sale, quoted above, is estopped to deny that the establishments of "The Hilton Co." had a good will and that such good will was valuable.

Whether the defendant's use of the name "Hilton's" in stores established by him competitively located with reference to the stores of the partnership, the good will of which he conveyed, impairs that good will is a question of fact. The Vice-Chancellor has determined that fact adversely to defendant and the evidence supports that finding.

II.

No one can use his own name in business in such fashion as to cause its confusion with a prior business.

In the present case the defendant contends that he has a right to use his own name in business, and that this is all he is doing, that he cannot be compelled to abandon the use of his own name in business.

The maxim *sic utere tuo,* &c., applies as well to one's name as to his other property rights. *L. Martin* v. *L. Martin & Wilckes Co.,* 75 N. J. E. 39, 50; aff'd. *id.* 257.

An individual may choose one of several different ways to make use of his name. He may go into business as an individual and use his full name, *e. g.* Joseph Hilton. He may form a partnership or corporation and use only his surname as Hilton and Younker or The Hilton Co. Or he may adopt such an abbreviation or modification of his own name as may cause it to be mistaken for that of a prior occupant of the same mercantile field.

In *International Silver Co.* v. *Rogers Corp'n,* 66 N. J. E. 119 , affirmed 67 N. J. E. 646, it appeared that a man who had been in the business of repairing bicycles procured plated silverware to be made and stamped with his name "Wm. H. Rogers" or "Wm. H. Rogers Co." The characteristic name under which certain well-known plated ware had long been sold was "Wm. Rogers." Finally he formed a corporation under the title "Wm. H. Rogers Corporation" and assigned all his rights to it. Vice-Chancellor Stevens points out (p. 134) that before the incorporation he did not adopt the name "Rogers

& Hubbard," although he had a partner of that name, that he had not previously employed the abbreviation "Wm." and concluded that there must have been a deliberate intent to simulate the name of his successful predecessor "Wm. Rogers Manufacturing Co.," for the purpose of gaining for himself a profit which belonged to another, that there was a conscious fraudulent purpose. The force of the decision lies in the fact that there was a deliberate adoption of a form of name to simulate the name of a successful business.

When the case reached the Court of Errors it affirmed the Vice-Chancellor but strengthened the decree and refused to allow the use of the name "Rogers" in any form as being likely to deceive. It says (p. 648):

> "Such a case is not like that of a natural person using his own name. It is more nearly like the case of a natural person who voluntarily selects a name for his business which may enable him to profit by another's trade reputation."

Both opinions condemn the deliberate adoption of a trade name calculated to deceive, whether by a natural person or by a corporation.

As a result of this litigation Mr. Rogers abandoned the corporate form and started stamping his goods "W. H. Rogers of Plainfield, N. J." A supplemental bill was filed and the case went again to this court. Finding from the previous history that the business was conceived in iniquity, this Court required that he add the phrase, "Not the Original Rogers." Although he was doing business under "W. H. Rogers" the Court refused to permit him to enjoy longer the good will he had stolen, holding that his use of his own name was not honest,

and reversing Vice-Chancellor Stevens, it said (p. 935):

> "Assuming that everyone has the absolute right to use his own name honestly in his own business, even though he may thereby incidentally interfere with and injure the business of another having the same name, he may not, in such use of his name, resort to any artifice or do any act calculated to mislead the public as to the identity of the business firm or establishment, or of the articles produced by them, and thus produce injury to the other beyond that which results from the similarity of name (citing authorities)."

In *L. Martin Co.* v. *L. Martin & Wilckes Co.*, 75 N. J. Eq. 39, it appeared that lamp black manufactured under L. Martin's name was widely and favorably known. A corporation known as Weglin & Wilckes Black Manufacturing Co. employed a young descendant of the original maker named Luther Martin 3d and shortly changed its name to L. Martin & Wilckes Co., although his skill or experience was very slight. On the facts the Vice-Chancellor found a deliberate unjustifiable and fraudulent adoption of the name "L. Martin" by the corporation and its use was enjoined. The decree was affirmed by this Court, 75 N. J. E. 258, without further opinion on that point. The point of the decision is that the deliberate adoption of a name to obtain the benefit of another's good-will will not be allowed.

So in *Edison Storage Battery* v. *Edison Automobile Co.*, 67 N. J. Eq. 44, a preliminary injunction was granted against the use of the name "Edison" in defendant's corporate name, although it appeared that a son of the famous inventor, who was interested in the new venture,

had given his consent that his name be used. Pitney, *V. C.*, said p. 55:

> "Anyone has a right to use his own name in business, but he may be restrained from its use if he uses it in such a way as to appropriate the good will of a business already established by others of that name. (This is the important thing.) *Nor can he by the use of his own name appropriate the reputation of another by fraud either constructive or actual.*"
>
> (Italics and bracket in opinion.)

The language of the foregoing decisions is quite as applicable in the case where an individual chooses the name under which he does business, although it is merely a modification of his own name. This is obviously the basis of Vice-Chancellor Stevens' remarks on pages 134, 135 of 66 N. J. Eq. and of the Court of Errors on p. 648 of 67 Equity.

So in many other jurisdictions a person has been enjoined from doing business in his own name, either (1) where the manner of using it, or the business in which it was used was obviously chosen for the purpose of profiting by another's good will, or, (2) when the necessary result of such use will be to impair such good will.

Russia Cement Co. v. *Le Page,* 147 Mass. 206, 17 N. E. 304.

Singer Manufacturing Co. v. *June Manufacturing Company,* 153 U. S. 169, 41 L. Ed. 118.

Croft v. *Day,* 7 Beav. 84, 49 Eng. Rep. 994.

Meneely v. *Meneely,* 62 N. Y. 427.

Tarrant & Co. v. *Johann Hoff,* (C. C. A. 2d. Circ.) 76 Fed. 959.

Royal Baking Powder Co. v. *Royal,* 122 Fed. 337.

Walter Baker & Co., Ltd. v. *Baker,* 87 Fed. 209.

Walter Baker & Co., Ltd. v. *Sanders,* 80 Fed. 889.

Chickering v. *Chickering & Sons,* 215 Fed. 490.

Cash v. *Cash,* 19 R. P. C. 181, 86 L. T. 211.

J. F. Rowley Co. v. *Rowley,* 154 Fed. 744.

Van Stan's Stratena Co., Ltd. v. *Van Stan,* 209 Pa. St. 564, 58 Atl. 1064.

Morton v. *Morton,* 148 Cal. 142, 82 Pac. 664, 1 L. R. A. (N. S.) 660.

Any such use of one's name is not the fair and honest use of one's own name which the law permits. If confusion will result from use of one's own name, he will be compelled to adopt distinguishing marks or phrases.

The law puts a handicap upon a latecomer to the industrial field. It says to him, "If you seek to enter upon the same line of business in which one of your name has already made a success, you must protect him and the purchasing public by making a distinction between yourself and the first comer." There is an unfavorable presumption against a man who erects a business competitive with one already established which has a valuable good will, if his name is the same as that of the established business. The law says, "If you really intend to compete honestly with the old establishment, you must rely upon yourself to earn the public patronage, and not on the name which belongs to the good will of an established business. There is no short cut to the confidence of the purchasing public over a road built by another."

What are the facts then as to the use by defendant of his name? He uses "Hilton's." Why does he use what is the popular possessive

of The Hilton Co.? As Vice-Chancellor Lane in his opinion points out—anyone who sets up business as "Macy's" would most obviously be seeking to trade on the reputation of R. H. Macy & Co. And to come to Newark for illustration we talk of "Stoutenburgh's," "Colyer's," "McGregor's" or "Bamberger's," or "Wiss's," not of Stoutenburgh & Company, Colyer & Co., McGregor & Co., L. Bamberger & Co. or J. Wiss & Sons Company.

How did the name "Hilton's" appear on the sign over the stores of defendant? The photographs, Exhibits C. 112, 113, 115, 117, 118, 121, 124, 145 show a basis for comparison. In each case there was gold lettering on a dark background (case, pp. 157, 158). Vice-Chancellor Lane says of them (they) "have such characteristics similar to those used by The Hilton Co. as that it cannot be said that there are any distinguishing features which would differentiate to the ordinary observer Hilton's stores —from The Hilton Co. stores." The Waterbury store was not opened until a month after 33d street and Fifth avenue. The signs were not identical, they were similar. But similarity not identity is the test of unfair competition, Swayze, *J.*, in *International Silver Co.* v. *Rogers Corp'n,* 67 N. J. E. 646 at 650.

At the time when Joseph Hilton adopted the name "Hilton's" to designate his places of business he knew and was charged with the knowledge that this name had been used by The Hilton Company in advertising and in the show windows of the various stores, on transparencies and window cards. The tube cards, *i. e.*, the advertising cards, which were displayed in the Hudson & Manhattan trains (Exhibits C. 73, 74, 75, 78, 79, 83, 84) emphasized ex-

pressly the word "Hilton" or "Hilton's." The contract for these cards dated April 26, 1916, and signed by the defendant himself, expressly stated that the subject advertised was to be *"Hilton's Clothes."* (Case, p. 650, Ex .C. 93.) "Hilton's" was used in window displays and on display cards. The sign printer, Mr. Kipping, who had no interest in testifying favorably for complainant and was also employed by defendant, says that he made many transparencies and signs with the word "Hilton's" on them at various times. The newspaper advertising on many occasions prominently used the word "Hilton's" as designating the place or business or products of the partnership. And whether this advertising was used in New York or elsewhere, it is evidential as to the practice in the use of the name.

All of this use of the name took place prior to the dissolution of the partnership so that defendant knew that at the time he opened his stores that he was adopting a name which has been widely used by the former partnership.

Further evidence of his intent to appropriate complainant's good will by adopting this name is found in his persistence in the use of the name after complainant, through his counsel, had called attention to the fact that the name was causing confusion and requested defendant to desist from the use thereof. See letter of Mr. Hardin, Exhibit C. 153, October 4, 1916. Such persistence after request to desist is evidence of fraudulent intent.

> *Eureka Fire Hose Co.* v. *Eureka Rubber Mfg. Co.*, 69 N. J. Eq. 159, at 167.

It cannot be said, therefore, that Joseph Hilton's selection and use of the name "Hilton's" under which to carry on the business from

which he had ostensibly retired and for which he had received many thousands of dollars consideration, was innocent or inadvertent. It was deliberate, willful and intentional and brings the case clearly within the rules of the cases above cited.

It is contended by defendant that there is nothing in the window dressing of the stores of complainant to distinguish them from other retail clothing stores. Concede all this and the very similarity seems to confuse the stores of the two parties, and does not negative a deliberate attempt to pirate the good will of complainant's stores.

The court should, therefore, afford him no protection in the use of "Hilton's" on the ground that it is his own name.

The Vice-Chancellor in this case has been satisfied that there is and must be confusion in the public mind between the two names. He has resolved the question of fact and found that "Hilton's" resembles the Hilton Company in use and sound and looks. A good test to apply would be to state the converse of this case and assume that the business had been developed under the title "Hilton's." Could a competitor establish a corporation or a partnership under the name "The Hilton Company," and escape the charge of unfair competition? The word "Hilton" is the prominent thing in both.

Dodge Stationery Co. v. *Dodge* (*supra*).

III.

Proof of specific fraudulent intent is unnecessary in cases of unfair competition.

International Silver Company v. *William H. Rogers Corporation,* 66 N. J. Eq. 119, 129, *et seq.*

Wirtz v. *Eagle Bottling Company,* 50 N. J. Eq. 164, 168.

Eureka Fire Hose Company v. *Eureka Rubber Manufacturing Company,* 69 N. J. Eq. 159, at 167, affirmed per curiam 71 N. J. Eq. 300.

National Biscuit Company v. *Pacific Coast Biscuit Company,* 83 N. J. Eq. 369, at 380.

Rubber & Celluloid Harness Trimming Company v. *Rubberbound Brush Company,* 81 N. J. Eq. 419, 424, affirmed per curiam, *idem* 519.

Cape May Yacht Club v. *Cape May, etc., Club,* 81 N. J. Eq. 454, at 458.

Viano v. *Baccigalupo,* 183 Mass. 160, 67 N. E. 641.

Millington v. *Fox,* 3 De G. M. & G. 893—22 L. J. Ch. 657.

Cellular Clothing Company v. *Maxton* (1899), A. C. 326-334, 68 L. J. P. C. 72.

Mr. Justice Swayze in *Munn & Co.* v. *The Americana Co.,* 83 N. J. Eq. 309, speaking for the Court of Errors and Appeals, says that fraudulent conduct is a necessary element of this class of cases, but he cannot mean more than that it is necessary for the Court to find as a fact that the acts of the defendant will produce confusion and damage to the complainant.

Vice-Chancellor Lane in this case tersely said in summing up the rules of the foregoing cases,

> "Expressed briefly, I think the rule is 'unfair competition' is fraudulent conduct."

It is also held in New Jersey that persistence in the use of a name, after request to desist, is conclusive evidence of such fraudulent conduct.

> *Eureka Fire Hose Company* v. *Eureka Rubber Manuafcturing Company,* 69 N. J. Eq. 159, at 167, affirmed per curiam, 71 N. J. Eq. 300.

IV.

Any deliberate impairment by the vendor of the good will sold will be enjoined.

Complainant might rest his case upon the principles of unfair competition. But in this case the defendant was one who had deliberately by an instrument in writing transferred to complainant all his interest in "all the name and good will" of the partnership. This is the foundation of another right.

Defendant by the bill of sale is estopped to deny that the partnership had a valuable good will. He has conveyed it to complainant, and received consideration for it.

> "Good will must mean every advantage—every positive advantage—as contrasted with the negative advantage of the late partner not carrying on the business himself, that has been acquired by the old firm in carrying on its business whether connected with the premises on which the business was previously carried on or with the name of the late firm, or with any other matter carrying with it the benefit of the business."
>
> Wood, *V. C.,* in *Churton* v. *Douglas,* 5 Jur. (N. S.) 887, 890, 28 L. J. Ch. 841.

Ginesi v. *Cooper & Co.*, 14 Ch. Div. 596, 601, 49 L. J. Ch. 601, approved in Newark Coal Co. *v.* Spangler, 54 N. J. E. 354 at 357.

A conveyance of the good will certainly includes the exclusive right to the use of the firm name.

Smith v. *Brand & Co.*, 67 N. J. E. 529, in which there was no specific mention of the firm name as one of the items transferred.

Churton v. *Douglas, supra.*

Levy v. *Walker,* 10 Ch. D. 436—48 L. J. Ch. 273.

Snyder Manufacturing Co. v. *Snyder,* 54 Ch. St. 86, 43 N. E. 325, 31 L. R. A. 657.

James Van Dyk Co. v. *F. V. Reilly Co.,* 73 Misc. 87, 130 N. Y. Supp. 755.

Slater v. *Slater,* 175 N. Y. 143, 148—67 N. E. 224—61 L. R. A. 796.

The situation must be judged as of the time of the transfer.

Smith v. *Vose & Sons Piano Co.,* 194 Mass. 193, 80 N. E. 527, 9 L. R. A. (N. S.) 966.

C. H. Batchelder & Co., Inc. v. *Batchelder,* 220 Mass. 42, 107 N. E. 455.

Did defendant then intend to reserve the right to the use of the name "Hilton's?" He did not do so expressly in his grant, although he reserved the right to some patterns he had taken from the factory (case, p. 627). Joseph Hilton knew that the word "Hilton's" was as much one of the partnership's trade-names as The Hilton Company. He had known of its use in advertising, on transparencies and window cards. He knew, as any reasonable man must have known, that the firm name passed current popularity as "Hilton's," and that this was just as valuable

a trade-name as The Hilton Company, probably more so, being shorter or more popular.

There was to be construed, therefore, from the bill of sale an intention to transfer the trade name "Hilton's" as much as the name The Hilton Co.

Houston v. *Magrane, et al.,* 212 Mass. 569, 99 N. E. 460.

This is a very strong case as the vendor of the good will had expressly conveyed the name James A. Houston and reserved the right to use the name Houston, but the vendee was held to have acquired the right to use the name as McGrane-Houston.

He expressly mentioned in his bill of sale, "all the name * * * of the business." That alone should be enough to carry the name "Hilton's" as "all" is used distributively in this connection. It should be read, "Every name of the business." But in addition he conveyed "all the good will," and later—all his interest in any and all property of whatever kind of the partnership. Included in these assets of whatever kind, included in the good will, were the firm's trade names, popular as well as formal.

Smith v. *Brand & Co.* (*supra*).

James Van Dyke Co. v. *F. V. Reilly Co.,* 73 Misc. 87, 130 N. Y. Supp. 755.

People ex rel Johnson v. *Roberts,* 159 N. Y. 70, 53 N. E. 685, 45 L. R. A. 126.

Slater v. *Slater,* 175 N. Y. 143, 148, 67 N. E. 224, 61 L. R. A. 796.

The defendant is therefore estopped by his grant from making any use of the names and good will which he has conveyed. He may not derogate, as it is said, from his grant. The principle is well established. It has been ap-

plied variously. In New Jersey, the vendor has been permitted to set up a competing business, but not permitted to solicit his former customers.

Snyder Pasteurized Milk Co. v. *Burton* (Err. & App.), 80 N. J. E. 185 following *Trego* v. *Hunt* (1896) App. Cas. 7, 65 L. J. Ch. 1.

In Massachusetts, he may not even set up a competing business if it will impair the value of that which he has sold.

Gordon v. *Knott,* 199 Mass. 173, 85 N. E. 184, 19 L. R. A. (N. S.) 762.

Old Corner Book Store v. *Upham,* 194 Mass. 101, 80 N. E. 228.

Foss v. *Roby,* 195 Mass. 292, 81 N. E. 199, 10 L. R. A. (N. S.) 1200.

In England he has been even prohibited from using the name which he had conveyed.

Churton v. *Douglas,* 5 Jur. (N. S.) 887, 890, 28 L. J. Ch. 841, where the defendant, having sold the good will of the business with the business itself, endeavored to set up again in business in his own name in the same community. His name happened to be the same as that under which the business had previously been conducted and the Court, although conceding that the vendee might not have the right of using the old firm name alone and as the title of the business sold, enjoined the defendant from carrying on his business in the style that he was undertaking.

"The doctrine is put upon the ground that these acts are direct and intentional dealings with the good will sold and efforts to destroy it," per Emery, *V.-C.,* in Newark Coal Co. *v.* Spangler, 54 N. J. Eq. 354 at 358, citing Trego *v.* Hunt, *supra.*

In *Myers* v. *Kalamazoo Buggy Co.,* 54 Mich. 215, 20 N. W. 545, Chief Justice Cooley says, at page 548:

> "The good-will was a substantial part of the purchase, and purposely to take any steps to prevent his receiving the benefit of it was a wrong of the same nature as would have been the retention of some portion of tangible property belonging to the stock of the company. This good-will is to be found in the probability that the old customers of the establishment, whose dealings with it have been satisfactory to them, will continue their custom and commend it to others; and if those customers were to be invited and enticed away from the old establishment, and especially if they were to be deceived into dealing with a new establishment under the belief that it was the old, the value of the business thus lost would be so much taken from the value of the good-will which had been bought and paid for; and the invitation, enticement, or deception that caused the loss would constitute a wrongful appropriation of property."

S. F. Myers v. *Tuttle,* 188 Fed. 532, S. C. 183 Fed. 235, Judge Holt says, at page 533:

> "It is well settled that an individual cannot be prevented from carrying on business in his own name, and that a purchase of the good-will of a business carried on in the name of an individual will not, as a general rule, prevent that individual from carrying on business in his own name thereafter. But in such a case the courts usually require that the later business should be carried on in such a way as not to produce confusion with the business the good-will of which has been sold."

Grow v. *Seligman,* 47 Mich. 607, 11 N. W. 404, 41 Am. Rep. 737.

Knoedler v. *Glaenzer,* 55 Fed. 895, 20 L. R. A. 733.

While in the case last mentioned relief was denied, it is valuable for the statement of the Circuit Court of Appeals, Second Circuit, page 899:

> "The learned judge, in his opinion, accurately stated what constitutes unfair competition. He said:
>
> 'The good-will of a business comprises those advantages which may inure to the purchaser from holding himself out to the public as succeeding to an enterprise which had been identified in the past with the name and repute of his predecessor. Any conduct on the part of the vendor of a good-will, calculated to impair the value of these advantages, is a breach of promise, implied in sales of every description, that the vendor will not disturb the vendee in the enjoyment of his purchase.' "

If, therefore, it be found by this court as was found by the Vice-Chancellor that the use by the defendant of the name "Hilton's" adversely affects the good will of complainant's business, its use must be stopped whether or not the court finds the other elements of unfair competition. The principle that a man may not derogate from his grant has been recognized in this state, and it is only making an equitable application of the rule to enforce it in this case.

V.

The previous use of the trade name in dispute by others does not disentitle complainant to relief.

The case shows that the name "C. Hilton" had been used by a nephew of complainant and defendant in Perth Amboy for a few years and that a store was opened in Yonkers under the name "Hilton's" (case, pp. 397, 398). The store in Yonkers was short-lived and there was testi-

money to the effect that it had gone out of business after protest by complainant (case, p. 579).

In Perth Amboy the business was conducted always under the name of "C. Hilton" with the "C" made as prominent as the rest of the name in every display of the name (case, pp. 417, 458). Moreover, such business was started during a period when the Hilton Company was using the name "George Watson & Co." in Newark. There was no proof whatever that the trade of Perth Amboy and Newark was competitive and it is doubtful whether, under the case of *Kaufman* v. *Kaufman,* 223 Mass. 104, 111 N. E. 691, invoked by the defendant, complainant would have been entitled to enjoin the business even if conducted by a stranger.

It is, however, established that although others have the right to use the name which complainant seeks to protect, yet this does not enlarge defendant's rights and will not prevent relief.

International Silver Co. v. *Rogers Corporation* (Err. & App.), 67 N. J. Eq. 646, at 650, where Clark Thread Company *v.* Armitage, *infra,* is quoted with approval.

Clark Thread Company v. *Armitage,* 67 Fed. 896,—74 Fed. 936, at 943.

Williams Mfg. Co. v. *Noera,* 158 Mass. 110,—32 N. E. 1037.

Pratt's Appeal, 117 Pa. St. 401—11 Atl. 878.

Cohen v. *Nagle* (Mass.), 76 N. E. 276—2 L. R. A. (N. S.), 964.

Lanahan v. *Kissel,* 135 Fed. 899.

Sartor v. *Schaden,* 125 Iowa 701—101 N. W. 511.

See also *Nims*: *Unfair Competition,* 2d Ed. p. 660.

VI.

No misrepresentation sufficient to prevent injunctive relief has been shown.

The contention that complainant has been guilty of misrepresentation and so should be denied relief upon the well known doctrine of "unclean hands," is unfounded.

The doctrine invoked by defendant is peculiarly applicable to trademarks on the theory that, if the Court granted relief where there was a misrepresentation in a trademark, it would be perpetuating a fraud. Where, however, a misrepresentation does not lie in the trademark itself, but in matter extrinsic to the trademark, the same principle is not applied.

The rule is established for New Jersey in *Johnson & Johnson* v. *Seabury & Johnson,* 71 N. J. Eq. 750, where Mr. Justice Swayze, speaking for the Court of Errors, says at page 754:

> "If it can be established in any case that the trade name which the complainant seeks to protect owes its value in any material degree to false representations on his part, we think he is not entitled to the protection of a court of equity. * * * * * * But we think there is no presumption that a trade reputation is due to the highly-colored or false statements in advertisements. Such statements are not so uncommon as to mislead an ordinary man; most persons discount them." See also *id.* p. 753.

In the case of *Bear Lithia Springs Company* v. *Great Bear Spring Company,* 71 N. J. Eq. 595, Vice-Chancellor Bergen held that a false statement on the labels as to the fact that the water was bottled at the Springs and the curative properties of the water was such misrepresenta-

tion, but the Court of Errors and Appeals in the same case in 72 N. J. Eq. 871, expressly disagreed with that application of the doctrine of "unclean hands."

In the same way Vice-Chancellor Stevens' opinion in *New York & New Jersey Lubricant Company* v. *Young,* 77 N. J. Eq. 321, was reversed in 84 N. J. Eq. 469 on the ground that the misrepresentations were not material.

In *Regent Shoe Manufacturing Company* v. *Haaker* (Neb. 1906), 106 N. W. 595,—4 L. R. A. (N. S.), 447, the advertisements complained of contained the statements, "Maker to Wearer," "Made by Us," "Manufactured and Sold by Regent Shoe Company," although, in fact, they were not manufactured as represented. No testimony was offered to show that the public at large or any customers had ever been deceived or induced to trade because they believed the shoes were actually manufactured by this firm. The Court said:

> "It is, however, not every exaggerated puff of one's own goods that is to be regarded as such a false representation as will deny relief in a court of equity. It is rather such materially fraudulent statements as to the character, quality and make of the goods as tend, if untrue, to impose upon and deceive the purchaser."

It was held the misrepresentation was not of so grave a character as to deny defendants relief in a court of equity.

See also *Wormser* v. *Shayne,* 111 Ill. Apps. 556.

Curtiss v. *Bryan,* 36 How. pr. 33.

In the present case the testimony is that for the years 1915 and 1916 only five or six per cent. of the goods sold by complainant were not manufactured by them (Case, p. 573). There is no

testimony that any customer was misled by the statement in any advertisement, or that he would have acted otherwise. It cannot truly be said that these statements in the advertisements contributed in any material degree to build up the good will of complainant. Many witnesses testified in response to questions by the Court and by complainant's counsel that the foundation of such good will was satisfactory service and satisfaction with the goods sold, and that such service and satisfaction resulted in the return in large numbers of customers for more goods (Case, pp. 434, 457, 469).

VII.

The decree enjoining the use of the name Hilton or Hilton's should not be modified.

It is unnecessary to review again the testimony that produced the impression upon the Vice-Chancellor, that defendant's conduct justified the full application of the principles of unfair competition. The fact of fraudulent conduct has been established. When such is the fact, defendant cannot complain if his use of his name is absolutely prohibited.

In *Cash* v. *Cash,* 19 R. P. C. 181, 86 L. T. 211, defendant was absolutely forbidden from designating his product in any way as Cash's.

In *Van Stan's Stratena Co.* v. *Van Stan,* 209 Pa. 564, 58 Atl. 1064, it was said, "the transfer by the father of a partnership asset, in effect joined by the son, precluded the son from afterwards using the name to the injury of the purchaser, although the name he now attempts to use is his own proper name."

Mr. Justice Pitney in *Waterman* v. *Modern Pen Co.,* 235 U. S. 88, 59 L. ed. 87, in a dissent-

ing opinion says that the defendant should be unqualifiedly enjoined from using the name "Waterman." He was following the rule in *International Silver Co.* v. *Rogers Corporation,* 67 N. J. Eq. 646, where the corporation was absolutely enjoined from using the name "Rogers."

The principle to be applied is that one will not be permitted to enjoy the fruits of fraudulent conduct, even although without such fraud he would be entitled to pursue such practices.

Snyder Pasteurized Milk Co. v. *Burton* (Err. & App.), 80 N. J. E. 187.

Stone v. *Grasselli Chemical Co.* (Err. & App.), 65 N. J. Eq. 756.

The old cases apparently find a distinction as to name between *corporate* and *natural* names on the theory that the corporate names are the subject of selective control by the person adopting a name, while natural names are not. The law of this State seems now firmly established to the effect that a family name may not be used to simulate the title under which an established business is conducted. And actual fraud in the selection of the name is not essential to relief.

In this case the defendant would seem, under the cases decided in this court, to be disenabled to organize a corporation competitive with complainant under the name "Hilton's."

He has not done that. His original attempt in that regard, made after his contract to sell was in effect but before his bill of sale, was abandoned.

The whole doctrine of unfair trade is of modern growth and the law is still in the formulative stage. The old notion that a man could unrestrictedly use his own name in trade has been exploded.

In *L. Martin Co.* v. *L. Martin & Wilkes Co., supra,* this court modified the decree as to accounting but as to the decisions of the Vice-Chancellor said:

> "We agree with the conclusion reached by the Vice-Chancellor upon the facts of the case and have nothing to add to his convincing opinion in that respect." (75 N. J. Eq. 258.)

Vice-Chancellor Stevenson, in the opinion below (75 N. J. Eq. 50), used this language:

> "I think we have got beyond the notion, if it ever prevailed, that a man has an absolute right to use his name in his business shutting his eyes to the inevitable effect of such use to deceive the public generally, and to injure some other dealer in the market. The maxim *sic utere tuo alienum non laedas* applies to everything that a man has, including his name. Confusion seems to have sometimes arisen from the failure to recognize the difference between the name with which a man finds himself encumbered and, perhaps, cursed, when embarking in business, and which perhaps to a very large extent he is practically obliged to use in such business, with the name of a corporation which he creates for the purpose of carrying on his business. He is not responsible for his individual name—had no choice in its selection, he is wholly responsible for the corporate name, having had a wide field within which to make any selection as he might see fit.
>
> "Confusion between two natural persons who are doing business under the names their parents wisely or unwisely gave them, generally may be regarded as an accident, a misfortune to both, but neither is to blame for the harm that is done. Two men having the name John Smith in common might be engaged in the same line of business in the same town. Certain special duties may be cast upon each, growing out of this sameness of name and business. Neither one, however,

> can compel the other to abandon his name or carry on his business under a different name. Suppose, however, an old established lampblack manufacturer named John Smith, carrying on his business in his individual name, should incorporate his business under the name of The John Smith Lampblack Company. Is it not clear that no other John Smith could thereafter embark in the lampblack business and carry on the same under the same corporate name? Under our present Corporation Act the second John Smith could not create a corporation with such a name."

This court in *International Silver Company* v. *Rogers Corporation,* 67 N. J. Eq. 648, used even stronger language in reiterating the words of Judge Wallace in the *R. W. Rogers case,* 70 Fed. 1017.

Does the anomalous situation exist under the law of this State that because the defendant uses his own family name he can accomplish a wrong against the complainant which, if he were acting under a corporate organization the law would enjoin?

There can be in principle no difference.

Formerly there seemed to be confusion in the minds of the judges between the doing of a thing and the name of the doer, and apparently there was a notion that because a man had a right to work he must have the right to work in his own name. The two are not connected and the man is not denied any business opportunity, to which he is reasonably entitled, by the rules against unfair trade, which do no more than extend to him the only rule under which society can live, that a man must use his own—even his own name—so as to do no unnecessary harm to another.

Mr. Nims, in the introduction to the 1st Edition of his work "The Law of Unfair Competi-

tion and Trade Marks," reproduced in the 2nd Edition, page vi, uses this language:

> "The law of unfair competition has developed in part also in response to a general feeling that the honest and fair-dealing merchant is entitled to the fruits of his skill and industry, and must be protected against loss caused by fraudulent and unfair methods used by business rivals. It is a recognition by the courts of the duty to be honest and fair in all relations of business life. This is one of the most healthful signs of the times. The gradual judicial development of this doctrine is an embodiment of the principles of sound common sense, business morality, although it involves nice discriminations between what may and what may not be done in honorable business rivalry."

And in the same book, Sec. 71, we find the following thoughtful reference to the insufficiency of decrees of injunction permitting the use of the name but restricting it by explanatory phrases:

> "The use of explanations with family names in cases where the defendant is found to have used his name to the injury of older concerns has very grave objections. The defendant who deliberately so uses his name as to sell his goods on the reputation and celebrity of a competitor commits a fraud. In so doing he has abused his right to use his name. He who abuses his right to liberty, loses it, for a time at least, sometimes permanently. He who abuses his rights and privileges as a husband or parent may lose them. He who abuses his rights in many relations of life is compelled by law to give them up. It is difficult to see how the right to the use of one's name is more sacred than various other personal rights. Repeatedly we find the rule stated in substance thus: 'Every one has a right to the free use of his own name.' There is grave doubt if any such absolute right exists. The only right

> one has in his name is the right to use it HONESTLY and FAIRLY. As said by Gerard, *J.*, if one 'cannot use his own name without representing his goods as those of another, then he cannot use his own name at all'—meaning of course in the one particular line of business in connection with which the abuse of the name has occurred.
>
> "Doubtless the theory of many of the decisions on this subject, is that an explanation converts a dishonest use of a name into an honest one. *This is true only in cases where the explanation actually reaches the buyer of the article.* It is by no means necessarily the fact that every purchaser of defendant's article reads and understands the explanation."

Again Mr. Nims, on page 138 of the same book, quotes from the English Court of Appeals, in *Cash* v. *Cash,* cited *supra,* and adds this comment:

> "There are few cases of authority which absolutely prohibit a man from using his own name, although a person has been definitely prohibited from using an adopted name, but there is good reason to believe that it will not be long before the justice of a more effective remedy will be realized."

The decree in this case recognizes the impossibility of any real protection to the complainant by explanatory or qualifying words in association with the family name. If a court permits the defendant to use the family name of Hilton, or Joseph Hilton, or Joseph Hilton & Sons, or any other Hilton combination, with explanatory additions distinguishing the business name from the long established partnership name of The Hilton Company, the court merely sanctions the creation in the community in which the two businesses are competitive, of two concerns which will be popularly known as "Hilton's." The second

will necessarily infringe the prior rights of the first. Nothing but positive assumption in contradiction of daily experience can deny, that, for all practical purposes, the business titles "The Hilton Company" and "Hilton's" are equivalent.

The defendant in establishing a new business was warned against the use of the name Hilton, which he notwithstanding adopted and used, and, according to his own testimony in this regard, he could just as well have established his new clothing business under any other name. No effective protection to the complainant is possible without a decree as broad as the one advised by Vice-Chancellor Lane. The restraint is limited by the decree to the use of the name "Hilton's" or "Hilton" only in a clothing business operated or conducted, directly or indirectly, by the defendant, and only in a clothing business competitive with the clothing business operated or conducted by the complainant trading under the name and style of The Hilton Company, and the restraint is limited to The Hilton Company, with no specific definition of competitive conditions except such as result from trade in cities in which the complainant now operates or conducts retail clothing business under the name and style of The Hilton Company.

No less restraint is sufficient, and the decree should not be modified.

VIII.

The decree should be affirmed.

JOHN R. HARDIN,
EDWARD O. STANLEY, JR.,
Of Counsel for Complainant-Respondent.

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New Jersey Court of Errors and Appeals

Complaint

(*Filed,* *1917.*)

IN CHANCERY OF NEW JERSEY

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Philip Hilton, of the Borough of West Caldwell, in the County of Essex and State of New Jersey, respectfully shows that:

1. Prior to June 24, 1916, he and his brother, Joseph Hilton, the defendant in this action, were partners engaged in business under the name of "The Hilton Company" selling men's clothing at retail with stores in the Cities of Newark, New Jersey, New York, New York, Brooklyn, New York, Philadelphia, Pennsylvania, Providence, Rhode Island, Pittsburgh, Pennsylvania, Chicago, Illinois and Boston, Massachusetts, and manufacturing clothing for sale at such stores.

2. The said business was conducted under the name of "The Hilton Company" in stores in

New York for about the last eleven years, in Newark since about 1907, with exception of the years 1910 through 1914, in Brooklyn since 1910, in Philadelphia since 1904, in Providence since 1914, in Pittsburgh since 1913, in Chicago since 1913 and in Boston, with the exception of about a year, since 1909. The volume of business was over a million dollars a year, averaging the last three years.

3. In the course of such business and continuously during the periods above set forth, said partnership used the words "Hilton" and "Hilton's" alone and in combination with other words, as Hilton-made, Hilton-sold, Hilton's clothes &c., to describe and designate merchandise manufactured and sold by said partnership and to designate and locate the places where said clothing was manufactured and the retail stores where said business was conducted. The said words were used variously by said partnership and appeared on its stationery, in correspondence, in advertising in the display and marking of goods, upon labels which were sewn into said clothing and otherwise in the manufacture and merchandising of its goods, the said words being used exclusively by said partnership during the periods aforesaid and not being used by any other person, firm or corporation in the business of manufacturing and selling men's clothing at retail.

4. In connection wtih the use of the words "Hilton" and "Hilton's" and "The Hilton Company" the said partnership had also adopted and used continuously for the past six or seven years

in the conduct of its business a certain trade emblem or device consisting of a representation of an ermine shield with a crown over the center thereof and the letter "H" framed therein. Said emblem was used and appeared in the same manner and in the same connection as the words "Hilton" and "Hilton's" and "The Hilton Company" above set forth and was used exclusively by said partnership during the period above set forth and by no one else.

5. The said partnership had used said words and emblem exclusively and extensively during the periods aforesaid and had during said time expended many thousands of dollars in advertising, manufacturing and merchandising its goods to the public generally and to purchasers at retail in particular, and had manufactured and sold large amounts of said goods to which said words and emblems were applied by said partnership. It had thus developed and secured thereby a large and extensive market and patronage for the goods sold and manufactured by said partnership and distinguished and designated by said names and emblems among retail purchasers not only in the cities where the retail stores of said partnership were located, but throughout other large sections of the country, and in all places where publicity, advertising and knowledge of the merchandise of said partnership penetrated or said goods were sold, although located at some distance from such stores. In particular it had given publicity to and merchandised its goods so designated and distinguished in the Cities of Paterson, New Jersey, and New York, New York, and the territory adjacent thereto and had patronage and customers in and around said Cities.

6. By reason whereof the said words "Hilton" and "Hilton's" alone and in combination with other words and said emblem were by the public generally and by purchasers at retail in particular, understood to mean and were applied to the merchandise and business activities of said partnership, The Hilton Company, and the places where said business was conducted and were applied solely thereto by such purchasing public and purchasers at retail, and said names came to have a secondary significance as above set forth as descriptive of and solely applied to said partnership, its business activities and products.

7. The products and merchandise of the said partnership were superior in style, value, fit and in other respects to similar products of other manufacturers sold for about the same price, and had the reputation among the public generally and in particular with purchasers at retail in and near the localities where said goods were sold and said advertisements circulated, of being superior in said respects, which reputation was attached to and connected with the words "Hilton" and "Hilton's" and the said emblem.

8. On or about June 24, 1916, Joseph Hilton, the defendant in this action and one of the members of said partnership, of his own volition, offered to convey to Philip Hilton, the complainant, all his right, title and interest in and to said partnership for a consideration named, which offer was accepted by the complainant and defendant thereupon executed and delivered to the complainant certain instruments transferring all the estate, right, title and interest of defendant in and

to the said partnership, to complainant. Defendant included in the grant and conveyance of said interest all his right, title and interest to all the name and good-will of said business and all its assets, all its choses in action and all its property and rights, privileges and advantages of every kind and nature, wheresoever situate and to whatsoever related. Complainant paid to defendant at the time of said transfer, many thouands of dollars as consideration for such transfer and bound himself to pay more thousands of dollars. A true copy of the bill of sale transferring said interest is annexed hereto and hereby made a part hereof.

9. Complainant thereafter continued to conduct the retail clothing business under the name of "The Hilton Company," in the same places and in substantially the same manner as it had previously been conducted by said partnership and continued to use in said business the words "Hilton" and "Hilton's" and the emblem above described to designate his said merchandise and business as the same goods and business formerly manufactured, sold and conducted by said partnership and of the reputation and good opinion joyed and made use of the good will of said partnership and of the reputation and good opinion which it had secured and enjoyed as described above. He now has invested in said business large sums of money and has a large and valuable business with branch stores in many cities, as above set forth, and with a market and customers for the clothing which he manufactures and sells wherever the products of his said business are known, advertised or sold and even more

extensive than the market and patronage of said partnership. Complainant, as the successor of said partnership, has had and enjoyed the patronage and retail trade of all the territory which is tributary from a merchandising standpoint, to the Cities of Newark, New Jersey and New York, New York, and in particular has and enjoys the retail trade and patronage of customers in Paterson, New Jersey and the territory adjacent so that said business so acquired by complainant from said partnership was and is a very valuable and profitable one. One of the largest elements of value in said business is the good will thereof, the patronage and trade which has been attracted to The Hilton Company and the reputation which the words "Hilton" and "Hilton's" and the trade emblem, above described, have when applied to clothing, and the reputation of the stores of The Hilton Company.

10. On or about September 9, 1916, in Paterson, N. J., and on or about November 4, 1916, at 33rd Street and Fifth Avenue, New York City, defendant opened stores for the sale at retail of men's clothing of substantially the same prices and general character as the clothing manufactured and sold by complainant and has opened and announced the opening of similar stores in New York, N. Y., and in Waterbury, Conn., and elsewhere. In opening said stores, and doing business therein, advertising his products and in all the operations of merchandising them, defendant has been and still is doing business under the name of "Hilton's" and has adopted, used and is using a trade emblem which resembles the emblem above described, now the property of com-

plainant, so closely as to deceive purchasers at retail. The said name "Hilton's" is displayed on the stores of defendant, in his advertisements, on his stationery and elsewhere without any given name prefixed thereto and without any explanation or qualification added thereto and was selected, together with said emblem, so your orator charges, wilfully and designedly, to create confusion in the minds of retail purchasers of clothing to deceive them, and lead them to believe that defendant was manufacturing and selling clothing of complainant's. The defendant also uses advertising matter of a form and substance the same as that long used by said partnership and now used by complainant, resulting in a like confusion.

11. The customers in trade of complainant and defendant are in large measure the same. In the City of New York and at Newark, Brooklyn and Paterson, the stores of complainant and defendant are in competition, so that the use by defendant of the words, descriptions and devices above mentioned is likely to, has and will deceive the general public and purchasers of clothing at retail and lead them to believe that the clothing manufactured and sold by defendant is the same as that of complainant, and that the store and stores of defendant in Patersen, New York, and elsewhere are a branch or branches of the stores of The Hilton Company now conducted by complainant.

12. Complainant charges that the similarity in the use of the names and symbols, the method of advertising and display, and method of sale of de-

fendant has been with intent to deceive and for the purpose of deceiving the public and purchasers of retail clothing, as well as of injuring complainant and as a part of a plan and purpose of the defendant to enjoy the benefit of the large sums expended by the said partnership and complainant in advertising said clothing and the benefit of the reputation for superior quality that the clothing manufactured and sold by The Hilton Company deservedly had attained in the estimation of the public and among the purchasers of retail clothing generally, and that thereby the business trade and reputation of complainant has been greatly injured, and unless restrained by this Honorable Court, the continued use by said defendant of said name and symbol, methods of sale and advertising, will injure complainant still further and injure it irreparably in the sale of its clothing and in the profits which it could reasonably make therefrom and work deception upon the public and purchasers of clothing at retail generally.

13. Complainant has requested said defendant to discontinue the use of the name "Hilton's," the use of the said trade emblem and the use of the methods of advertising and sale above described, but the said defendant has failed so to do and is still continuing in such practices.

Complainant is without adequate remedy in the Courts of law and therefore prays:

1. That Joseph Hilton, the defendant to this suit, may answer this bill of complaint without oath, and each statement therein made.

2. That the said Joseph Hilton, his agents, servants and employees, may be enjoined and restrained from using the name "Hilton's" or "Hilton," alone or in such manner as to lead or induce the public to believe that the goods manufactured or sold by him are manufactured or sold by complainant and that the business conducted by defendant is the same as or a part of the business conducted by complainant, from using any emblem or device resembling the trade emblem of complainant in any way in his business and from conducting his business so as to deceive the public and induce it to believe that the goods manufactured or sold by defendant were manufactured or sold by complainant and that the business conducted by defendant is the same as or a part of the business conducted by complainant.

3. That an account may be taken of the amount due complainant by reason of the defendant's acts aforesaid.

4. That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint and to abide such decree as this Court may make in the premises.

RITNEY, HARDIN & SKINNER,
Solicitors and counsel with Complainant.

Bill of Sale

Annexed to Complaint

THIS INDENTURE, made the 24th day of June, nineteen hundred and sixteen, between JOSEPH

HILTON, of the Village of South Orange, in the County of Essex and State of New Jersey, party of the first part, and PHILIP HILTON, of the Borough of West Caldwell, in the County of Essex and State of New Jersey, party of the second part; WITNESSETH, That the said Joseph Hilton, for and in consideration of the sum of One ($1) dollar, lawful money of the United States of America, and other good and valuable consideration to him in hand paid and given by the said Philip Hilton, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the said Philip Hilton, and his heirs, executors, administrators and assigns, all the estate, right, title and interest of the said Joseph Hilton of, in and to The Hilton Company co-partnership business at Newark, New Jersey, and all other places (heretofore conducted by the said Joseph Hilton and the said Philip Hilton, as co-partners), including all the name and good-will of said business and all its assets, including also all its money, accounts receivable, bills receivable, stock of merchandise, woolens, linings, trimmings, cloth, suits overcoats, and other garments and clothing manufactured, unmanufactured and in course of manufacture, in all its stores, factories, work-shops, store rooms, in transit and wheresoever situate; all its furniture and fixtures, store, factory, office and other equipment, tools, machinery and supplies of all kinds and wheresoever situate; also the building known as 793 and 795 Broad St., Newark, N. J., and the building known as 166-168 Market St., Newark, N. J., all its choses in

action, and all its property and rights, privileges and advantages of every kind and nature, wheresoever situate and to whatsoever relating, intending hereby to grant and convey unto the said Philip Hilton and his heirs, executors, administrators and assigns, all the estate, right, title and interest of the said Joseph Hilton, of, in and to all the foregoing mentioned property and rights, and of, in and to any and all other property and rights of every kind and nature, wheresoever situate and to whatsoever relating, of and to which the said Joseph Hilton and the said Philip Hilton, as co-partners and as members of the firm and co-partnership trading under the name of The Hilton Company, are possessed or entitled, embracing also everything of and to which the said Joseph Hilton and the said Philip Hilton as co-part- as co-partners an das members of the firm and co-ship aforesaid are possessed or entitled, which has not been included in the various deeds of assignment bearing even date herewith and executed and delivered contemporaneously herewith.

TOGETHER with the appurtenances to the same, or any part of the same, belonging and in anywise pertaining, and also all the estate, right, title and interest, claims and demands whatsoever of the said Joseph Hilton, of, in, to, out of and concerning the above mentioned property, rights and co-partnership.

TO HAVE AND TO HOLD the same unto the said Philip Hilton and his heirs, executors, administrators and assigns; it being expressly understood and agreed, however, that all the indebtedness, liabilities and obligations of every kind and

nature of the said co-partnership, are hereby wholly assumed by the said Philip Hilton.

And the said Philip Hilton, for himself, his heirs, executors, administrators and assigns, for and in consideration of the premises, agrees to and with the said Joseph Hilton, his heirs, executors, administrators and assigns, that he, the said Philip Hilton, will assume any and all obligation, liability and indebtedness of the said co-partnership (heretofore conducted by himself and the said Joseph Hilton as co-partners, under the name of The Hilton Company), and that he, the said Philip Hilton hereby assumes any and all such obligation, liability and indebtedness, and agrees to save harmless the said Joseph Hilton, his heirs, executors, administrators and assigns from and against any and all obligation, liability, loss and damage on account thereof.

Anything hereinbefore contained to the contrary notwithstanding, it is expressly understood and agreed by and between the parties hereto that this instrument does not grant or convey, or intend to grant or convey any estate, right, title or interest of the said Joseph Hilton of, in or to those two certain tracts or parcels of lands and premises known as street No. 264 Fifteenth Ave., Newark, N. J., and street No. 21 Chapman St., Orange, N. J., respectively.

In Witness Whereof, the said parties hereto have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Signed, sealed and delivered
in the presence of:

Answer

(*Filed* *1917*)

IN CHANCERY OF NEW JERSEY

Between
PHILIP HILTON,
Complainant,
and
JOSEPH HILTON,
Defendant

} On Bill &c

The answer of Joseph Hilton to the bill of complaint of Philip Hilton, complainnt,

1-2. This defendant admits the allegations of paragraph 1 and 2 of said bill, except that he denies that the said business was conducted continuously in the City of Newark under the name of The Hilton Company, but shows that for years it was conducted under the name of George Watson & Co.

3. He denies the allegations of paragraph 3.

4. He admits that for some time past The Hilton Company in the conduct of its business did use an emblem or device, the exact character of which is best ascertained from an inspection thereof. He denies that the same was used in connection with the words "Hilton" or "Hilton's", and denies the balance of said fourth paragraph of said bill.

5. He denies that the said partnership had used the words "Hilton" or "Hilton's" exclusively

and extensively during the period aforesaid, or at any time. He admits that the firm did some advertising, manufacturing and merchandising its goods, but denies that such advertising was anything but local in character, and insists that no general advertising was engaged in, and that the same was in no sense national or spread throughout the country; or that it had procured a patronage or market for said firm outside of so much of the public as was immediately tributary to the several stores that the firm controlled. He denies that the same extended throughout large sections of the country, and in particular he denies that any publicity or reputation had been given to or acquired by said firm in the City of Paterson, or elsewhere, or that any advertising to any extent had been done by said firm in the City of New York, or elsewhere, or that the said firm had any particular reputation, or that the reputation it did enjoy extended beyond the limits of the localities wherein their stores were severally situated.

6-7. He denies the allegations of paragraphs 6 and 7.

8. He admits that on or about the 24th day of June, 1916, he did sell and convey, by instrument in writing, a true copy whereof is attached to the bill of complaint, his right, title and interest in said firm. He denies, however, that by virtue of said instrument any right of this defendant to use his own name, or the name "Hilton" or "Hilton's" was conveyed or intended to be conveyed, or that the same was considered, or in the minds of either of the parties to said conveyance; or

that in figuring on the elements that entered into the consideration for said conveyance, the said name, or the right to use the same, was in any way considered. He, therefore, denies the allegations of the 8th paragraph of said bill.

9. The defendant admits that the complainant continued to conduct the retail clothing business under the name of The Hilton Company, in the places and in substantially the same manner as it had been previously conducted by said partnership, and until this defendant commenced to conduct business in the Cities of Paterson and New York, under the name of "Hilton's," after which time the complainant began featuring in his advertisements, and methods of conducting his business, the word "Hilton," for the express purpose of himself appropriating the word and name which this defendant had assumed and taken. He denies that the complainant has ever enjoyed sufficient patronage from customers living in Paterson to make the same of any consequence, or that the same was or is valuable and profitable. He also denies that the words "Hilton" or "Hilton's" were an element of the goodwill of the complainant's said business. He is ignorant of how much the complainant has invested in the business, and calls for proof. He has no doubt, however, that the patronage and sales which the complainant has enjoyed are, as he alleges in the 9th paragraph of said bill, more extensive than they formerly were.

10. He admits that from and since the dates in the 10th paragraph of said bill stated this defendant has conducted a retail clothing store at Pater-

son, New Jersey, and at the corner of 33rd Street and Fifth Avenue, in the City of New York. He denies, however, that the clothing manufactured by him and sold in said stores, was designed to be the same, or was in any way patterned after the goods sold by the complainant. He shows that there is a general similarity between the clothes sold by all retail dealers of the character and stamp of the complainant and this defendant. He admits that he has conducted said business under the name "Hilton's" and claims a right so to do. The said name was adopted by the sons of this defendant, who at the outset proposed to carry on the business (it then being the intention of this defendant to retire), and was so adopted with the express consent of the complainant who disavowed any rights or interest therein. He denies that the selection of said name was either wilfully, designedly or otherwise, made to create confusion in the minds of purchasers, or any one else, or to lead them to believe that this defendant was dealing in the clothing of the complainant. He further denies that he used advertising matter of a form and substance the same as that used by the complainant; although he admits that when his sons were about to start the store in Paterson, by and with the express consent of the complainant, an advertising form used by the complainant in opening his Providence store, was adopted by them. They ceased, however, using the same when such permission was revoked by the counsel of the complainant.

11-12. He denies the allegations of the 11th and 12th paragraphs of the bill. He denies that he has any store in the City of Newark in competi-

tion with the complainant, or that the complainant has any store in the City of Paterson in competition with this defendant. He shows that practically no customers from the City of Paterson go to Newark or New York, for the purchase of clothes at the store of the complainant. He admits that he has a store on Fifth Avenue in the City of New York, but the same caters to a somewhat different trade from that enjoyed by the complainant in his store on Broadway in said City. He denies absolutely that the signs, window dressing, stationery, or other features of his business, in any way simulate or resemble those of the complainant. On the contrary, he shows that the same are in every way distinctive, except that window dressing, by the necessities of the case, must be more or less identical, and he denies that there is anything distinctive or peculiar about the character of the complainant's window dressing. He denies each and all of the allegations of the 11th and 12th paragraphs of the bill of complaint He again denies that he, in conducting his said business, has in any way imitated or sought to create confusion with the business conducted by the complainant, and shows that he has in every way differentiated the two; and he denies that the complainant is entitled to any relief, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

McCARTER & ENGLISH,
Solicitors for and of counsel
with defendant.

[*Common Replication.*]

Conclusions

IN CHANCERY OF NEW JERSEY

Between PHILIP HILTON, Complainant, and JOSEPH HILTON, Defendant.		On Bill. Of Final Hearing

Messrs. Pitney, Hardin & Skinner (Mr. Hardin and Mr. Stanley) for complainant.

Mr. Selick J. Mindes and Mr. Robert H. McCarter, for defendant.

LANE, V. C. The bill seeks an injunction to prevent defendant using the word "Hilton's" to designate the places at which he carries on a clothing business. The case has taken six or seven days to try It has been elaborately orally argued and elaborate briefs have been submitted. The testimony has not been written out, and I am relying upon my recollection in stating the facts. Some may be misstated, but not to an extent which would change the result. If either counsel observe apparent mistakes, I wish they would call my attention to them.

In 1904 there was a manufacturing clothing business carried on in the City of Newark by one I. Hilton under that name. About that time there became associated with him, the defendant, Joseph Hilton. A store was opened in that year

in Philadedphia and the name adopted was "The Hilton Co." Subsequently, in 1907 the name "The Hilton Co." was adopted for the store in Newark. Between 1910 and 1914 the name "The Hilton Co." was abandoned in Newark and the name "George Watson & Co." substituted. This due to the fact that the Hiltons had acquired the established business of George Watson & Co. in Newark. In 1910 a store was opened in Brooklyn under the name of "The Hilton Co."; in Providence in 1914; in Pittsburg in 1913; Chicago in 1913; Boston in 1909 and in New York in April, 1906. Philip Hilton became associated in the business with Joseph Hilton and in 1916 Philip and Joseph were the joint owners of the business. On the 24th day of June, 1916 a sale of Joseph's interest to Philip was consummated and a bill of sale delivered which conveyed the interest of Joseph in the business "including all the name and good will of said business and all its assets." Joseph intended to go into the same business. Philip knew this. Prior to the consummation of the sale a store had been leased ostensibly for the two sons of Joseph in Paterson. I conclude that it was in the mind of Joseph at that time to himself become associated with his sons, or to supplant his sons. As a matter of fact, when the store was opened Joseph was the owner. I think Philip knew that the store was to be opened in Paterson and the preponderance of evidence is to the effect that he consented to the use of the name "Hilton's" by the sons in Paterson. Goods were manufactured by The Hilton Co. for use in the Paterson store and I must conclude that Philip knew of their manufacture. In the latter

part of 1916 The Hilton Co. had four stores in New York located at 85 Nassau Street, New York, Corner of 14th and Broadway, New York, 37th Street & Broadway, New York, and 412 Fulton Street, Brooklyn; Joseph conceived the idea of opening stores in New York and proceeded to do so; he now has in New York three stores, located at 33rd Street and Fifth Avenue, 243 Broadway, and 36th Street and Broadway. These stores, or some of them, are in comparatively close proximity to some of those of The Hilton Co. Joseph now contemplates opening a store in Brooklyn in comparatively close proximity to that of the Hilton Co. and another in New York immediately opposite the Nassau Street store of the Hilton Co. Each of these stores are designated by prominent signs as "Hilton's" The signs while unlike in color and in material used, yet have such characteristics similar to those used by The Hilton Co. as that it cannot be said that there are any distinguishing features which would differentiate to the ordinary observer Hilton's Stores from the Hilton Co. stores. The window displays are practically identical. The evidence is that there are no marks which would be noticed by the ordinary observer distinguishing window dressings in stores of this nature. The show cards used while not identical are yet similar. It is so with the labels. Prior to 1916 Hilton Co. had done considerable advertising in the newspapers in various localities in which it had stores, although none to any extent in the City of New York. It had advertised in the City of New York by means of show cases placed in prominent places in the Hudson Terminal and also by posters placed in

the Tube Trains. I know of no more effective method of advertising and I cannot shut my eyes to the fact that I have myself, before I ever heard of this case, noticed these advertisements and knew that there was such a concern as the Hilton Co. or Hilton's which sold men's suits. In some of the advertisements used before 1916 the words "Hilton" and "Hilton's" were used. In others the words "Hilton Clothes" and like phrases. The complainant's original claim seemed to be based upon the ground that the term "Hilton's" had acquired a secondary meaning, and a large part of the argument was devoted to the question as to whether or not the proofs show that this secondary meaning had attached. The view that I take of the case renders it unnecessary for me to determine whether the complainant has substantiated its claim in this respect or not. The distinction has been drawn between the right of the complainant to enjoin the use of the name "Hilton's" based upon the provisions of the bill of sale and the right based upon unfair competition. I think so far as this case is concerned, it is a distinction without a difference because the same facts which would result in enjoining the use of the name because of the grant contained in the bill of sale would induce the Court to enjoin its use because of unfair competition.

The question is one of fact. The legal rules are settled. Chancellor Walker said in *National Biscuit Company vs. Pacific Coast Biscuit Company*, 83 N. J. E. 369, at page 371: "The underlying principle that no man has a right to palm off his wares as those of another, thereby cheating the purchasing public and filching the business of

a rival, is so essentially an element of natural justice and so solidly imbedded in our jurisprudence that all that is necessary to quicken a Court of equity, is to show that in the particular instance the offence has been committed."

Vice Chancellor Backes in *Cape May Yacht Club vs. Cape May Yacht and Country Club,* 81 N. J. E. 454, 456, said: "Jurisdiction of Courts of equity to prevent injury from infringement of trade-names has been liberally exercised and applied in all circumstances whenever it appeared that the name was an established, distinctive and valuable adjunct to an undertaking, whether used to distinguish manufactured articles, a place of business, or a corporation, commercial, or one formed not for pecuniary gain. All that is required to bring into activity the injunctive powers of the Court is to inform it that the complainant's trade is in danger of harm from the use of its name by the defendant in such a way as is calculated to deceive the public into the belief that the defendant's affairs in the respect complained of, are those of the complainant."

Vice Chancellor Howell said (and his opinion was approved by the Court of Errors and Appeals in 81 N. J. E. 519) in *R. C. & H. T. Co. vs. Rubber Bound Brush Co.*, 81 N. J. E. 419, at p. 424: "It is not necessary that the complainant in order to succeed should prove misrepresentation or actual fraud by the defendant, or give any evidence that any single person was deceived. It is enough if, in the opinion of the judge the symbol or device or get-up used by the defendant is one which so closely resembles the symbol, device

or get-up used by the complainant as to be likely to deceive the public. If so, then the conditions required by the rules of law are fulfilled, and the decision of the question is one which must be committed to the eye and the sound judgment of the judge to whom the case is presented."

The Court of Appeals said in *Munn & Co. vs. The Americana Co.*, 83 N. J. E. 309 that "Fraudulent conduct on the part of the defendant is a necessary element," citing *International Silver Co. vs. Rogers,* 1 N. J. E. 560, 563.

The Court does not state what constitutes fraudulent conduct or what proof is required from which fraudulent intent may be inferred.

Vice Chancellor Emery said in *Eureka Fire Hose Co. vs. Eureka Rubber Mfg. Co.*, 69 N. J. E. at p. 16: "This protection is granted without regard to the intent of the infringer, because a fraudulent intent to deceive the public and appropriate the benefit of the trade reputation of another is conclusively presumed, from the using of the name or mark after request to desist, although the absence of such intent may in some cases be a defence to an action for damages."

And see also *Wirtz vs. Eagle Bottling Co.*, 50 N. J. E. 164; *International Silver Co. vs. Rogers*, 66 N. J. E. 119, at p. 129; *National Biscuit Co. vs. Pacific Coast Biscuit Co.* 83 N. J. E. at p. 380.

Expressed briefly I think the rule is "unfair competition" is "fraudulent conduct."

Examining the facts in the light of the rules of law hereinbefore referred to, it seems to me that it cannot seriously be argued that the use by the

defendant of the name "Hilton's" in the manner it is used in connection with stores in close proximity to those of the Hilton Co. cannot but lead to confusion, and tend to injure the good will of the complainant, his interest in which the defendant sold to the complainant. I must consider that I am a man of ordinary intelligence and that I proceed with ordinary care and caution, and I know that if I walked down Nassau Street, New York, having seen the sign of the Hilton Co. in the Hudson Terminal and desired to buy a suit of clothes as advertised, if I first saw on one side of the street the store of the defendant with the sign "Hilton's," I would immediately reach the conclusion that it was the same establishment which had advertised in the Hudson Terminal. If by chance I glanced across the street and saw another store with the words "The Hilton Company" over it, then I might wonder why the company had two stores in such close proximity, and I, might be lead to investigate as to which of the stores really had done the advertising. If, however, I walked into the store of the defendant at 33rd Street and Fifth Avenue, there would be nothing which would tend to raise my suspicions that that store was not that of the party advertising. The word "Hilton's" is the opular possessive of the words "The Hilton Co." just as "Macy's" is of R. H. Macy & Co. It seems to me that if the defendant can be allowed to open a store opposite or in close proximity to the stores of the complainant under the name of Hilton's, then there is no objection to a store being opened opposite or in close proximity to "Macy's" and the use by such store of the designation "Macy's."

Conclusions

There are three affirmative defenses set up by the defendant:

First: It is insisted that the complainant is perpetrating a fraud upon the public by selling goods advertised as manufactured by it which are not, in fact, so manufactured, and that the case is within *Perlberg vs. Smith*, 70 N. J. E. 638.

The proofs disclose that at the present time a very great proportion of the clothing is manufactured by the "company," I think between ninety and ninety-five per cent. The proportion of goods actually manufactured has steadily increased. While some of the advertisements may be said to leave the impression on the mind that the goods sold are actually manufactured by the "company," yet most of them are consistent with the idea that the goods are not so manufactured but are selected by the "company." It makes no difference to the public by whom the goods are manufactured so long as the public is satisfied with the article that it gets. The reputation of the "company" has grown not because of the fact that it manufactures the article, but because it produces to the public an article that the public wants. The good will that has resulted is entitled to protection. I do not think that the case is within *Perlberg vs. Smith* but rather within the reasoning of *Johnson & Johnson vs. Seabury & Johnson*, 71 N. J. E. 750; N. Y. & N. J. *Lubricant Co. vs. Young*, 84 N. J. E. 489, reversing Vice Chancellor Stevens 77 N. J. E. 321, *Regent Shoe Mfg. Co. vs. Haacker* (Neb. 1906) 106 N. W. 595, 4 L. R. A., N. S., 447.

Second: The defendant insists that the com-

plainant acquiesced in the use of the word "Hilton's by the defendant. There is no proof of any acquiescence on the part of the complainant except with respect to the use of the names by the sons of Joseph in Paterson. Assuming the testimony in the part of the defendant with respect to this to be true, there was a statement made by Philip to the wife of Joseph and one of the sons that he did not care if they opened in Paterson what name they used so long as they did not use the name of the Hilton Co. I do not believe that Philip ever intended to permit the use by Joseph, or by the sons, of the word "Hilton's" in any way which would result in unfair competition. It is almost inconceivable. I rather assume that he thought that the use of the term "Hilton's" in Paterson would not result in unfair competition with his stores. The Paterson store has been discontinued so that I do not have to determine whether I would enjoin the use of the word "Hilton's" in Paterson. The consent was not broad enough to cover the stores in New York or in any other place where the result would be competition with the Hilton Company stores. I think the asquiescence presents no obstacle to relief.

Third: It is insisted that because in Perth Amboy a similar business was conducted under the name of "Hilton" and also in Yonkers that the complainant is not entitled to relief. There is no proof whatever that the store in Yonkers, which has now been discontinued, or the store in Perth Amboy in any wise competed with any Hilton Company store, although the name may be used elsewhere, yet such use if in a non-competitive community or to a small extent will not prevent relief.

Upon the ground of unfair competition and because it is an attack upon the good will of the Hilton Company, the use of the term "Hilton's" by the defendant to designate his stores which are in competition with those of The Hilton Co. stores will be enjoined.

Throughout these conclusions I have used the term "it" to refer to the Hilton Co. for convenience.

Counsel on both sides have referred to many cases from foreign jurisdictions. I have considered it unnecessary to deal with them as I think the rules applicable are settled by prior decisions in this jurisdiction.

Counsel may present a form of decree on Monday, August 13th, or Wednesday, the 15th.

Final Decree

(*Filed, Sept. 21, 1917.*)

IN CHANCERY OF NEW JERSEY

Between PHILIP HILTON, Complainant, and JOSEPH HILTON, Defendant.	On Bill, etc.

This cause coming on to be heard in the presence of John R. Hardin, of counsel for complain-

ant, and Robert H. McCarter, of counsel for defendant, the pleadings having been read, the proofs having been taken and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is entitled to relief in the premises and that an injunction should issue,

It is, on the 19th day of September, 1917, on motion of Pitney, Hardin & Skinner, Solicitors of complainant, ORDERED, ADJUDGED and DECREED, by Edwin Robert Walker, Chancellor of the State of New Jersey, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby ORDER, ADJUDGE and DECREE, that the defendant, Joseph Hilton, his agents, servants and employees be and he and they hereby is and are perpetually enjoined from using the name "Hilton's" or "Hilton," either alone or in association with other word or words for any purpose whatsoever in any clothing business operated or conducted directly or indirectly by the defendant, competitive with the clothing business operated or conducted by the complainant trading under the name and style of The Hilton Company, and particularly from using the word "Hilton's" or "Hilton" either alone or in association with other word or words to describe or designate any retail clothing store or stores, or the clothing therein sold, or the business therein operated, or conducted, now or hereafter operated or conducted, directly or indirectly, by the defendant in any city or cities in which the complainant, trading under the name and style of The Hilton Company, now

operates or conducts a retail clothing business.

And it is FURTHER ORDERED that the defendant pay the taxed costs of the complainant in this cause, inclusive of a counsel fee of $1000, hereby allowed to counsel for complainant.

This decreee shall not prevent the use of the owrds prescribed in Paterson, N J., but application may be made on notice at the foot hereof for such relief as may be proper thereto.

E. R. WALKER,
C.

Respectfully advised,
Merritt Lane,
V. C.

Notice of Appeal

(*Filed, Sept. 26, 1917.*)

IN CHANCERY OF NEW JERSEY

Between PHILIP HILTON, Complainant, and JOSEPH HILTON, Defendant.	On Bill &c.

Joseph Hilton, the defendant in the above stated cause, hereby appeals from so much of the final decree made in this Court in the above stated cause as declares that the defendant, Joseph Hil-

ton, his agents, servants and employees be and he and they hereby is and are perpetually enjoined from using the name "Hilton's" or "Hilton," either alone or in association with other word or words for any purpose whatsoever in any clothing business operated or conducted directly or indirectly by the defendant, competitive with the clothing business operated or conducted by the complainant trading under the name and style of The Hilton Company, and particularly from using the word "Hilton's" or "Hilton" either alone or in association with other word or words to describe or designate any retail clothing store or stores, or the clothing therein sold, or the business therein operated, or conducted, now or hereafter operated or conducted, directly or indirectly, by the defendant in any city or cities in which the complainant, trading under the name and style of The Hilton Company, now operates or conducts a retail clothing business.

And it is FURTHER ORDERED that the defendant pay the taxed costs of the complainant in this cause, inclusive of a counsel fee of $1000, hereby allowed to counsel for complainant, to the Court of Errors and Appeals, in the last resort in all causes.

Dated, September 25th, 1917.

McCARTER & ENGLISH,
Solicitors for and of counsel with
Defendant.

I concede there is good cause for appeal in the above stated cause.

ROBERT K. McCARTER,
Of Counsel with defendant.

Petition Of Appeal

(*Filed, Sept. 26, 1917.*)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between
JOSEPH HILTON,
Defendant-Appellant,
and
PHILIP HILTON,
Complainant-Respondent.
} On Bill &c.,

To the Honorable, The Court of Errors and Appeals, in the last resort in all causes:

The petition of Joseph Hilton, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggreived by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the nineteenth day of September, in the year one thousand nine hundred and seventeen, wherein the said Philip Hilton was complainant, and the said Joseph Hilton was defendant, in this respect, to wit., that the said decree adjudges that the defendant, Joseph Hilton, his agents, servants and employees be and he and they hereby is and are perpetually enjoined from using the name "Hilton's" or "Hilton," either alone or in association with other word or words for any purpose whatsoever in any clothing business operated or conducted directly or indirectly by the defendant, competitive with the clothing business operated or conducted by the complainant trading under the name and style of The Hilton Company, and particularly from using the word "Hilton's" or "Hilton" either alone or in

association with other word or words to describe or designate any retail clothing store or stores, or the clothing therein sold, or the business therein operated, or conducted, now or hereafter operated, or conducted, directly or indirectly, by the defendant in any city or cities in which the complainant, trading under the name and style of The Hilton Company, now operates or conducts a retail clothing business.

And it is further ORDERED that the defendant pay the taxed costs of the complainant in this cause, inclusive of a counsel fee of $1000, hereby allowed to counsel for complainant.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that there should have been no such order, but the said bill of complaint should have been dismissed with costs.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

McCARTER & ENGLISH,
Solicitors for and of counsel
with Appellant.

(*Endorsed.*)
"Filed Sep 26, 1917,
Thomas F Martin,
Clerk."

STATE OF NEW JERSEY

DEPARTMENT OF STATE

I, Thomas F. Martin, Secretary of State of the State of New Jersey, and ex-officio Clerk of the

Court of Errors and Appeals in the last resort in all causes, do hereby certify that the forgoing is a true copy of PETITION OF APPEAL, Between Joseph Hilton, Defendant-Appellant, and Philip Hilton, Complainant-Respondent, as the same, is taken from and compared with the original Filed Sep. 26, 1917, and now remaining on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this Twenty-sixth day of September, A. D. 1917.

THOMAS F. MARTIN,
Secretary of State.

(Seal.)

[*Common Answer in Appeal.*]

Testimony

(*March 5, 1917.*)

IN CHANCERY OF NEW JERSEY

Between
PHILIP HILTON,
Complainant,
and
JOSEPH HILTON,
Defendant.

Transcript of shorthand notes of testimony taken in the above entitled cause, at Chancery

Chambers, Newark, N. J., on March 5, 1917, before Hon. Merritt Lane, Vice Chancellor.

Appearances:

Mr. John R. Hardin and Mr. Edward O. Stanley, Jr., for the complainant.

Mr. Robert H. McCarter and Mr. Selick J. Mindes for the defendant.

CHARLES F. HANSER, sworn:

Direct-examination by Mr. Stanley:

Q. Where do you live? A. I live at 168 Clinton Avenue, Newark.

Q. And what is your business? A. Advertising.

Q. With what firm or corporation are you connected? A. My own, known as the Hanser Agency, in the Kinney Building.

Q. How long have you been in that business? A. About sixteen or seventeen years.

Q. In Newark all the time? A. In Newark all the time.

Q. And do you at the present time do the advertising for Philip Hilton? A. I do.

Q. Did you prior to June, 1916 do advertising for The Hilton Company? A. I did.

Q. For how long a time have you been doing advertising for The Hilton Company? A. Ever since the store practically was formed on Market Street, in fact before The Hilton Company was formed, when it was known as I. Hilton, dating back before the time of The Hilton Company's—before it was really formed, before the company was formed.

Q. Dating back to what year? A. Well, off-hand

I cannot say, but it should be, I should say, easily twelve or fourteen years.

Q. And in what has your work consisted for them? A. The preparation of their copy for newspapers, sign matter for windows, and the preparation of form letters, in fact everything in the way of advertising that they would require.

Q. Did you write the copy that went into the newspapers? A. I did.

Q. And into the signs? A. Yes.

Q. Did you ever have any conferences with either of the members of the firm of Hilton Company about the contents of the copy, advertising copy? A. Yes, that was very frequently discussed.

Q. Any suggestions made by them? A. Suggestions were made by both Mr. Philip Hilton and Mr. Joseph Hilton from time to time.

Q. What localities did your advertising cover? A. It covered Boston, Providence, Philadelphia, Pittsburgh, Chicago, Newark, Brooklyn and New York.

Q. That is, you wrote the copy for appearance in those cities, did you? A. I did.

Q. Did you see the insertion of the advertisements? A. I did to this extent, that our advertisements are always ordered in for a certain date, and are subject to the finding of the local manager who has to see whether or not the instructions have been carried out, as far as set up, etc, but the actual ordering in is allowed to the manager because of the mistakes that frequently happen in an advertisement, and no definite order can be issued on an advertisement until it has been O. K 'd by someone who has seen it.

Q. Did you receive after the advertisements were ordered any copies of the newspapers? A. I did.

Q. Do you know the advertisements you ordered in were inserted? A. Yes.

Q. In any other cities than Newark? A. Yes; I received them at my office.

Q. And checked them up? A. And checked them up; I check up the bills for The Hilton Company.

Q. So that you know that the advertisements you prepared appeared in the various localities spoken of? A. I did.

Q. During this period of time do you have any definite idea as to the form of advertising you were running for The Hilton Company? A. Yes, indeed.

Q. What was that idea?

Mr. McCarter: I object. The question is what the advertisements were, not what the idea was.

Q. Well, strike out that question. What general idea did all the advertisements carry?

Mr. McCarter: I object. The advertisements must speak for themselves. I cannot see how he can come here and either by description or theory stigmatize them or characterize them.

The Court: I think you are right.

Q. Mr. Hanser, if I should show you some advertisements would you recognize the advertisements prepared by you? A. I would.

Q. There was one period of time, was there not, when you were not doing the advertising for the Hilton Company? A. Well, there were several periods of time for an approximate length

of six months I should say in which time I was not employed by them.

Q. Were you employed by them during the whole of 1915? A. I don't believe the whole of 1915; I think the first three or four months of 1915 I was not employed; I cannot be very definite on that point because I haven't my records before me right now to say.

Q. I show you a scrap book of advertisements, and I turn to an advertisement marked "5 21 15, News." Did you prepare that advertisement? A. No, I did not.

Q. I show you an advertisement marked "Newark News, 9/10/15." Did you prepare that advertisement? A. I did; yes.

Mr. Stanley: I offer this in evidence.

Marked Exhibit C-1.

The Court: When was the agreement dated?

Mr. McCarter: June 24, 1916.

Q. I show you an advertisement marked "Newark News, 9/17/15." Did you prepare that copy? A. I did.

Q. And know that it appeared? A. I do.

Offered in evidence.

Marked Exhibit C-2.

Q. I show you an advertisement marked "Newark News, 10/22/15," and ask you whether you prepared that advertisement? A. I did.

Q. Did it appear? A. It did.

Offered in evidence.

Marked Exhibit C-3.

Q. I show you an advertisement marked "10/27/15, Newark News." Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence.

Marked Exhibit C-4.

Q. I show you an advertisement marked "Newark News 10/29/15." Did you prepare that advertisement? A. I did.

Q. Did it appear? A. It did.

Offered in evidence.

Marked Exhibit C-5.

Q. I show you an advertisement marked "Newark News 11/ 5/15." Did you prepare that advertisement? A. I did.

Q. Did it appear? A. It did.

Offered in evidence.

Marked Exhibit C-6.

Q. I show you a n advertisement marked "Newark News 11/12/15." Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-7.

Q. I show you advertisement in the Newark News 11/19/15. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-8.

Q. I show you an advertisement in the Newark News 12/3/15. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-9.

Q. I show you advertisement in the Newark News 12/10/15. Did you put that in? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-10.

Q. I show you advertisement marked "Newark News 12/16 and 12/17/15," which appear to be identical. Did you prepare those? A. I did.

Q. Did they appear? A. They did.

Offered in evidence and marked Exhibits C-11 and C-12.

Q. I show you an advertisement marked "Newark News, 10/29/15." Did you prepare that ad- I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-13.

Mr. Stanley: I call the Court's attention to "Tailored by Hilton, The Hilton Store" and big "Hilton" down at the bottom and up at the top.

Q. I have another book. I show you an advertisement marked "Newark News 1/7/16;" January 7, 1916; did you prepare that? A. I did.

Offered in evidence and marked Exhibit C-14.

Q. I show you an advertisement marked "Newark News 1/6/16," did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and Marked Exhibit C-15.

Q. I show you an advertisement marked "Newark News 1/21/16," and ask you if you prepared that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-16.

Q. Advertisement of 1/14/16; did you put that in? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and Marked Exhibit C-17.

Mr. Stanley: I call the Court's attention to the word "Hilton" at the top, "A Hilton sale. Why a Hilton sale is always a success. The Hilton Company."

Q. I show you advertisement marked "January 26, 1916," did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-18.

Q. I show you advertisement of January 28, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and Marked Exhibit C-19.

Q. February 2, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-20.

Q. February 4, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-21.

Q. News, February 11, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-22.

Q. February 16, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-23.

Q. February 23, 1916, in the News; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-24.

Q. February 25, 1916, the News; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-25.

Q. March 3, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-26.

Q. March 10, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-27.

Q. Advertisement of June 16, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-28.

Mr. McCarter: It seems to me anything that occurs after these negotiations have started would be self-serving and improper.

The Court: Mr. McCarter, isn't any ad-

vertisement that has been made, even since the contract was carried out, evidential for the purpose of showing, if nothing else, that the present owner of that trade name, if there be a trade name, or name, has continued to use it, so there is no non-user, not for the purpose of establishing a right, of course, but for the purpose of showing that Hilton has continued to use the term.

Mr. McCarter: I suppose his claim to use it, his right to use it, is the very basis of this suit.

The Court: Undoubtedly.

Mr. McCarter: Now he cannot by anything he does after litigation—

The Court: No; he cannot establish a right to it, but hasn't he got to show two things, first a right, and secondly, that he has continued to use it? Upon that theory alone isn't it admissible. Nothing has been done since the contract was carried out; nothing that was done after the negotiations were started could establish the right, but I think it is evidential on some theory, and of course if it goes in for one purpose it goes in.

Mr. Stanley: I call attention to the large heading "Hilton Suits, Hilton Suits, Hilton Clothes. The Hilton Co," the Co. small.

Q. June 23, 1916, Newark News; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-29.

The Court: It is understood that these are admitted over objection of counsel for the defendant.

Mr. McCarter: I am going to say, unless it is followed up, all this proof of all these Newark advertisements is followed up by proof of substantial circulation either in the City of Paterson or in the City of New York, which I may characterize as the seats of war in this case, why we deem these advertisements irrelevant. I do not suppose your Honor would now shut them out, but I am now announcing to our friends on the other side that we intend to contend that as far as this case is concerned these advertisements might just as well appear in the middle of the Sahara Desert.

Q. June 29, 1916, Newark News. Did you prepare that, announcement of dissolution? A. I did.

Mr. McCarter: I think that is objectionable. They claim by the dissolution which occurred on the 24th of June they acquired certain rights. Can their construction of that situation be relevant to this case?

The Court: I will admit it on the ground that it shows no rights of the parties, but on the ground that it was a public announcement made by them at that time as to what happened.

Mr. Hardin: Probably if not under absolutely obligation of law, under any rule of prudence compelled to make it.

The Court: A casual glance don't indicate to me that it contained anything Mr.

McCarter, other than what was agreed to. It is a mere announcement of dissolution, and that did take place.

Offered in evidence and marked Exhibit C-30.

Q. June 30, in the Newark News; did you prepare that? A. I did.

Q. And did it appear? A. It did.

Offered in evidence and marked Exhibit C-31.

Mr. McCarter: The same objection.

Q. July 5, 1916, Newark News; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-32.

Mr. McCarter: I won't keep objecting to these.

The Court: They are all over your objections, Mr. McCarter.

Mr. McCarter: Yes.

Q. July 7, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-33.

Q. July 14, 1916. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-34.

Q. July 21, 1916; did you prepare that and did it appear? A. I did, and it appeared.

Offered in evidence and marked Exhibit C-35.

Q. July 28, 1916. Did you prepare that? A. I did.

Q. And did it appear? A. It did.

Offered in evidence and marked Exhibit C-36.

Q. August 4, 1916 did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-37.

Q. I show you an advertisement of August 11, 1916. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-38.

Q. August 18, 1916. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-39.

Q. August 25, 1916. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-40.

Q. September 1st 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-41.

Q. September 8, 1916; Newark News; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-42.

Q. September 15, 1916. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-43.

Q. September 22, 1916; did you prepare that? A. I did.

Q. And it appeared? A. It did.

Offered in evidence and marked Exhibit C-44.

Q. September 29, did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-45.

Q. October 6, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-46.

Mr. McCarter : October 4, 1916 is the date of the letter from Mr. Hardin to Mr. Joseph Hilton, the defendant, which is the declaration of war. I suggest even now after war has been declared, Mr. Hardin's letter of warning, I have no objection to their continuing but I want your Honor to have that in mind.

The Court: I have it in mind.

Q. October 13, 1916. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-47.

Q. October 20, 1916, did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-48.

Q. October 27, 1916; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-49.

Mr. Stanley: I offer in evidence an advertisement appearing in the News Friday April 30, 1915; I have a copy of it.

Marked Exhibit C-50.

Q. I offer an advertisement appearing on page 35 Newark Evening News. May 31, 1915.

Marked Exhibit C-51.

I offer in evidence advertisement appearing on page 31 of the Newark Evening News May 28, 1915, in which Hilton's is spoken of as a locality again, "At Hilton's."

Marked Exhibit C-52.

I offer in evidence advertisement appearing on page 4 of the Newark Evening News June 11, 1915.

Marked Exhibit C-53.

I offer in evidence advertisement appearing on page 5 of the News of July 16, 1915.

Marked Exhibit C-54.

Q. Did the advertisements which I have shown you and which you say you prepared appear also in other Newark papers? A. At times they appeared in the Star Eagle.

Q. Is that a morning or evening paper? A. An evening paper.

Q. Did they appear in any other paper? A. At times in Elizabeth.

Q. Anywhere else? A. Not in the immediate vicinity.

Q. Did the advertisements which you prepared appear anywhere else than in newspapers? A. Not to my knowledge.

Q. Did you prepare any advertisements for the Hudson Tube cars? A. Yes. Of course they are different advertisements altogether than newspaper advertisements.

Q. You prepared advertisements for the Hudson Tube cars? A. I did.

Q. Do you know where they were exhibited? A. I do.

Q. Did you prepare copy for appearance in other cities besides Newark? A. I did.

Q. Now I show you an advertisement marked, a clipping marked "The Bulletin, June 3, 1910."

Mr. McCarter: That is Philadelphia Bulletin?

Mr. Stanley: Yes.

Q. Do you remember that advertisement? A. I do.

Q. Did you prepare it? A. I did.

Q. Did it appear in that paper? A. It did.

Mr. McCarter: I object to it. I cannot see what the advertisement in the Philadelphia Bulletin has got to do in this case.

The Court: They may be endeavoring to establish a reputation over a whole section; whether they will succeed in doing it or not is another question.

Mr. Stanley: I offer it in evidence.

Marked Exhibit C-55.

Q. I show you a Boston Post of June 8, 1910.

Mr. McCarter: The same objection.

The Court: All of this will be admitted subject to your objection, Mr. McCarter.

Q. Did you prepare that advertisement? A. I did.

Q. Did it appear? A. It did.

Mr. Stanley: I offer it in evidence.

Marked Exhibit C-56.

Q. Boston Post, June 10, 1910; did you prepare that advertisement? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-57.

Q. Elizabeth Journal, June 10. Did you prepare that advertisement? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-58.

Q. Boston American, June 10, 1910. Did you prepare that advertisement? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-59.

Q. Philadelphia Bulletin June 10, 1910. Do you remember that? A. I do.

Q. Did you prepare it? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-60.

Q. Boston Post, June 15, 1910. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-61.

Q. Boston American, June 15, 1910. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-62.

Q. Bulletin, June 15, 1910. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-63.

Q. Bulletin, June 17, Philadelphia. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-64.

Q. Boston Post, June 17. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-65.

Q. Elizabeth Journal, June 17; did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-66.

Q. Newark Evening News, June 24, 1910. Did you prepare that advertisement? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-67.

Q. Boston American, June 24, 1910. Did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-68.

Q. Advertisement in the Boston Post, June 29, did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-69.

Q. Philadelphia Bulletin, July 1, did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-70.

Q. Boston Post, July 2, did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-71.

Q. Philadelphia Bulletin, July 1, did you prepare that? A. I did.

Q. Did it appear? A. It did.

Offered in evidence and marked Exhibit C-72.

Mr. Hardin: I suggest, with the consent or Mr. McCarter, that we can shorten matters by having these advertisements in the scrap book that the witness has before him to go in in bulk, inasmuch as the witness is familiar with each one of them, and on each one of the advertisements there is a memorandum of the newspaper and the date of the insertion.

Mr. McCarter: And we agree to that, subject of course to the relevancy of the evidence, so long as Mr. Stanley will give the name of the paper and the date of the

appearance, it being assumed, as Mr. Harding says, he knows they were inserted and were prepared by him, that is a fact is it, Mr. Hanser?

A. It is.

Mr. Hardin: With that understanding then Mr. Stanley will read from the notes on the face of the advertisements, the newspaper and the date of insertion, the advertisements going in without the necessity of marking each one.

Mr. Stanley: Philadelphia Bulletin. July 8. Boston Post, July 9. Boston Post. July 13. Newark News, July 15. Boston Post, July 15. These are all 1910. This book contains all 1910 publications. Philadelphia Bulletin, July 21. Newark News. July 22. Philadelphia Bulletin, July 22. Philadelphia Bulletin, July 26. Philadelphia Bulletin, July 28. Philadelphia, Bulletin, August 3. Philadelphia Bulletin, August 5. Boston Post, August 5. Boston Post, August 12. Philadelphia Bulletin, August 10. Philadelphia Bulletin, August 12. Boston Post, August 17. Boston Post, August 20. Philadelphia Bulletin, August 19. Brooklyn Daily Standard Union, April 29. Brooklyn Daily Standard Union, April 22, 1910. Elizabeth Daily Journal, May 27/1910. Brooklyn Daily Union, May 27, 1910. Brooklyn Daily Standard Union, May 22, 1910. Elizabeth Daily Journal May 20, 1910. Elizabeth Daily Journal May 13, 1910. Brooklyn Daily Standard Union May 6, 1910. Boston American, July

1, 1910. Boston Post, July 28, 1910. Boston Post, July 29, 1910. Boston American, July 29, 1910. Boston Post, July 30, 1910. Elizabeth Daily Journal, August 26, 1910. Boston American, August 30, 1910. Evening Bulletin, Philadelphia, September 7, 1910. Newark News, September 9, 1910. Boston Post, September 9, 1910. Philadelphia Evening Bulletin, September 9, 1910. Elizabeth Daily Journal, September 9. Philadelphia Evening Bulletin, September 14, 1910. Philadelphia Evening Bulletin, September 16, 1910. Boston American, September 16, 1910. Boston Post, September 17, 1910. Boston American, September 20, 1910. Evening Bulletin, Philadelphia, September 21, 1910. Evening Bulletin, September 23, 1910. Boston Post, September 24, 1910. Philadelphia Evening Bulletin, September 30, 1910. Boston Post, September 30. Philadelphia North American, October 1, 1910. Philadelphia Bulletin, October 13, 1910. Boston Post, October 14, 1910. Boston American, October 13, 1910. Philadelphia Evening Bulletin, October 14, 1910. Boston American, October 14, 1910.

Boston Post, October 12, 1910. Philadelphia Evening Bulletin, October 19, 1910. Boston Post, October 19, 1910. Boston American, October 18. Philadelphia Evening Bulletin, October 21. Boston Post, October 22. Boston American, October 25. Evening Bulletin, Philadelphia, October 26, 1910. Elizabeth Daily Journal, October 26, 1910. Boston Post, October 26. Newark

Evening News, October 25. Philadelphia Evening Bulletin, October 28. Elizabeth Daily Journal, October 28. Boston American, October 28. Boston Post, October 29. Elizabeth Daily Journal, November 2. Philadelphia Bulletin, November 2. Boston American, November 2. Boston Post, November 3. Elizabeth Daily Journal, November 4. Philadelphia Evening Bulletin, November 4. Philadelphia Inquirer, November 5. Philadelphia North American, November 5. Boston Post, November 5. Philadelphia Bulletin, November 7. Elizabeth Daily Journal, and Newark Evening News, November 8. Boston Post, November 8. Boston American, November 11. Philadelphia Evening Bulletin, November 11. Elizabeth Daily Journal, November 11. Boston Post, November 12. Philadelphia North American, November 12. Boston American, November 15. Elizabeth Daily Journal, November 16. Philadelphia Evening Bulletin, November 16. Boston Post, November 17. Boston American, November 16. Elizabeth Daily Journal, November 16. Philadelphia Evening Bulletin, November 18. Philadelphia Evening Telegraph, November 18. Elizabeth Daily Journal, November 18. Philadelphia North American, November 19. Boston American, November 18, Boston Post, November 19. Philadelphia Evening Bulletin, November 21. Elizabeth Daily Journal, November 22. Boston Post November 23.

Boston Post, November 26. Philadelphia North American, December 3. Philadelphia Evening Bulletin, November 25. Philadelphia North American, November 26. Philadelphia Evening Bulletin, November 29. Boston American, November 29. Boston Post, November 30. Boston Post, December 3. Boston American, December 2. Philadelphia Evening Bulletin, December 2. Philadelphia Evening Bulletin, December 7. New York Evening World, December 7, 1910. Elizabeth Daily Journal, November 30, 1910. Brooklyn Daily Eagle, December 9, 1910. Philadelphia Inquirer, December 10. Philadelphia North American, December 10. Boston American, December 14. Elizabeth Daily Journal, December 14. Philadelphia Evening Bulletin, December 14. New York Evening World, December 14. Boston Post, December 17. Brooklyn Daily Eagle, December 16. Boston Post, December 15. New York Evening World, December 16. Philadelphia Evening Bulletin, December 16. Philadelphia North American, December 17. New York Evening World, December 30. Philadelphia Evening Bulletin, December 29. Boston American, December 30. Elizabeth Daily Journal, December 30. Boston American, January 7, 1911. Philadelphia North American, December 31, 1910. Philadelphia Evening Bulletin, January 4, 1911. New York Evening World, January 6, 1911, and Brooklyn Daily Eagle, January 6, 1911.

The Court: Counsel propose to show advertisements published between 1910 and 1915, and it is agreed that they prepare in their office a list, furnish it to counsel on the other side and make available to him the original advertisements so that he may verify the list, during the course of this hearing, before the conclusion of the case.

Mr. Hardin: That applies generally to our newspaper advertisements. We have some other proofs with reference to 1915 and 1916 in other places than Newark; they might just as well take the same course I suppose.

The Court: Take the same course.

Q. Did you ever have any conference with Mr. Joseph Hilton during the time you were preparing copy for The Hilton Company? A. I had conferences with Mr. Joseph Hilton and Mr. Philip Hilton.

Q. What were those conferences about? A. Oh, ways and means of making the advertising more effective.

Q. Anything said about what should appear in the advertisements?

Mr. McCarter: By whom do you mean?

Q. By Mr. Joseph Hilton or by you? A. Well, if we struck a particularly good idea, as we did in the Congressional—the Ways and Means Committee Investigation on the woolen tariff, we had run series of advertisements and they proved to have been very effective, and at various times and in various cities afterward it was suggested that we renew that style of advertising because it had been so effective.

By Mr. McCarter: Q. You mean suggested by Mr. Joseph Hilton? A. Mr. Joseph Hilton as well as Mr. Philip Hilton.

Mr. McCarter: I want the distinction. I object to this general line of trying to get in assumptions by general supposition that it was suggested; suggested by whom, and what was suggested? Let us have the conversation.

The Court: As near as he can.

Mr. McCarter: Yes.

The Court: I suppose the conferences he had with Philip or Joseph during the term of partnership are binding upon Joseph now.

Mr. McCarter: I suppose that the object is to show notice, and it may be—

The Court: Of course I don't know what the object is.

Q. Did Mr. Joseph Hilton or Mr. Philip Hilton make any suggestions as to any particular words that should be used and copied? A. No, except to feature the name very prominently.

By the Court: Q. Which one did that? A. Well, I might say both.

By the Court: Q. Not what you might say, what was the fact? A. The fact of the matter is, I worked with them so long, and with both of them, that it would be a difficult matter for me to say on what occasions one said one thing to me and another another.

Q. Were their instructions to you to feature the name?

Mr. McCarter: I object. I think that is very leading, and the question is what was

said, and by whom; I think we are entitled to that. They cannot talk like a phonograph, two or three at a time.

Q. What was said by Mr. Joseph Hilton about the subject matter of copy for advertising? A. Well, that I cannot recall.

Q. Did he give you any general instructions? A. Only to make the ads. good and strong.

By the Court: Q. You said a moment ago something about featuring the name. What was said about that, if anything? A. Well, to send home the fact that Hilton Clothes were the best clothes, to feature it in the cut at the top, the name Hilton.

By the Court: Q. Who gave you those instructions? A. I might say both Mr. Hiltons, both of the Mr. Hiltons.

Q. It was conceded by both to be a very good idea?

Mr. McCarter: No.

The Court: What was said, as near as you can remember. A. Nothing, other than that it was a good idea to use that as frequently as possible and as prominently as possible.

Q. Did you prepare copy for the tunnel advertising? A. I did.

Q. Did you prepare the copy for that advertisement? A. I did not.

Q. Do you know who did? A. A man by the name of Nathanson.

Q. Did you prepare the copy for that one? A. I did not.

Q. Is that also Mr. Nathanson? A. It is.

Q. Did you prepare the copy for that? A. I did not.

Q. Mr. Nathanson? A. Mr. Nathanson.

Q. Did you prepare the copy for that? A. I did.

Q. Do you know whether it appeared or not? A. I do.

Q. Where did it appear? A. In the Hudson & Manhattan trains between Newark and New York.

Q. Running from where? A. From the terminal station in Newark to Thirty- third or thirty-fourth Street, New York, I don't know the name of the street.

By Mr. McCarter: Q. You know they don't run between Newark and Thirty-third Street? A. I don't know anything about it, sir.

By Mr. McCarter: Q. Don't you know no trains start from Newark that go to the Thirty-third Street terminal? A. I do not.

Mr. McCarter: There isn't any such train.

A, I know you have to change at Grove Street, if that is what you mean.

By the Court: Q. Did this ad appear in all Hudson & Manhattan trains? A. If you ask me that question I cannot answer because I am not an inspector.

By the Court: Q. What was the contract? A. Contract? I don't know.

Mr. Hardin: We will produce the contract.

Mr. Stanley: I offer this in evidence.

Mr. McCarter: When is it, what date did it appear?

Q. Do you know what date this appeared? We will identify the date by the tunnel advertising contract? A. No, I can't say when it appeared.

Mr. Hardin: It appeared in October, 1913, as a matter of fact; this witness does not know I guess.

Marked 73 for identification.

Q. Did you prepare the copy for that sign card? A. I did.

Marked 74 for identification.

Q. You don't know when this appeared, do you? A. I do not, no.

Q. Did you order it in, as you say? A. I didn't order it in; I had the cards ordered and shipped to the Tunnel Advertising Company who themselves placed it in.

Q. Do you know whether the figure 15 appeared in the Exhibit 73 for identification as it finally appeared? There is fifteen dollar price on this sign; there is some question whether that appeared on the final card. A. I can't say definitely; there were two sets, and one destroyed; which of the two was inserted I don't know.

By the Court: Q. Is that the only change, as to price? A. That is the only change, as to price, as far as I recollect.

Q. Showing you 74 again, I ask you whether you know whether that was used before June 24, 1916? A. That I can't answer, I don't know.

Q. By looking at the advertisement you cannot say? A. No, I cannot.

Q. Did you prepare the copy of that advertisement? A. I did.

Q. Where was it used? A. In the tube train.

The Court: I understand now that all of these were used in the tube train.

Mr. McCarter: I understand the witness does not know that.

A. I have seen them all in the tube trains personally.

Mr. McCarter: Fifteen or twenty—you see you don't know.

The Court: I will change my remark,— they were prepared for the tube train.

Mr. McCarter: Yes; I think that is better.

Marked 75 for identification.

Q. Do you know when C-75 for identification appeared? A. Well, it should have—

Mr. McCarter: I object.

A. I don't know when it appeared, no.

Q. What did you have to do with the appearance of these cards? A. What do you mean, the appearance?

Q. Do you give directions as to when they shall appear? A. No, I do not.

Q. Just prepare the copy? A. Just prepare the copy.

Q. Did you prepare the copy for that? A. I did.

Marked 76 for identification.

Q. Did you prepare the copy for that? A. I did.

Marked 77 for identification.

Q. Did you prepare the copy for that one? A. I did.

Marked 78 for identification.

Q. Did you prepare the copy for this one? A. Yes.

Marked 79 for identification.

Q. I ask you if you prepared the copy for that? A. I did.

Marked 80 for identification.

Q. Did you prepare the copy for that card? A. I did.

Marked 81 for identification.

Q. Did you prepare the copy for that? A. I did.

Marked 82 for identficaton.

Q. Did you prepare the copy for that? A. I did.

Marked 83 for identification.

Q. Did you prepare the copy for this poster? A. I did.

Marked 84 for identification.

Q. Do you know where this poster appeared? A. It appeared in the stations in the Hudson and Manhattan Railroad.

Q. What stations? A. Between Newark and uptown New York.

Q. All of the stations? A. In all of the stations.

By Mr. McCarter Q. Do you know that? A. That is the contract. I don't know whether they were actually there.

Mr. McCarter: I object. Don't let us have from this witness what he don't know about. I move that be stricken out.

The Court: It will be stricken out.

By Mr. Hardin: Q. Do you happen to have seen ary of those in the stations? A. I have seen them.

By the Court: Q. What time, when? A. Up until about a montn and a half ago.

By the Court: Q. Commencing from what time? A. Perhaps six months prior.

By the Court: Q. In some of the stations? A. In some of the stations.

Q. Did you prepare the copy for that advertisement? A. I did.

Q. Do you know where it appeared? A. It appeared in the subway stations.

Q. Did you see it? A. I did.

Q. Do you remember when you saw it? A. About two weeks ago.

Offered in evidence and marked Exhibit C-85.

Mr. McCarter: Of course that is subject to our objection.

The Court: Yes, the general line, anything that happened after the contract.

(Wtiness temporarily withdrawn)

PLEASANT C. MILLER, sworn:

Direct-examination by Mr. Hardin:

Q. Where do you reside? A. New York.

Q. And what is your occupation? A. I am advertising manager of the Hudson & Manhattan Railroad Company and general manager of the Tunnel Advertisng Company.

Q. And where are the headquarters of the Tunnel Advertising Company? A. 30 Church Street, New York.

Q. Are you an officer of that company? A. Yes.

Q. What? A. Secretary.

Q. How long have you been associated with that company? A. About ten years.

Q. Do you know Philip Hilton? A. Yes.

Q. Do you know Joseph Hilton? A. Yes.

Q. And in what relation have you come in contact with them? A. They have done advertising business with me in the Hudson Tubes.

Q. Since when? A. From my records, June 1st, 1915, up to the present time.

Q. And have you met Mr. Joseph Hilton in connection with the business that you transacted with the company or with the Hilton people? A. Yes.

Q. Havee you had any contracts with the Hilton Company? A. Yes, sir.

Q. Will you give us the date of the earliest one? A. May the 11th, 1915.

Q. Was the contract in writing? A. Yes.

Q. Did you negotiate it? A. Why, negotiated partly through one of my solicitors and partly by myself with the Hilton Company.

Q. I show you a contract and ask you was there more than one original of that contract? A. Yes, they are all signed in duplicate.

Q. Have you got the contract with you? A. I didn't bring any originals with me.

Q. I show you a paper "Tunnel advertising of May 11, 1916" and ask you whether you recognize that as one of the originals of that contract? A. Yes, it is.

Q. Is the letter which is attached to that signed by you? A. Yes.

Mr. Hardin: I offer that contract in evidence.

Marked Exhibit C-86.

Q. Have you a copy of that letter of April 26, 1915? A. Yes, sir.

Q. Is that a carbon copy of the letter that is

referred to in that contract, Mr. Miller? A. Yes.

Q. And did you sign that letter? A. That is my initial; the carbon copy of it; the original I signed.

Mr. Hardin: I offer the letter then of April 26, 1915.

Marked Exhibit C-87.

Q. Do you know whether advertising was furnished in accordance with that contract? A. Yes, sir.

Q. During the term of the contract? A. Yes, sir.

Q. And do you know whether posters were distributed and painted signs on the columns of the Hudson Terminal, as referred to in the letter of April 26, 1915? A. Yes.

Q. You say you do know whether it was given? A. Yes, I do know it was given.

Q. Have you any information as to the display, the spaces that were occupied by advertisements in the cars during the period of this contract?

Mr. McCarter: Of your own knowledge now, Mr. Miller.

Mr. Hardin: Mr. Miller is an officer.

A. I take it from the record; I can't carry all these in my mind; I have to take it from the book yes, they were provided with space 16x28, next to the center door in all the cars.

Q. That included all the cars that ran into the terminal downtown track from Newark, as well as the cars that connected from Grove Street uptown? A. Yes, sir.

Q. And where were the posters, twenty-one sheet posters referred to in the letter, distribut-

New Jersey State Library

ed? A. I did not bring a list showing the locations, but they appeared at least one at each station on which we have posters, that is all the stations with the exception of Park Place here, Harrison, Summit Avenue; they appeared at all other stations.

Q. And where were the three painted signs on the column of the Hudson Terminal? A. They are still down there on the Concourse of the Hudson Terminal.

Q. Cars are operated also from the Hoboken Terminal to downtown New York by the Hudson Terminal Company, and these advertisements you refer to appeared in all cars operated on the system? A. In all cars, yes.

Q. Was this contract renewed May 11, 1915 or another contract made? A. We made another contract.

Q. What was the date of the next contract? A. December 9, 1915.

Mr. Hardin: This contract, your Honor please, is signed "Hilton Company by Joseph Hilton."

Q. Have you your own copy of the original contract of December 9, 1915 with you? A. Yes, sir.

Q. I asked you if you had your original with you? A. No, sir.

Q. I show you a paper headed "Tunnel Advertising Company," under date of December 9, 1915, and I ask you if you recognize that as a duplicate original? A. Yes, sir.

Mr. Hardin: I offer that contract in evidence. That, if your Honor please, runs for

a period of twelve months, commencing January 15, 1916, at $65. per month.

Marked Exhibit C-88.

Q. Where is Dey Street referred to in this contract? A. Well, that is the stairway on the Concourse of the Hudson Tunnel coming down from Dey Street.

Q. And this contract referred entirely to a show case in the Hudson Terminal. A. On the Concourse floor of the Hudson Terminal.

Q. Do you know whether that show case was established under that contract? A. Yes, it was established.

Q. Shortly thereafter? A. Yes, the work was carried right along.

Q. And is it there still? A. Yes, sir.

Q. And has it been continuously paid for by the Hilton Company since it was established? A. Well, I haven't the book as to whether last month or the month before—it is entirely satisfactory.

Q. It has been paid for? A. Yes.

Q. Do you recognize that photograph as a photograph of the case to which you have been referring under this contract of December 9, 1915? A. This is the one; that is the one at Dey Street.

Mr. Hardin: I offer that photograph in evidence which the witness says he recognizes as a picture of the case referred to in the contract of December 9, 1915.

Marked Exhibit C-89.

Q. Was there more than one show case referred to in that contract? A. No, sir, just one show case referred to in that contract.

Q. Do you know whether there is more than

one show case in the terminal? If there are any others it is under some later contract? A. Yes, sir.

Q. Who is Mr. Nathanson referred to in this letter of yours of April 26, 1915, do you know? A. No, I have never seen him, I never met him; I may have written his name; I may have gotten letters from him; I remember he was an advertising man that was doing some work for the Hilton's; I don't know him personally; I think he was in my office once, but I can't say I am familiar with him.

Q. Was there another contract later with the Hilton Company and Tunnel Advertising Company? A. Yes, three more.

Q. What is the date of the next one, December 9, 1915? A. Here is one November 23, 1915.

Q. The one of December 9, 1915 referred to the show case only? A. Yes.

Q. You say there was an earlier one on November 23, 1915? A. Yes, sir.

Q. Have you the original of that one with you? A. No, sir.

Q. I show you contract bearing the heading "Tunnel Advertising Company" dated November 23, 1915, and ask you whether you recognize that as a duplicate original of the contract of that date to which you have referred? A. Yes, sir.

Q. This contract succeeds the original contract of May 11, 1915, does it not? A. Yes.

By Mr. McCarter Q. And runs to when? A. Six months, from December 1, 1915.

Contract offered in evidence and marked Exhibit C-90.

Q. Did you have any correspondence with the Hilton people with reference to that contract? A. I expect I had considerable correspondence.

Q. Was it renewed at any time, or another contract made to succeed it, or was there any further contract made with reference to show cases? A. Well, there was a contract made for show cases, then there was another contract to continue the car advertising.

Q. What is the date of the show case contract, the new show case contract? A. There is one for show case at Thirty-third Street station, dated February 9, 1916.

Q. Have you the February contract with you? A. I have copy of it.

Mr. Hardin: Any objection to using copy, Mr. McCarter?

Mr. McCarter: You have mislaid your original? Subject to the production of the original. You are sure that is a copy, Mr. Miller?

A. That is carbon copy.

Mr. McCarter: That is all right.

Mr. Hardin: For the present I will offer a copy in evidence.

Marked Exhibit C-91.

Q. Was there a case established under that contract? A. Yes, sir.

Q. Do you know whether it is still continued? A. Yes, it is still there.

Q. Do you recognize that as a photograph of the case? A. Yes, sir, that is a photograph of it.

Photograph offered in evidence and marked Exhibit C-92.

Q. And in which one of the statements in this case located? A. Thirty-third Street.

Q. What is the next contract? A. April 26, 1916.

Q. And to what does that relate? A. Now that is for one hundred and twenty months, beginning June 1st, 1916, right of cancellation at a certain time; that covers the 16x28 cards in all the cars, twenty posters on the stations, three painted signs at the Hudson Terminal, two show cases at the Hudson Terminal, one show case at Thirty-Third Street, and cancellation of these other contracts, whatever they had still to run.

Mr. Hardin: That original I have not been able to locate, and I suppose if Mr. McCarter wants me to prove the loss—

Mr. McCarter: Oh, no.

Mr. Hardin: That particular contract was signed by both Philip and Joseph.

Mr. McCarter: Let us have proof of that Don't make these statements.

Q. Do you know how that contract of April 26, 1916 was signed on behalf of the Hilton Company? A. "Hilton Company, by Philip Hilton, Joseph Hilton, 791 Broad Street, Newark."

Q. And you have an original in your possession so signed? A. Yes, sir.

Q. That contract appears to have been in part represented by an Exhibit attached descriptive of the space? A. Yes, that is part of the contract.

Q. I show you a paper and couple of blue pages attached, being apparently Exhibit A and ask you whether that is a copy of the contract of April 26, 1916? A. Yes, it is.

By the Court: Q. How muuch a month did that contract provide for? A. $525.

Q. There was an additional show case provided for by that contract? A. Yes, sir.

Q. Where was that to be located? A. That is on the south-east corner, over toward the south-east corner of the Concourse of the Hudson Tunnel.

By the Court: Q. What street is that near? A. It is about, well, almost on the corner of Cortlandt Street and Church.

Q. Do you recognize this photograph that I show you as a photograph of that case? A. Yes, sir.

Mr. Hardin: I offer the photograph in evidence. I offer the contract of April 26, in evidence.

Marked Exhibit C-93.

I offer photograph in evidence.

Marked Exhibit C-94.

The photographs which I have offered and which have been identified by this witness are for the purpose of describing and identifying the cases, and have no special reference to contents.

Q. Do you remember whether that contract of April 26, 1916 was first signed by Philip Hilton or not? For the purpose of refreshing your memory I show you a letter that appears to have been signed by you. A. Well, that letter is signed by me, that is my letter; this letter would indicate that the contract was first signed by Philip Hilton, and I remember that it was; it was some little time after before the other signatures were secured.

Q. Did you send the contract with Mr. Philip's signature to Mr. Joseph Hilton? A. Yes; I sent it to Mr. Murray, letter addressed maybe to either one of them, but it was sent by hand by one one of my solicitors, I think he took it to Mr. Murray.

Q. Did you get any receipt back or anything to indicate that the letter— A. Yes, the letter got there because I got the contract back eventually.

Q. Do you recognize your letter? A. Yes, that is my letter.

Q. After seeing that letter do you recall whether or not you sent the contract to Joseph Hilton? To whom was that letter addressed? A. Addressed to Joseph Hilton.

Q. That letter refers to a clause in the contract to be added with reference to the termination and cancellation of it; was that clause added? A. Yes.

Q. And it appears at the end? A. At the end of the contract.

Q. The Exhibit A attached to the contract, as well as the contract itself was signed by both Philip Hilton and Joseph Hiton? A. Yes, sir.

Q. Have the displays been made in the cars in accordance with the terms of the contract since the date of the contract, April 26, 1916?

Mr. McCarter: I don't suppose this witness has seen every car.

Mr. Hardin: He says he gets reports at his office; he does not make inspection himself, but he knows generally.

The Court: I will admit it. It is physically impossible for anyone to have seen every one of these cars, and I think this witness can testify generally whether the displays have taken place.

Q. And what is the fact, have the displays been advertisement according to the contract? A. Yes.

By the Court: Q. Charged for and paid for? A. Yes, charged for.

Q. And paid for? A. Except the current open account, whatever that is, yes.

Q. Are you able to give us any information as to the number of people that travel on the Tube system between Newark and New York and the stations over there? A. In 1916 the total tickets sales were 66,184,128, for the year 1916.

Q. At all the stations? A. Yes.

By the Court: Q. Sixty-six million, is that the number of tickets sold? A. Yes, sir, that represents the traffic.

Q. What year was that? A. 1916.

Q. And during the year 1916 the Hilton Company signs were displayed throughout the whole year? A. Yes, in every car.

Q. Have you any figures as to the people who are in attendance in the course of a year in the Erie station where one of these cases is located?

The Court: On Thirty-Third Street.

Mr. McCarter: I haven't seen any Erie show case.

Q. The one I want is the one on the first contract.

The Court: That is Hudson Terminal at Dey Street.

A. Well, I didn't bring those figures; I didn't know I was to be asked that; I haven't got that; I could have given that; I can give you that approximately the number of passengers there per day.

Mr. McCarter: They don't all go to Dey Street.

A. No, the number of passengers a day, I can give that; Dey Street has nothing to do with it; it just happens that Dey Street was mentioned to identify the location of the show case; it is right in the center of the Concourse.

Mr. McCarter: But everybody doesn't see it necessarily; a great many people get out of the rear end of the train, do not see it at all.

A. That is true, but there is another case up there though.

The Court: I will admit the evidence as to the average number of people daily in the Hudson Terminal.

Q. You may give us those figures? A. Approximately a hundred thousand people a day.

Q. While this case is said to be near Dey Street can you describe a little more generally its location? A. Well, the Hudson Terminal Concourse extends from Cortlandt Street through and under Dey Street and over to Fulton Street, so that Dey street is about the center of the Concourse, and this show case is at the foot of one of the stairs coming down from Dey Street.

By the Court: Q. When you use the term one hundred thousand people a day you mean one hundred thousand passengers, and if a man goes there four times he is counted four times? A. Yes, a hundred thousand people per day; I was asked how many people were on the floor.

By the Court: Q. No matter how many times one person goes there? A. He is counted, yes, we can't separate it.

Q. Can you give us any figures as to the number of people daily on the floor of the Thirty-third Street station? A. I was not asked to bring those figures, but approximately, and I will be willing to correct it from the record, thirty-two or thirty-three thousand a day, somewhere along there; I can correct that from the records if you want it.

Q. Now are you able to give us any figures as to the people from New Jersey who use the tube system? A. Well, I happened to bring with me a record showing the ticket sales at our Lackawanna end of the Hoboken station and ticket sales at our Erie station, but that does not include all of New Jersey, that does not include the Newark branch.

Q. Suppose you give us the figures of the Lackawanna station at Hoboken? A. The total ticket sales per annum at that end of that station in 1916, 4,570,217.

Q. And how about the Erie station? A. And at the Erie 4,746,300 plus 690,195, which the Erie railroad sell for us at their own stations out on their lines, making a total of 5,436,445.

Q. Have you any figures as to the people who come from Jersey, Exchange Place, Jersey City, or the stations out Newark way? A. I did not bring those figures with me.

Q. Are there such figures? A. Yes, they are all available.

Q. Perhaps you can send us memorandum. A. If you want it, and the Court will admit it I will send it.

Q. My thought was if you will send them to us I thought we might by arrangement.

Mr. McCarter: I think at the same time he might verify those surmises and give the period covering—

A. If you write and ask me what you want I can give you the figures from the record just as they are.

Q. Have you observed any of the advertising of the Hilton people under these contracts in your cars or stations? A. Yes, all the cards have to come to me before they are put in the tube in the trains.

Q. I show you Exhibit C-84 for identification: do you recognize that as a poster that was in use under any of these contracts? A. Yes, those were on the station.

Q. Which station? A. On the stations that I have named, being all except the stations at which we have no advertising.

Q. Do you remember under which one of the contracts they were installed? A. I can go back and see,—put in December 21, 1915, you can just see which contract.

Q. And similar posters have been exhibited under other contracts besides the one this one particularly relates to? A. Do you want me to tell you which contract that went under?

Q. I am only getting at whether this kind of advertising has been going on under all the contracts, or whether it is peculiar to some one of them? A. It has been going on ever since he first started advertising with us, when he first started back in June, 1915 we got him posters and car cards.

Q. And this poster, have you any way to recog-

nize the date of any given poster? A. I had the date put on the back, here you notice December 21, 1915, that is taken from my record.

Mr. Hardin: I offer that in evidence.

By Mr. McCarter: Q. Who put the date on the back of there? A. I had it put on by one of my clerks from the record.

By Mr. McCarter: Q. Record of what? A. Record in our shop, where we keep a record of our business; whenever a car card goes in or a poster is put on display we keep a record of that.

EXAMINED by Mr. McCarter:

Q. The record you refer to was in your office? A. Yes, in my office.

Q. Of the date that was brought, or the date this was first brought to you and passed by you? A. I don't get that.

Q. You have said that on December 21, that date December 21, 1915 had been put on the back of this Exhibit 84 for identification from the records in your office? A. Yes.

Q. That means, as I understand you, that that is the day that you personally passed that particular style of exhibit? A. That is the date, that appears as the date of installation of that advertisement. Now that may mean this, that on December 21, if that is the date, the man started putting them up; he may not have finished until December 22, or Sunday or a holiday, or Saturday came along—it may have taken him another day, but that is fixed as the date of installation of those advertisements; you understand these do not go in, it is physically impossible to put them all in sometimes in one day.

Q. Who installs them, a man in your office? A. I have a department for that; I have a regular department three or four men, a superintendent in charge, and he keeps records and books on it.

Q. And this date of December 24 is taken from some record kept by somebody? A. Yes, sir.

Q. In one of these departments? A. Yes, sir.

Q. As being the date when they started to install this thing? A. Yes, sir.

Q. How do you recognize this particular Exhibit 84 for identification as being the particular one that was put up on the date marked on the contract? As I understand you, they had the right to change these cards and posters for a different purpose, and I understand further that they did in fact change them. Now do you know—

Mr. Hardin: You do not apply that understanding to this particular—

Q. Do you know that this particular poster remained the same throughout the entire period? A. Well, I know that it did not.

Q. Did not? A. Yes.

Q. Then I ask you if you have any means of knowing that this particular poster, C-84 for identification, was the one that was in fact started to be displayed on the 21st of December? A. Yes, that particular poster came right out of our stock as our copy that we keep, and was sent over by me to the Hiltons three or four days ago; that is our own marking on the back, and came out of our stock that we keep to identify each card or poster that appears in the Hudson tubes.

Q. Well, then you mean by your statement to indicate that that particular poster, C-84, containing whatever is written or printed on it, was

the one that was installed on or about December 21, 1915? A. Yes, sir.

Q. Do you keep a copy of every separate card? A. Every change, we try to.

Q. Do you keep it? A. We try to.

Q. Do you succeed? A. Well, how well we succeed is dependent on the human element.

Admitted as exhibit and identification part stricken out, left as Exhibit C-84.

Further DIRECT-EXAMINATION by Mr. Hardin:

Q. I show you a series of exhibits, I show you eight cards which are marked for identification already; do you recognize them as cards that have been exhibited in the cars of the tube system under these Hilton contracts? A. I would recognize them more from this writing on the back.

Q. Did they come out of your stock the same way as the other poster? A. Yes.

Q. And the dates on the back indicate that those signs were installed in the cars of the system or were begun to be installed at least in the cars of the system at the times indicated on the back of each one? A. Yes.

Q. Now I show you three others that have not yet been marked, and I ask you if similarly these are signs that were installed at different times in the Tunnel system? A. Yes.

Q. Have they also come out of your stock in the same way and do the dates on the back indicate that the installation began in the cars at the times named? A. Yes.

Mr. Hardin: I offer these three addi-

tional ones, and the others that have been marked for identification.

The Court: Your testimony with respect to these and the dates will be precisely the same as your testimony with respect to that poster, won't it?

A. Yes.

Mr. McCarter: I have no objection. Identification mark stricken out and the numbers left as exhibits.

Mr. Hardin: These new ones that have been offered are on May 8, June 30 and August 10, 1915.

Marked Exhibits C-95, C-96, C-97.

Q. I show you Exhibits 81, 82, and 83 for identification and ask you whether you recognize those as having been used in advertising on the Tunnel train, and whether they likewise came out of your stock, and whether the dates on the back indicate the dates of installation? A. Yes.

Mr. Hardin: I offer these three in evidence.

The Court: Let them be marked. Strike out the identification mark.

Q. I show you Exhibit C-85 and I ask you whether that also came out of your stock? A. Yes, sir.

Q. And will you look at the back and tell us when that was first installed? A. January 23, 1917.

Q. And where is that used? A. That is used on the stations as a poster, I am sorry to say.

Q. And do you know whether that at the date of the installation, January, 1917, that took the place of another? A. Yes, that was used to cover

up the poster then showing, whatever that may have been.

Mr. McCarter: Of course that was long after the suit even.

Q. Do you know whether it took the place of the one originally installed December 31, 1915? A. Well, I couldn't say.

Q. I don't mean this very one, but it covered the same kind? A. Yes, it was to cover up the ones that were then showing.

Q. A sign of this size took the place of one so much larger? A. Yes, it did.

Q. And do you know whether this has been used in there where they have got boards in the station? A. He had a similar one he used for car cards, printed on cardboard.

Q. And that was used in the trains? A. In the cars.

CROSS-EXAMINATION by Mr. McCarter:

Q. Have you brought over all the signs and cards and posters that are in your stock that were exhibited by virtue of these contracts? A. Yes; my instructions were to send over one of each of the car cards and the posters that had been on display; I have every reason to think that was what was done.

Q. There was no selection, but there was one of each? A. Of each.

Q. And have all you sent been exhibited here? A. Well, I didn't count the ones I sent over; I sent over quite a bunch of them, I should say about that many; this was Friday or Saturday I had them in my office.

Mr. Hardin: I am ready to assure Mr.

McCarter that all Mr. Miller sent are in.

Mr. McCarter: Have been exhibited and offered in evidence?

Mr. Hardin: Yes; there is no attempt at selecting.

Q. In your acquaintance with Mr. Joseph Hilton are you aware of the fact that he could not read? A. No, sir.

Q. You never learned that? A. No, sir.

Q. I call your attention to this Exhibit C-93. Do you know who in fact composed that, and how it happened to shorten up the arrangement from the detail that was set out in the previous contract? A. You mean this? I don't quite get your question.

Q. The subject of advertising Hilton's clothes, etc, all the other contracts, as I recall them, are quite specific having a description of four or five lines? A. Let me see; I don't remember that there was anything; there is one advertising Hilton's clothes, subject of advertising, Hilton's Clothing Company.

Q. Who composed the twpewriting part in each case on these particular contracts that you have offered in evidence? A. I did.

Q. And of your own volition? A. Yes.

Q. And it happened to be just as it was? A. Just as it was.

The Court: What is the date of the contract, that one that Mr. McCarter refers to? A. April 26, 1916.

Q. Do you know whether any of the show case displays or the show cases themselves have been altered since they were originally installed? A. The dressing of the show cases, yes, that is changed quite frequently.

Q. And how about the signs or part of the show cases themselves, do you know that they have not been changed? A. I don't think they have been changed since they were completed; the show case itself in each instance I think was completed before they put the electric sign on top; as I remember, each one has electric sign on top; they couldn't be started until the show case is finished, and it should take two or three weeks probably to install that; there have not been any other changes, to my knowledge, I have not O. K'd any changes.

Q. And the electric signs on top were only later in so far as it was necessary to have them later, because they could not be put in until after the show case was up? A. That is my understanding, yes.

Q. Is there electric sign on all of them? A. Well, the photographs will show.

Q. You don't recall then? A. I could not carry these details in my mind.

Q. In fact you really don't know anything about— A. Oh, yes, I see them very frequently, that I referred to first.
but under oath I would like to,—Yes, all of them that I referred to find.

Q. And you now say that all the electric signs were installed practically immediately after the cases under which they stand were completed? A. Well, as nearly as I can remember at this time. I have not burdened my mind with that particularly.

Recess.

CHARLES F. HANSER resumed for further Direct-examination by Mr. Stanley:

Q. Mr. Hanser, did you prepare a copy for their window display of the Hilton Company also? A. I did.

Q. I show you a window poster and ask you whether you prepared that? A. I did.

Marked 98 for identification.

Q. Do you know whether that card, 98 for identification, was displayed in the windows of the Hilton store? A. I recollect having seen that in the stores.

Q. Do you remember what time you saw that? A. No, I do not.

Q. Was it prior to June, 1916? A. Yes, I am quite sure it was.

By Mr. McCarter: Q. What store are you speaking of? A. Particularly the Newark store.

Q. Do you know whether this card was displayed in any of their New York stores? A. I don't know whether they were displayed there or not, but they were prepared with that idea.

Mr. McCarter: I object.

The Court: It doesn't do any harm; there is no evidence that they were not displayed there.

Mr. Stanley: I offer this in evidence at this time. The witness says he recollects having seen it in the Newark store.

By Mr. McCarter: Q. When did you see that in the Newark store? A. In the spring of 1916.

Marked Exhibit C-98.

Q. I show you another window card and ask you if you prepared that? A. I prepared that.

Q. Did you ever see that displayed? A. I have no recollection of it, no.

Mr. Stanley: I ask that that be marked for identification.

Marked 99 for identification.

Q. Do you remember when you prepared it? A. When the spring signs were made up, all at one time, there was another of them made at one time.

Q. Spring of what year? A. Nineteen hundred sixteen, and the same illustration was used in all of them.

Q. Did you prepare that? A. I did.

Q. What time did you prepare that? A. At the same time the others were prepared.

By The Court: Q. Were all those that are standing up against the window there prepared at the same time? A. Yes, sir.

By The Court: Q. Do you recollect having seen any of them in the windows, except the one you have already identified? A. I recollect the one with the large figures in, I think it was thirteen and a half or so, particularly.

By The Court: Q. That is the one you have already identified? A. Yes, sir.

The Court: Why don't you offer those all for identification and have them marked, rather than asking questions about each one?

Q. Now I will pass them before you, and see if there are any you have not prepared, and let me know if there are? A. I recognize these, referring to 100 to 111 for identification, inclusive.

Offered in evidence and marked 100 to 111 inclusive.

CROSS-EXAMINATION by Mr. McCarter:

Q. You have stated, Mr. Hanser, that you are connected with this clothing enterprise in Newark and elsewhere for some sixteen or seventeen years? A. No, I did not.

Q. How long? A. I said about ten years.

Q. All right, ten years. A. I said I had been in the business for sixteen or seventeen years.

Q. At the start of your connection with the enterprise in Newark it was known as I. Hilton? A. I. Hilton.

Q. Who composed the firm at that time? A. I don't know.

Q. Well, did Mr. Phillip Hilton? A. I don't know.

Q. Was he connected with it? A. That I don't know.

Q. Mr. Joseph Hilton? A. Mr. Joseph Hilton was about the place, took an active interest in it.

Q, He was much more active in it than Mr. Philip Hilton as far as you could see? A. Well, in actual labor, yes.

Q. Was Mr. Isaac Hilton then alive? A. Yes.

Q. Was he active in it? A. He was.

Q. So that when the business was run as I. Hilton the two more active members, so far as your recollection goes, was Mr. Isaac and Mr. Joseph, than Mr. Philip Hilton? A. Yes, in that particular store.

Q. And if indeed Mr. Philip Hilton had anything to do with the Newark store you don't remember his doing it? A. Oh, yes.

Q. What was his position? A. He was about.

Q. He was away a good deal of the time? A. No.

Q. But you don't even know whether he was a member of the firm? A. No, I did not know the connection at all.

Q. Did you know the Bell concern, the Bell Tailoring Company? A. I did.

Q. Wasn't Mr. Philip Hilton connected with that? A. He was.

Q. At the same time he was connected with I. Hilton? A. I believe so.

Q. Sure about that? A. Well, I worked for both of them at the same time.

Q. Well now, where was the business located at that time? A. I don't just recall the number, but I think it is 142 Market Street.

Q. It was not on Broad? A. Not on Broad.

Q. Now do you remember the death of Mr. I. Hilton? A. Yes, I remember that he died.

Q. Did that occur before or after the time they moved out on Broad Street just below Market? A. That occurred before, if my recollection serves me right.

Q. And was it at the time that he died that the name The Hilton Company was adopted? A. I don't know how long afterwards that name was adopted really.

Q. Well, is it your recollection that the name I. Hilton continued after the death of Isaac Hilton? A. It seems to me that the name remained over the door at least for some time.

Q. On Broad Street? A. On Market Street.

Q. On Market Street? A. Yes.

Q. Now you remember, do you not, the fact that the enterprise bought out the George Watson & Company business? A. Yes, I remember that.

Q. Had the name The Hilton Company?

Mr. Hardin: This is not exactly cross-examination, but I don't know that I care much.

The Court: Mr. Hardin, I do not want to intervene myself and overrule questions unless you want to object. It is not cross-examination. I am not going to overrule it unless you object to it on that ground.

Mr. Hardin: I think if Mr. McCarter wants to bring it in the case he better bring it in in some other way than by a gentleman that had some contractual relations with an advertising concern.

Q. Do you remember about the time that Mr. Watson died? A. No, I don't know that.

Q. But you know he did die? A. I know he died; he was dead long before the business was ever sold out, years before, if I recollect.

Q. You remember the fact that the business was sold out? A. Yes.

Q. And you know from that time down the name of George Watson & Company was continued, don't you?

Mr. Hardin: I object to that undess Mr. McCarter lays some better foundation. It is not cross-examination, and while I have no possible objection to having it brought in the case in some proper way, the use of the Watson name, when he says "From that time down" it means absolutely nothing.

The Court: I will overrule the question upon the ground that it is not cross-examination. As I understand this witness's testimony it is to the effect that he prepared certain signs, certain advertise-

ments, and they were published, or prepared for publication.

Q. Now coming down then to the specific period when the signs that you have produced first, the advertisements you have produced first appear, which is 1915, you have undertaken to testify about that, haven't you? A. I beg your pardon, I just didn't follow you there.

Q. You undertook to testify to the advertisement you composed during the year 1915? A. Yes.

Q. You said there were three or four months in 1915 that you did not act in that capacity for that enterprise? A. Yes.

Q. What months were they? A. Well they were I should say from about the first of the year, or early in the spring until perhaps summer, August.

Q. Didn't you resume about the first of September? A. I imagine it was along,—I know it was sometime in the fall,—I am not clear as to just what month it was.

Q. In that period was Mr. Nathanson acting in that capacity? A. In between time, yes, while I was out.

Q. So that any advertisements that have appeared here and been offered in evidence by you from the spring until the early fall of 1915 were not drawn by you? A. Well, I was called upon several times to draw up a few special announcements, but I have not seen them in this collection.

Q. Then your answer is yes to my question?

The Court: His answer is not yes, because you presuppose there have been some introduced between other periods of time; I don't know whether there have or not.

Mr. McCarter: I think there have.

The Court: I do not know.

Mr. Hardin: As I recall he declined to recognize advertisements until he—

The Court: There have been several shown that he said he did not recognize.

Q. Do I understand then that there are no advertisements in or to go in—

Mr. Hardin: What do you mean by "going in," marked for identification?

Mr. McCarter: Have we agreed that you are to prepare a list of these advertisements that are to go in that book, that are to go in later?

The Court: Yes, but that covered 1911, 1912, 1913 and 1914, not 1915; 1915 has been covered.

Q. Do I understand that you have recognized or spoken of no advertisements in the year 1915 that you yourself did not compose? A. Yes.

Mr. Hardin: I don't want to have any confusion about this thing; I know Mr. McCarter does not either. We have introduced advertisements by way of production of newspapers themselves.

The Court: They were not identified by him. Mr. McCarter's question is perfectly proper; the witness's answer is proper: he merely referred to those that the witness had identified; the witness said he did not identify any except those that were prepared by himself.

Q. How long prior to the time when Mr. Nathanson came there had you been the advertising man? A. Well, ever since I. Hilton, ever since I

began with the concern when it was I. Hilton, with several possible exceptions, which perhaps were for a period of three months or so.

Q. Now you prepared the advertisements for all the stores wherever they were located, didn't you, during the time you were serving them? A. I did.

Q. And you made a specialty of that kind of work? A. I did.

Q. You pretended to have and believed you did have, without being boastful, a faculty of writing attractive advertisements? A. I do.

Q. That is a gift of itself, isn't it, the same as the practice of law or anything else? A. It is.

Q. So that you would compose the advertisements, wouldn't you? A. I would, yes.

Q. Now you knew that neither Mr. Philip or Mr. Joseph Hilton was able to read, didn't you? A. I was familiar with that fact.

Q. You knew that? A. I knew it.

Q. So that you didn't show them the advertisements and obtain their approval? A. Oh, yes, I did.

The Court: Just a moment, until the counsel finishes his question.

Q. What I am driving at is, after the advertisement was composed, but before it was inserted, what would you do with it? A. I would take it to the house and read it to them for their O. K.

Q. To whom? A. Whichever two of the members were present.

Q. Invariably? A. Invariably.

Q. For every advertisement? A. I can't say for every one; they were not there all the time.

Q. Therefore it would not be invariably? A. Well, I don't know.

Q. What? Don't you know, Mr. Hanser, that as a matter of fact that you had *carte blanche* to compose and edit and insert and carry on the advertisements, except your sole limitation was as to space and cost? A. I didn't even have those limitations.

Q. Didn't even have those limitations? A. No.

Q. But it was up to you to compose, insert, select the paper and run the advertising department, wasn't it? A. Yes, I should say so.

Q. Now you have produced some advertisements commencing in the month of September, 1915; previous to that you remember, do you not, that the firm in Newark had been using the name George Watson & Company? A. They had used the name George Watson & Company, yes, but as for the time you speak of I am not just so clear when that was; I know it was some time in 1915.

Q. Did you compose the signs on the building? A. No, I did not. What signs do you refer to may I ask. The announcing of the sale of the Watson business stock?

Q. I mean the signs that were displayed on the front building on Market Street or on Broad Street? A. At what time do you refer?

Q. Any time. A. Oh, I have at times, yes. I thought you referred specifically to the time when announcement of the sale of the Watson stock took place.

Q. The Hilton Company always had a sign, didn't they, a wooden sign on the building? A. I guess they had, yes.

Q. Did you compose that? A. No, indeed, they didn't require my assistance.

Q. Don't you know that for several years pre-

vious to the latter part of 1915 the use of the name The Hilton Company was totally abandoned at the Newark store?

Mr. Hardin: I don't think that is cross-examination.

The Court: Do you object to it on that ground?

Mr. Hardin: Yes, sir.

The Court: I sustain the objection that it is not cross-examination.

Q. Did you know C. Hilton down in Perth Amboy? A. Yes.

Q. Did you prepare his advertisements? A. Yes.

Mr. Hardin: That is objected to as not cross-examination.

The Court: Objection sustained.

Mr. McCarter: I don't think counsel has a right to wait until the question is answered and then object.

The Court: I beg your pardon, Mr. McCarter, that question and answer will be admitted.

Mr. Hardin: I move to strike out the answer.

The Court: The answer will be stricken out.

Q. You spoke of some advertisements "style-built;" was that a phrase composed or invented by yourself? A. No, indeed.

Q. Who gave you that? A. Mr. Murray.

Q. When did you first use that? A. With the beginning of the fall advertising, this last fall campaign, if I recollect correctly.

Q. Nineteen hundred sixteen? A. Nineteen hundred sixteen.

Q. That was after the dissolution? A. Yes.

Q. Who since Mr. Joseph Hilton retired from the firm has given you directions you have received as to the advertisements, Mr. Murray? A. Mr. Murray, in collaboration with Mr. Philip Hilton.

Q. Any of the more recent exhibits, then, that utterly fail to refer to the word "Hilton" or "Hilton's" is because of directions given to you by one or the other of them? A. Well, I don't recall any that don't show the use of the name "Hilton."

Q. Assuming that there be some which are entirely without any reference to the word "Hilton," or "Hilton's"—

Mr. Hardin: I object.

Q. I ask you if the directions for that came from Mr. Murray or Mr. Philip Hilton?

Mr. Hardin: I object. It is not proper cross-examination; it infers an assumption that the witness has not made.

The Court: I will admit it.

Q. (Question read.) A. To begin with, there were no instructions issued, order to leave out or add anything different than before.

Mr. McCarter: I move that be stricken out. That is not an answer.

The Court: It will stand.

Q. Have you received any instructions whatever from either of these gentlemen during the past three or four months with reference to what you should put in or leave out on the advertisements? A. No, sir.

Q. None whatever? A. No, sir.

Q. You pursued the same plan of doing exactly as you chose? A. Yes.

Q. Just as you always did? A. As I always did.

Q. Were there no more or no less instructions? A. No more, no less instructions.

Q. If you wanted to put in "Hilton" you put it in, if you didn't want to you didn't put it in? A. Exactly.

Q. That was the way it was before? A. Exactly.

Q. The books of advertisements that have been produced here by you and contain certain lead pencil annotations of the location and date of the advertisements, is that your book? A. No, sir.

Q. Who made the annotations? A. The auditor.

Mr. McCarter: Well, now, your Honor, I certainly misunderstood that. I withdraw my consent. I am not going to have this gentleman undertake to verify the date of an advertisement that he did not make. I supposed he was using his own scrap book, and I have no doubt your Honor did. I think that is a very unfair way. I could have gone up there and read the date just as well as he. It now seems that some unknown person has put those dates on there, and Mr. Hanser is acting in entirely good faith on it, simply says that shows such and such a date.

The Court: That would be what company, the Hilton Company?

A. If I may interpose here, I might say I recognize some of my handwriting on some of the insertion of dates which I put on myself before this

man was engaged for that work, particularly in June, 1910.

Mr. McCarter: I think this is so important—

The Court: I will let the testimony stand if it becomes necessary before the case closes I will refer it to a master to determine the exact dates that these publications were made. I am not going to sit here and have a lot of evidence or lot of newspaper books or newspapers produced here in Court and each one of these advertisements verified. If there is any question about it I will see that they are verified in a proper way.

Mr. Hardin: There isn't any question at all.

Mr. McCarter: Well, your Honor will recall I am trying to adapt myself,—I suppose we are entitled to have the case tried according to law, time or no time. I was very glad to acquiesce in the idea that a certain advertisement appeared in the Newark News or the Boston Transcript or the Philadelphia Evening Bulletin on a certain date. I assumed, of course, he had his own memorandum that he put there; it now transpires that he has not at all.

The Court: I assumed that this was his scrap-book.

Mr. McCarter: I do not ask that the auditor be called or the files be called, but I say we ought to have the man that did put them there to be sure it is accurate; we don't know; and it is very important, I think, the

dates of these advertisements, as we look at it, and I asked that so much of this testimony that this gentleman gave,—he acted entirely in good faith, and Mr. Hardin did, we were all under a misapprehension,—I don't think the evidence ought to be in that this gentleman put in; I don't think we ought to be held to that kind of evidence.

Mr. Hardin: I think Mr. McCarter misunderstands the situation. This witness testified he had prepared these advertisements and he had arranged for their publication in the newspapers, he knew they were published. I don't think he at any time said he had put the particular lead pencil marks on the advertisements in evidence, and I don't think the testimony will show he said anything of the kind. There are sundry ways to prove these dates by the production of the newspapers themselves.

The Court: Precisely; if it becomes necessary to prove the precise dates I will refer it to somebody to prove that.

Mr. Hardin: We have got the advertisements themselves; there is nothing in doubt except the date of the paper. As to the date of any particular advertisement I suggest if Mr. McCarter wants to criticize any particular date let us know and we will produce the bill or paper and get at it in some other way. I don't want him to take what he ought not to be required to take, nor do I want him to take anything not subject to such verification as is necessary. When we have verified the matter in the

advertisement, that is the chief thing, whether it was published on the 22d of April or the 23d of April is immaterial in this case.

Mr. McCarter: It is not a question of the 22d or 23d; it is a question of having evidence get in here under a misunderstanding, which I object to.

The Court: This witness has testified positively with respect to each one of these advertisements, that they were prepared by him, that they were prepared for the purpose of publication, that they were published in their respective newspapers, he knows that because he checked up the files; he was paid through his office in some way or another. Now, the particular dates when, that is the only thing in dispute, that is the only thing in doubt; they may have to connect it up, may have to show the particular dates the publication was made.

Mr. McCarter: I don't want it to be taken for granted that we acquiesce that there is any proof of the dates of those advertisements.

The Court: That is what I say, they may have to do that.

Mr. McCarter: All right, sir.

Q. Who selected the papers, you? A. Well, it begins back so far that it is difficult for me to answer; we would all get together and talk it over; I don't think at any one time I made a definite selection myself.

Q. Well, having given advertisements, several score in number, in different papers, Boston,

Philadelphia, Brooklyn, Newark and Elizabeth, and perhaps one or two more places, would you select these insertions, these papers to insert them in? A. Well, we would know which were the best, and, talking it over with the firm, we would decide.

Q. Do you mean then to say, to limit the testimony you have already given with reference to the *carte blanche* that you exercised by saying that you had no discretion as to papers? A. You didn't ask me that question. You asked me about the size and the amount of money to be spent.

Q. (Question read.) A. Well, is my answer to that question unsatisfactory, do I understand you?

Q. That is what I mean to imply by repeating it?

Mr. Hardin: I say he has answered it.

The Court: I think so also. The second question will be overruled.

Q. Did you or did you not exercise your own discretion in the choice of these papers whose names and advertisements you have recognized about a hundred in number? A. Not entirely myself, no.

Q. Well, did you at all? A. That I can't answer you; I may have at times.

RE-DIRECT-EXAMINATION by Mr. Stanley:

Q. Did you ever acquaint either Mr. Joseph or Mr. Philip Hilton with the contents of any of the newspaper advertisements you prepared? A. Very frequently.

Q. How did you do that? A. By reading it to them.

Q. Where did you read it to them? A. In the store, or wherever they might be.

Q. In Newark? A. In Newark, sometimes in Philadelphia, sometimes in Chicago.

Q. And will you describe what your custom was in that respect? A. What do you mean by custom?

Q. When a newspaper advertisement appeared what did you do? A. After it appeared?

Q. Yes. A. Why, during the time that I was in charge of the files I saw that it was filed, and when the bill came in I saw that it was dated properly.

Q. Did you show them the contents of the advertisement before the publication appeared, or afterward? A. Always.

Q. Before or afterwards? A. Always before.

Q. Before? A. Yes.

Q. And you would take over to them a copy?

Mr. McCarter: Please don't lead him.

The Court: I think he has said enough on that subject.

Q. Can you give us the figures of circulation of the newspapers in which the advertisements have appeared? A. Well, I can't offhand; I can give you approximate figures; I haven't any records.

Q. Have you any in your book showing the figures of circulation? A. We have complete information.

Q. By whom were those books prepared? A. They are files of the data supplied by the newspapers themselves.

Q. Can you tell us, for instance, what the circulation of the News was for the year 1916?

Mr. McCarter: Isn't it better to get it accurate?

Mr. Hardin: I think so as to the News, but I think it is a perfectly good way to get at the circulation of the Philadelphia papers.

Mr. McCarter: I have no objection to his using the official documents he has got.

Mr. Hardin: Suppose we have him prepare a list?

Mr. McCarter: All right.

Q. Will you prepare such a list? A. Will be glad to.

Q. When can you do that? A. Immediately, this afternoon.

Mr. Hardin: Make it cover several years; don't stop at one year. We will furnish you with a list of such newspapers and ask you to prepare such a list.

A. I will be glad to.

By Mr. McCarter: Q. You still serve as advertising agent for The Hilton Company? A. I do.

WILLIAM F. CONE, sworn:

Direct-examination by Mr. Stanley:

Q. What is your business? A. Commercial photographer.

Q. Where are you located? A. Two hundred seven Market Street, Newark.

Q. How long have you been in such business? A. Twenty years.

Q. Were you requested by Mr. Murray of the

Hilton Company to take photographs for use in this suit? A. Yes, sir, I was.

Q. Did you take them? A. Yes.

Q. I show you a photograph marked Exhibit C-92 and ask you if you took that photograph? A. I did.

Q. Will you tell us what it is a photograph of? A. Photograph of The Hilton Company show case 133 Street terminal of Hudson and Manhattan Railway.

Q. When did you take it? A. On Saturday, the 3rd of March.

Q. What time of day? A. It was about 12 o'clock, noon.

Q. I show you a photograph marked Exhibit C-89 and ask you if you took that photograph? A. I did.

Q. What is it photograph of? A. Photograph of The Hilton Company show case at the Cortlandt Street terminal of the Manhattan Railway Company.

Q. When did you take it? A. On Saturday, March 3rd.

Q. I show you Exhibit C-94 and ask you if you took that? A. I did.

Q. What is it photograph of? A. The Hilton Company show case at the Cortlandt Street station Manhattan Terminal.

Q. When did you take it? A. Saturday, March 3rd.

Mr. McCarter: May I just have how they differ?

Mr. Stanley: One is C-89 and one C-94. They have been described before.

Q. I show you photograph not yet in evidence

and ask you what it is photograph of? A. It is photograph of Hilton store at Thirty-sixth Street and Broadway, New York City.

Q. Did you take it? A. I did.

Q. When did you take it? A. Saturday, March 3d.

Offered in evidence and marked Exhibit C-112.

Q. I show you another photograph which is not yet in evidence and ask you what that is. A. This is the Broadway front of Hilton store at 36th Street and Broadway.

Q. Did you take the picture? A. I did.

Q. When? A. Saturday, March 3d.

Offered in evidence and marked Exhibit C-113.

Mr. Stanley: I understand your Honor to dispense with the proof of the taking and date of each photograph?

The Court: That is a matter for Mr. McCarter. If they fully identify themselves and he will testify the statement he made on the back is a true statement they can go in without particular reference to each one of them.

Mr. McCarter: I don't see any objection to having them offered without formal proof, as long as we can get the exhibit numbers. We understand we are going to do the same kind of thing.

Q. You have identified each photograph you took, Mr. Cone, by putting on it the thing represented, the place and the day it was taken, with your signature, haven't you? A. That is correct, yes.

By the Court: Q. The statements on the back of those photographs are true statements? A. They are.

By the Court: Q. And you took them all? A. I did.

The Court: Now I think we can save time if we have those marked.

Q. Any of the photographs been touched up in anyway, Mr. Cone? A. None whatever.

Mr. Stanley: I wish to offer all the photographs which have been identified in evidence.

Marked Exhibits C-114 to 129.

Q. Are you sure that you have not made a mistake in the date that you have designated on the back of those Paterson photographs as having been the day that you took them? Look at them now. I wonder if you are not mistaken. A. Those are all correct, sir.

Q. That is, the dates that appear on the back you are sure are correct dates? A. Yes; they were made the same day; one of them was made that night.

Q. Which is the one that was taken at night? A. (Witness pointing to Exhibit C-127) after closing hours.

Q. What memorandum have you with you, if any, that enables you to place the time that the Paterson exhibits are taken? A. I have no memorandum with me except what is on the back.

Q. Did you typewrite that on the back yourself? A. No, sir; my stenographer.

Q. And where did your stenographer get the information? A. From me.

Q. And what information did you give to her? A. What appears on the back.

Q. What did you have to enable you to say when it was? A. The negative envelopes were marked by myself.

Q. Can you produce them? A. I can.

Mr. McCarter: I think there is an error there, and I would like to ask Mr. Cone to get them and bring them if he will.

A. Perhaps I can set you straight on the apparent error, if you can point it out to me.

Mr. McCarter: Some things are on that photograph that we think were not there on the 21st.

A. I can correct that.

By Mr. McCarter: Q. How so? A. If you put it in the form of a question.

By the Court: Q. What is in your mind? I am interested in it myself? A. In the interval between morning and evening the window show was changed on that date.

Q. Which date? A. November 21.

Mr. McCarter: That is not what I am talking about at all. I still think, and we have good reason to think, that the witness is mistaken in the day that he took the Paterson photographs, and we think the permanent, not speaking of the mere change of the dressing of the window, that some permanent things that appear on this document, on those exhibits, were not there on the 21st. Therefore we have a right to ask this witness to produce whatever original memorandum he has in his possession that justifies the conclusion that somebody else has put on the back of those photographs that they were taken on the 21st.

The Court: Q. Have you the original negative? A. Yes, sir.

By the Court: Q. Can you produce it? A. The negatives are not marked; the envelopes are marked by myself.

By the Court Q. In which the original negatives are contained and still are contained? A. Yes, sir.

Q. By the Court: Q. At the next hearing can you produce those so far as the Paterson store is concerned? A. Yes, the negatives and envelopes.

Q. How far is your place of business from here? A. Market and Beaver Street.

Q. About five minutes walk, isn't it? A. That is all.

By the Court: You may be able to get those negatives and bring them back this afternoon? A. Yes, sir.

EXAMINED by Mr. Hardin:

Q. What time of day were these taken? He says all of them were taken at one time; Exhibit C-127, that was taken later. What time of day were these pictures of the Paterson store taken? A. Well, these, to the best of my recollection—I went up there about something like 8 o'clock in the morning and completed the work.

Q. And what time was Exhibit C-127 taken? A. That was in the evening of the same day.

Q. About what time? A. Just after closing hours, I suppose about half-past six or seven o'clock.

JOHN A. SCOTT, sworn:

Direct-examination by Mr. Stanley:

Q. Mr. Scott, where do you live? A. I live at 58 Cypress Street, City.

Q. Newark? A. Newark.

Q. What is your business? A. Window decorator.

Q. By whom are you employed? A. I am employed by The Hilton Company.

Q. How long have you been employed by The Hilton Company? A. Between eight and nine years.

Q. Do you dress all the windows for them? A. I don't dress all of them; no, sir.

Q. What windows do you dress for them? A. I have charge of all the stores this side of Pittsburgh.

Q. What cities does that include? A. That includes Philadelphia, Newark, Brooklyn, New York, Providence and Boston.

Q. Is there more than one store in any of the cities you have named? A. In New York there are three.

Q. Where are they located? A. Located on Thirty-seventh Street and Broadway, Fourteenth Street and Broadway and Eighty-fifth and Nassau Street.

Q. Were you connected with The Hilton Company in June, 1916? A. Yes, sir.

Q. You are still connected with them, aren't you? A. Yes.

Q. Have you any assistant, Mr. Scott? A. Yes, I have one now.

Q. You have spoken of dressing the windows;

how often do you dress the windows of The Hilton Company? A. You mean on an average?

Q. Yes, on an average. A. Well, about once a week; we change our windows; we try to change them once a week; we don't always get around to them.

Q. Do you personally arrange the clothing in the windows? A. Most of it, yes.

Q. Is there any advertising matter used in the windows besides the clothing on the forms themselves? A. There are regular window signs, price tickets.

Q. I show you Exhibit C-102 for identification, is that what you mean by window sign? A. Yes, sir.

Q. Do you recognize C-102? A. I do, yes.

Q. Do you know whether that was ever displayed in any of the stores of The Hilton Company? A. We displayed a sign of this description in all of our stores.

Q. Do you know then when it was displayed? A. I can't exactly give the date; no, sir.

Q. Can you fix then any general time, any year? A. Yes, in 1916.

Q. What time in the year 1916? A. As near as I can remember, the spring of 1916.

Q. Was it displayed later than June, 1916? A. No, sir; not to my knowledge.

Q. I show you C-100 for identification; was C-100 displayed in any of the stores of The Hilton Company? A. Yes, sir.

Q. What store was it displayed in? A. We displayed signs of this description in all of our stores.

Q. In all of your New York stores or all of your stores? A. In all of our stores.

Q. At what time? A. As near as I can remember that was a year ago in January or February, though that might have been shown possibly a month later.

Q. January, February or March, 1916? A. Yes, sir.

Q. I show you C-101 for identification and ask whether that was displayed in any of the stores of The Hilton Company? A. Yes.

Q. When? A. That was displayed in the same months as the previous ones.

Q. That is C-100?

Mr. Hardin: In all the stores? A. In all stores; yes, sir.

Q. And by all stores you mean Boston, Philadelphia and Pittsburg? A. Yes.

The Court: He said that.

Q. I show you C-98 and ask you where and when that was displayed? A. That was displayed in all of our stores in 1916, the spring.

Q. C-103, when was that displayed? A. Well, this sign I don't recognize as been displayed in 1916; I think it is an older sign.

Q. When was it displayed? A. I couldn't say just when it was displayed, but I think in 1915, in January of February.

Q. Was it ever displayed? A. Well, one and others very similar, yes.

Q. Do you know whether this sign was displayed? A. Yes, I am pretty sure that this sign was in some of our windows.

Q. Where? A. I couldn't say where.

Q. I show you C-99; where and when was that displayed? A. That was displayed in the spring of 1916.

Q. C-104; where and when was that displayed? A. As near as I can remember, that was in 1915 we used that sign.

The Court: I understand the witness, unless he qualifies it, that they were used in all the stores from Pittsburg to Boston, unless he qualifies his statement.

Q. Is that true with respect to this sign? A. Let me explain how we had our signs made. When I ordered signs they were ordered for all the stores and they were displayed in all the stores, the same sign, the same reading matter, the same prices; I can't identify this sign as being displayed in any one of our stores, but I can say that it was displayed in some of our stores.

By Mr. Hardin: Q. What is the date of that one? A. That was 1915, I should say, in January or February.

Q. C-105; where and when was that displayed? A. That was displayed in 1916, in the spring.

Q. In all the stores? A. Yes, sir.

Mr. Hardin: That is to be taken for granted is the Court's ruling.

Q. C-106; where and when was that displayed? A. Well, as near as I can remember, 1915.

Q. What time? A. That I couldn't say.

Q. C-107; where and when was that displayed? A. Well, that is an old sign, that might have been displayed in 1916, it might have been displayed in 1915, I ain't sure.

Q. Was it displayed prior to June, 1916? A. Yes.

Q. C-108; where and when was that displayed? A. That was displayed either in 1914 or before that date, and old sign; we haven't used them in years.

By the Court: Q. 1914, you say? A. Yes, sir.

Q. C-109; where and when was that displayed? A. This was displayed in January, 1916, I think January or February of 1916.

Q. C-110; where and when was that displayed? A. I think that was in 1916, in February or March, I ain't sure; I am pretty sure about the year of that.

Q. C-111? A. That was displayed at the same time; these two signs come from two different stores, I imagine, they no doubt have come from two different stores.

The Court: Before you go on with anything else, those have all been marked for identification, haven't they?

Mr. Stanley: Yes, sir.

The Court: You better offer those that have been marked for identification first.

Mr. Stanley: I offer in evidence Exhibits numbered from C-98 to C-111, inclusive, for identification.

The Court: They may retain their present mark; just mark out the identification.

Q. I show you window sign and ask you if you recognize that? A. Yes.

Q. Where was it displayed? A. That particular sign was displayed in our Nassau Street store.

Q. When? A. Oh, over two years ago.

Offered in evidence and marked Exhibit C-130.

Q. Was that displayed in any other store? A. Well, one similar was displayed in all of our stores.

Q. At the same time? A. About the same time, yes.

Q. I show you another window card and ask you whether you recognize that? A. Yes.

Q. Where and when was that displayed? A. That was displayed sometime before 1914.

Q. What stores? A. Well, in all stores.

Offered in evidence and marked Exhibit C-131.

Q. Do you recognize that window card? A. Yes.

Q. Where and when was that displayed? A. In 1916, "January marked down sale."

Offered in evidence and marked Exhibit C-132.

Q. Do you recognize that window card? A. Yes.

Q. Where and when was that displayed? A. As near as I can remember that was displayed in 1915, I ain't quite sure of it, but I think it was 1915.

By the Court: Q. Was it after June, 1916? A. It was long before that.

Offered in evidence and marked Exhibit C-133.

Q. Do you recognize that window card? A. Yes.

Q. Where and when was that displayed? A. That was displayed before 1914; I know it is over two years old.

Offered in evidence and marked Exhibit C-134.

Q. Do you recognize that card? A. Yes; that was displayed at the same time.

Offered in evidence and marked Exhibit C-135.

Q. I ask you if you recognize this card? A. That was displayed about the same time.

Q. About 1914? A. Before that, it was before 1914.

Offered in evidence and marked Exhibit C-136.

Q. Do you recognize that window card? A. Yes.

Q. Where and when was that displayed? A. That was displayed in 1915.

Mr. McCarter: May I ask who has put these dates on this picture?

A. Some of them I put on.

Mr. Carter: I notice you look at the date every time until I covered it, then you got it wrong you said 1915 and it is 1916; I covered one with my handkerchief and he got it wrong right away.

Offered in evidence and marked Exhibit C-137.

Q. Do you recognize this card? A. Yes.

Q. Where and when was that displayed? A. At the same time as the previous one.

Offered in evidence and marked Exhibit C-138.

By Mr. Hardin: Q. What was the year? A. 1915.

Q. Mr. Scott, are you aware that there have been show-cases by The Hilton Company in the terminals of the Hudson tunnel railway? A. Yes.

Q. Do you know how long those have been in existence? A. I couldn't say just how long; no, sir.

Q. Do you dress those windows? A. Yes.

Q. Do you remember how long you have been dressing them? A. I can make a rough guess, and that is all.

Q. What is your best recollection?

Mr. Hardin: We have got the dates.

A. I have been dressing them ever since they have been built.

Q. Have you used any window cards in those show-cases? A. Yes, sir.

Q. Have you used the same window cards there that you have used in the stores? A. Not always, no, sir.

Q. I show you certain cards that were in use during the year 1916; were those same cards in use in the tube show-cases? A. Not all of them; no, sir.

Q. Were some of them used? A. Yes.

Q. Can you identify which one if I show them to you? A. I can identify the kind; yes, the same style of card.

Q. Just pick out whichever one you used? A. I can see it right from here.

Q. Was C-99 used in the tube show-cases in 1916? A. Yes, that style of a card was in all show-cases, yes.

Q. Do you recognize any other cards here that were used in the tube show-cases? A. Yes, sir.

Q. Will you please go over them and pick out any other cards that were used? Have you found any other cards that were used in the tube show-cases? A. Only this one style here that was used.

Q. When you refer to this one style what do you refer to? A. There were several other, just this style with different reading matter on it.

Q. With the picture of the young man with the grip? A. Yes.

Q. All those cards were used in the tube show-cases, were they? A. No, sir.

Q. What were used? A. I couldn't identify any one particular one that was used; we have these shipped in from our different stores, but I know we had that style of card in the show-cases.

Q. What style, similar to C-99 and C-102, referring to the number at the top? A. Yes, sir.

Q. Was there any advertisement placed in theatre lobbies? A. Yes.

Q. In what cities? A. Well, I couldn't say all the cities, but I know there were some in Brooklyn and New York.

Q. And what was the form of that advertising? A. There were show-cases in the lobbies of several theatres where we displayed a suit.

Q. Was there any reading matter in the same show-case? A. They had announcement.

Mr. McCarter: Hadn't we better have the advertisement rather than give its contents?

The Court: I suppose if he saw it, Mr. McCarter, he can testify to it. It is one of that class of evidence that cannot be compelled to produce the original, I don't suppose; it is not a written document.

Q. Do you remember what the reading matter was in those lobbies? A. I couldn't give you the exact words on any one of them; no, sir.

Q. Can you give us what word was used to describe the person selling the goods? A. I know The Hilton Company had their ad there, referring to their different stores.

Q. How did they describe themselves? A. Hilton Company on those particular signs.

Q. Did they ever use the word "Hilton?" A. A. On those signs in the theatre lobbies?

Q. Yes? A. I don't know, sir; I ain't sure.

Q. Did you ever have any advertisement down at Coney Island? A. Yes.

Q. Where was that? A. That was in Stout's pavilion.

Q. What was it, a show-case? A. Show-case, yes.

Q. Have any window cards there? A. We had window cards, announcements, yes.

Q. What style were those? A. They were the same style we showed in most of the other theatres, although the reading matter varied somewhat.

Q. And what description did it contain of the merchant that was selling the goods there advertised? A. It just gave the name of the firm and the addresses of the stores.

Q. And did it show the name "Hilton's?" A. On some of it it was "Hilton's" and some of them "The Hilton Company."

Q. In the windows beside these window cards you had price tickets, didn't you? A. Yes.

Q. What did those price tickets have on them? A. They had the price of that suit, the individual suit.

Q. Anything else? A. It had the word "Hilton's" on it, a great many of them, and a good many of them had "The Hilton Company" and some of them had a crest with an "H" in it.

Q. Will you describe that crest you have spoken of? A. I couldn't give you an exact description of it, word description, no, sir.

Q. I show you a photograph of the show-case in the Thirty-third Street Terminal already in evidence, that is Exhibit C-92, which apparently

shows a price ticket with a crest on it; is that what you refer to in your testimony? A. Yes, that is an embossed crest.

Q. Has it any color in it? A. It has, yes.

Q. What is the color used? A. The color on some of them were red and gold.

Q. How long have you been using those crests? A. Oh, for several years.

Q. Do you know how many years? A. I just couldn't say, no, sir.

Q. Been using those in all your window displays? A. Yes, sir.

Q. Have you seen the windows of the stores labelled "Hilton's" in New York? A. I have; yes, sir.

Q. What time have you seen those windows, what time of the year? A. I have seen them about every week or two since they were opened.

Q. When did they open? A. I couldn't tell you the exact date.

Q. Well, how long do you remember seeing windows in New York? A. The first time I saw the windows on the Fifth Avenue store was about a month I should judge after the store was opened.

Q. When was that, December, January? A. As near as I can remember it was somewheres along in December when I first saw it.

By Mr. Hardin: Q. December of what year? A. 1916.

Q. This last year? A. Yes.

Q. What did that window have in it when you saw it? A. I didn't get a very close look at it because I was looking at it from across the street.

Q. Is there any window that you did get a close look at? A. The window at Thirty-sixth Street.

Q. When was that? A. That was a day or so after they opened.

Q. And when was that, what time of the year was that? A. That was in February.

Q. Of this year? A. Of this year, yes.

Q. What did you see there? A. Well, I saw a window dressed very similar to what the Hilton Company have been doing for the past eight or nine years.

Q. And of what did that similarity consist? A. The general style of the windows, the curtains were draped as near as possible like the draperies in The Hilton Company's windows, and the general lay out of the window was very similar.

Q. What articles did they use in the windows? A. They used red silk velour.

Q. Does The Hilton Company use that? A. Yes.

Q. What else did they use? A. They used pedestals that are identical with the pedestals used in our store.

Q. Do they use canes? A. Yes, canes, all their fixtures were the same as we used in our stores.

Q. Did they use any window cards? A. Yes, sir.

Q. Did the window cards have any similarity to the window cards in The Hilton Company? A. I can't say about that, I didn't take particular notice of their window card.

Q. Did they use any price tickets? A. Yes.

Q. Describe those? A. The price tickets I didn't look at very closely; I couldn't describe them.

Q. Didn't you see any window of Hilton's prior to February of this year closely? A. No, sir.

Q. What do you mean, when I ask you about

Hilton's what stores do you have in mind when I say "Hilton's?" A. When you say "Hilton's" I supposed you were referring to Mr. Joseph Hilton's stores?

Q. In New York? A. Yes.

Q. Mr. Scott, in the curtains on the windows of The Hilton Company is there any symbols? A. Yes, there is.

Q. What is that? A. Well, we have a particular style of our own draping those curtains.

Q. I meant is there any letter or crest or embroidery? A. You mean on the draperies? Yes.

Q. What is that? A. It is the letter "H" on some of our windows.

Q. Where are those windows where you found the letter "H"? A. I am pretty sure you will find that in our Fourteenth Street store; at one time we had them in all our stores.

Q. Was anybody else using that letter "H" in their windows? A. Not that I know of, no.

Q. In the Joseph Hilton store? A. I never looked at their windows close enough to observe that.

Q. I show you a photograph of Hilton's store at Thirty-sixth Street and Broadway and ask you if you recognize the same element in those curtains? O. Well, I can see here it looks to me very much like an "H."

Q. (Witness looking at C-115, photograph of Thirty-third Street and Fifth Avenue.) Does that contain the "H" that you speak of? A. Yes.

Q. Does that resemble the window curtains of the Hilton Company? A. It does somewhat, yes.

(Witness temporarily withdrawn.)

WILLIAM F. CONE, resumed:

Examined by Mr. McCarter:

Q. Mr. Cone, have you found the original data that you went to look up? A. Yes, sir.

Q. And these are the envelopes containing the original negatives? A. Yes, they are.

Q. And these memoranda are in your own handwriting? A. They are.

Q. And correctly give the dates? A. Yes, sir.

Q. And this is the envelope in which those negatives have been kept ever since? A. They are, in which they were originally put.

JOHN A. SCOTT, resumed:

Cross-examination by Mr. McCarter:

Q. To what store of The Hilton Company do you refer as displaying an "H" in the curtain? A. Well, I didn't refer to any particular store, only our Fourteenth Street store, but we have displayed an "H" in our curtains in all of the stores at some time or other; some of those signs are taken down at the present time.

Q. When did you cease having the use of the "H" generally? A. We haven't ceased using the "H."

Q. I am talking about the curtains now. A. I can't say, sir; I don't remember just when we stopped using it.

Q. Is there a single place now, or was there for the past year, where there was an "H" on the curtains in your stores? A. I think at Fourteenth Street you will find one.

Q. You are sure about that? A. Yes, I am pretty sure.

Q. Have you any picture of that here? A. No, sir; not that I know of.

Q. You can't remember another single store where there is an "H" in any of the curtains, or has been for a year past, can you? A. If I ain't mistaken I think there is an "H" in all the curtains where there is curtains displayed, but we don't display curtains in all our stores, there is one or two of our stores where we haven't any curtains.

Q. Didn't you mention a moment ago as one of the similarities between our stores and yours that they had curtains? A. Yes.

Q. Do you display curtains, or don't you? A. Yes, we display curtains.

Q. In all your stores? A. In all our stores, but not exactly duplicate, what I was showing you.

Q. I ask you whether you do or do not display curtains in all your stores? A. No, sir; we do not.

Q. You do not? A. No, sir.

Q. In how many stores during the past year have you displayed curtains in the windows? A. In our Chicago store, Pittsburg, Brooklyn, Philadelphia, Thirty-seventh Street, Fourteenth Street and Boston and Providence.

Q. And each one of those has an "H"? A. I wouldn't swear to it, no, sir.

Q. When did you stop using the "H" on the curtain display? A. I don't remember.

Q. Will you say you ever universally used "H" on your curtain display? A. Yes, sir.

Q. When? A. I couldn't say as to the time.

Q. Well, how long since? A. Well, it might be

five years, it might be six years, it might be three years, I don't know.

Q. How long have you worked for the concern? A. Between eight and nine years.

Q. Constantly? A. No, sir.

Q. When were you out? A. About two and a half years ago I should say the time was.

Q. That was in what year? A. It must have been in 1913 or 1914.

Q. Which was it? A. I ain't sure.

Q. Well, I think it is of some importance because you have given testimony concerning both years? A. As near as I can remember it was 1914 or 1913, I can't say exactly which, but I know I was away from them about four months in either one of those years.

Q. Now, you have stated that there was some display at Coney Island, when was that? A. I should judge that was a year or so ago.

Q. Was it in the winter or summer? A. Well, it was in the summer.

Q. Summer of 1916? A. I wouldn't swear to it, no, sir.

Q. Was it 1915? A. I wouldn't swear to it, what year it was.

Q. So that you have no idea what summer it was? A. I have an idea, yes; but I won't swear to it.

Q. Well, what is your best recollection? A. I think as near as I can recollect it was in 1916 or 1915.

Q. Can't say which? A. No, sir.

Q. Are you the John Scott that made an affidavit in this case? A. Yes, sir.

Q. Now, will you please look at 108, C-108; when

do you say that was displayed? A. I think that was displayed before the year 1914.

Q. Before the year 1914? A. Yes.

Q. In the Newark store? A. I believe it was, similar card was displayed in all of our stores.

Q. In the Newark Store? A. No, sir.

Q. Eh? A. No, I don't think it was in the Newark store.

Q. Isn't the Newark store one of your stores? A. Yes.

Q. Why did you say a moment ago you thought it was displayed in all your stores? A. Not this particular one.

Q. Didn't you say just now it was displayed in all your stores, and don't you say now it was displayed in all your stores? A. I said one similar to that was displayed in all our stores.

Q. Including Newark? A. Yes.

Q. So you are quite sure that this sign or one like it with the words, "Hilton Suits Better Style and Economy" was displayed in the year 1914 in the Newark store? A. Now, I ain't so sure of that.

Q. Eh? A. I am not sure of that.

Q. Don't you know as a matter of fact you were not using the name "Hilton" at all in 1914 in Newark? A. Then if we wasn't it was not displayed here.

Q. Now, is all your evidence as accurate as that? A. Well, on these signs I can't pick out any one sign that was displayed at any particular time.

Q. You haven't made any difference between the Newark stores and the other stores in your evidence to-day, have you? A. No.

Q. You now recall, don't you, that for a period in 1914 and 1913 and 1911 and 1912 you did not use the word "Hilton" at all in the Newark store, don't you remember that? A. Yes; I am taking your word for the dates.

Q. Why did you say that this C 108 was used in the Newark store? A. Because it slipped my memory that we didn't use the Hilton name.

Q. Yes. Now, we will take some others. Look at C 131, please, give me that; that you testified to have been used when, C 131, now, when did you say it was used? A. That was before 1914.

Q. Do you say that was used in the Newark store? A. No, sir.

Q. Eh? A. No, it could not have been used in the Newark store.

Q. You didn't tell us that before, did you? A. No, sir, I didn't.

Q. Now, let us take C 136, please; that was used in 1914, was it? A. That was used either that year or before; it is a very old sign.

Q. Was that used in the Newark store? A. I don't believe it was.

Q. No. When was C 133, which I now show you, used? A. As near as I can remember it was used in 1916 or before, I don't know how long before.

Q. Do you know who put these figures on these exhibits? A. I put them on.

Q. You put them on? A. Yes.

Q. From what, data or memory? A. From memory, yes.

Q. When did you put them on? A. I put them on when I gathered the signs last Saturday.

Q. You say when you gathered the signs; how

often do you change these so-called window cards? A. Sometimes we change them every week, sometimes we don't change them for a month; sometimes longer.

Q. What is the longest period that you can recall that you ever retained the same window card? A. I believe our half price sale signs stay in our windows longer than any other cards we have.

Q. That would be about how long? A. As long as we kept the sale on.

Q. I suppose so, that would be about how long? A. Sometimes it was on for a month, sometimes longer.

Q. Did ever any of that exceed two months? A. Not many more, no, sir.

Q. Now, you had therefore different signs, different window display cards prepared frequently enough for use in all your stores, changing them at least once a month, didn't you? A. Yes.

Q. Every year? A. Yes, sir.

Q. Do you preserve them all? A. No, sir.

Q. You have got a lot more in your possession than those you produce here, haven't you? A. Not many more, no, sir.

Q. Eh? A. No, sir.

Q. Where are the rest? A. The rest are destroyed and broken up in some of our stores they are destroyed immediately they come out of the window, it all depends how much space we have to store them.

Q. Where did these come from? A. These signs came from Philadelphia, some of them, some of them came from Nassau street, a few came from the Newark store, a few of them came from Fourteenth street.

Q. Which came from the Newark store? A. I can't identify the ones that came from the Newark store.

Q. Do you say there are no others left in any of the store rooms where these came from? A. No, sir, I don't say that.

Q. Who selected these? A. Some of our managers, and I selected some.

Q. Which did you select? A. I can't identify them.

Q. What? A. I can't identify the ones that I selected.

Q. You have no idea which of these you have produced here, the window display cards you yourself selected? A. I can identify a few of them, yes.

Q. Where were the ones that you selected located? A. At Nassau street.

Q. How many are over there at the Nassau garret or storehouse that you brought these from? A. I couldn't say, I couldn't guess, there might be a dozen, might be two dozen, might be three dozen, I don't know.

Q. How many did you select from them? A. Three or four.

Q. Now, who else did the selecting besides yourself in this matter? A. Well, our manager, I suppose our manager selected them, I don't know.

Q. You have given us all you know about the selection, namely, those that you yourself selected? A. Yes.

Q. Who gave directions to the managers to select? A. I sent my assistant to Philadelphia on Saturday or Friday, I don't know which, I think

it was Friday, and he told the manager to select some signs there, the old signs that he could get hold of, that was his instructions.

Q. Then you gave the instructions for the selection? A. To my assistant, yes.

Q. Did they come from anywhere else beside Philadelphia and Nassau street? A. Yes, Fourteenth street.

Q. Who gave the direction for those places? A. I went to Fourteenth street myself.

Q. And selected them? A. Yes.

Q. And you selected Fourteenth street, too? A. Yes.

Q. How many did you select from there? A. I don't remember, three or four, maybe six.

Q. And there were a great many there, weren't there? A. Not many, no, sir.

Q. How many, two or three dozen? A. I couldn't guess.

Q. Well, what you think, make an effort now? A. There might have been a dozen, might have been eighteen, there might not have been that many.

Q. Will you pick out again the Nassau street signs that you selected? A. That is one of them (indicating).

Q. That is one, that refers now to Exhibit C 130. Another one, please, Nassau street? A. I think those two came from Nassau street.

Q. This 137 and 138 also came from Nassau street to the best of your recollection. Now, do I understand you to say that dressing windows in a clothing store with curtains with pedestals and with canes is distinctive to the Hilton Company? A. The style of dressing, yes.

Q. Will you answer my question?

The Court: I think he has answered it. Mr. McCarter; he says, "The style of dressing, yes, sir."

Q. I repeat, I understood you to say that wherein we had copied your window dressing was in the fact that we had used curtains draped, general lay had silk velour pedestals and canes? A. Yes.

Q. Are you using now curtain draped windows in all your stores? A. No.

Q. So that is not like you, is it? A. Well, I should say in that we have stores not exactly as you describe, yes.

Q. You think when you did have curtain draped windows you were distinctive in that? A. Yes, in that particular way we draped it?

Q. In what particular way? A. I can't just describe it, but I never saw another window outside of the Hilton Company that used that particular style of drapery.

Q. You can't tell us what it was, the particular style? A. No.

Q. You know that other clothing people used curtains and draped in the back of the window, don't you? A. Yes.

Q. Now, you know that other concerns use silk velour in curtain draperies, don't you? A. Yes.

Q. Do you mean to say you were peculiar and distinctive in using pedestals? A. No, sir.

Q. Other clothing stores use that? A. Yes.

Q. Were you distinctive in using canes? A. No, sir.

Q. Other stores did that? A. Other stores did that, yes.

Q. What do you mean by pedestal? A. Pedestal.

Q. Using your phrase? A. It is like a taboret.

Q. Like a taboret, you say? A. Yes.

Q. You will have to tell me what that is. A. Now you have got taboret in your home with lamp on.

By the Court: Q. Answer the question. What is taboret? A. Taboret is a piece of furniture.

Q. You mean kind of a little stool or something or other to put something on, small stand or stool? A. Yes.

Q. Oh, I see. Now I refer you to Exhibit C 115, which is, I believe, our store at Fifth Avenue and Thirty-third Street; I refer you to the H in the curtain appearing in that photograph; is that the H you have in mind, or had in mind when you were testifying? A. Yes.

Q. I show you a photograph, Exhibit C 117, which I believe is your Fourteenth Street store, isn't it? A. Yes, sir.

Q. And that is the store that you say has the curtains with the H in? A. Yes, sir.

Q. Point them out, please. A. There is the H right there.

Q. H C? A. Yes, sir.

Q. Now you think that that H on Exhibit 115 is like the monogram H C on Exhibit C 118, eh? A. I didn't say that.

Q. You didn't? A. No, sir.

Q. At any rate, whatever you did say you do not think they are very much alike now, do you? A. No, sir.

Q. I refer you to C 89, the Hudson and Manhattan Railway terminal. Do you find an H there? A. No, sir.

Q. Eh? A. No, sir.

Q. I ask you to look at C 118? A. There is an H on the show case.

Q. I meant on the curtains. C 120, Broad Street store, do you find an H in the curtain there? A. No, sir.

Q. You said, as I understand it, that the defendant's store at Thirty-sixth Street and Broadway is very similar in general make up to your store? A. Yes, not in general make up; I said the dressing of the windows.

Q. You have given characteristics in which it is similar? A. Well, the most striking thing I would say is the way the draperies are draped, that is, the red velour drapery.

Q. Have you draperies in your store to which you compare ours? A. No, sir, I took them down about a month ago in the Fourteenth Street store.

Q. Took them down from the Fourteenth street store? A. Yes.

Q. I know, but you said the Thirty-sixth Street store of ours was very much like what? A. Very much like a Hilton store.

Q. What Hilton store? A. All of the general Hilton stores.

Q. But none of them ever had used curtains? A. Oh, yes, they had.

Q. Which one beside the Fourteenth Street? A. We had curtains in our Philadelphia store about a month ago draped exactly as they are in the Thirty-sixth Street store, and we had curtains draped exactly the same way in our Fourteenth Street store up to about a month ago.

Q. How near is the defendant's Thirty-sixth Street store to your Broadway store? A. About a block.

Q. Any curtains in your Broadway store within a block of that? A. Yes.

Q. Have been? A. Yes, are in there now.

Q. Draped the same? A. Yes.

Q. The same color? A. The same color, not exactly the same color, but they are red, there might be a different little shade in that, but that is all.

Q. Draped differently from the curtains in other stores? A. Yes.

Q. How differently, in what way? A. I can't just describe it to you, but you won't see another pair of curtains like that in Broadway, to my knowledge, only in those two stores.

Q. Can't you give us some kind of description of the alleged peculiarities so we can confront you with others like it? A. I can give you a little demonstration if you would like to have me do so and try to picture it to you?

Q. Any way that you can make it plain, what is the distinctive character of it? A. For instance, take that ledge right along the wall there, if there was a pole at the top of that ledge for the curtain hanging down and brought over to a pedestal or taboret, as you call it.

Q. As I call it? A. Or as I tried to explain it to you; that is the style of drapery that is used in their Thirty-sixth Street store.

Q. Instead of the bottom of the curtain on the side of it being permitted to go down to the floor is it dragged forward and put on top of a little table? A. No, sir, it is tied to a pedestal.

Q. Tied to a pedestal? A. It was the last time I saw it, that was one day last week.

Q. And that was distinctive of your way of dressing windows? A. Yes.

Q. That has been a feature of the Hilton windows for the last six or seven years, that particular style of drapery now in New York as well as elsewhere? A. Yes.

Q. Now, is there anything else that is peculiar, as you say, or distinctive about the style of drapery of the curtains of the Hilton windows? A. Not in the curtains, no, sir.

Q. I show you a photograph in this book of ours that was used on the application for preliminary injunction, is marked, Stoutenburgh & Company, Newark, New Jersey, and ask you—

Mr. Hardin: Objected to as not cross-examination.

The Court: Objection sustained.

Mr. McCarter: I want to show that this is not peculiar, I want to show that this has got the curtain in the same way, your Honor.

The Court: I suppose you may on that theory.

Q. That shows drapery, doesn't it? A. Yes.

Q. And doesn't it show it coming around the taboret? That is very similar to our drapery, this Stoutenburgh, isn't it so marked, at least? A. Yes.

Q. You know that window, Stontenburgh? A. I have seen it several times.

Q. Now, I show you another photograph, Portland Clothing Company, Brooklyn, New York, that has the same idea of the drapery coming forward on the taboret, does it not, in the photograph? A. It does not show it, no, sir, nothing like the Hilton drapery.

Q. Does it not have drapery coming forward,

and can't you see where my finger points where the drapery comes around the taboret? A. You mean this drapery or this (indicating)?

Q. I don't care which. A. This one is nothing like our drapery.

Q. I didn't ask you about that; I asked you if it isn't drapery coming forward and tied around the taboret? A. Not that I can see; I can't see where it is anything like the Hilton drapery, no, sir.

Q. Do you think Stoutenburgh is copying you? A. Yes.

Q. You said that there was a great similarity between the two Broadway stores; what is the color of your sign? A. At our Broadway store what sign do you refer to?

Q. I mean the wooden sign on the building? A. The permanent sign on the building?

Q. Yes. A. Is black and gold.

Q. What is the color of the sign of Hilton? A. Dark green and gold, as I remember.

Q. Do you say that the arrangement of the window glass, the entrances, &c., are at all similar? A. No, sir.

Q. Very different, aren't they? A. Yes.

Q. As different as can be? A. Yes.

Q. You have something printed on your sign beside the Hilton Company there, haven't you? A. I don't know, I haven't read that sign in so long I really have forgotten.

Mr. Stanley: What store?

Mr. McCarter: Broadway and Thirty-sixth Street.

The Court: The photograph will show it.

RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. Do you happen to know who dresses the Stoutenburgh window? A. Do I happen to know who dresses it? Not now, no, sir, but I know who put those curtains in in the way they are displayed in that picture.

Q. Who was he? A. A former assistant of mine by the name of Mr. McGovern.

Q. Has he been accustomed to dress the Hilton windows under your direction? A. Yes, I learned Mr. McGovern how to make that particular style of a drape.

Q. I show you Exhibit C 121, I call your attention to the "H" over the door; is that work in the glass, do you remember? A. Yes.

Q. And I call your attention to the "H"— A. I can't see it on the photograph, but I know there is an "H" in the glass over each of the windows.

Q. Back part of the windows? A. Yes, in the leaded glass partition.

Q. I show you 122; do these "H's" that you have referred to again appear in that? A. Yes, very similar to our "H."

Q. And that is in the back part of the window? A. Yes, that is in the background on Thirty-seventh Street. This is picture of the Thirty-seventh Street store, is it not?

Q. This is not a part of the front plate glass, it is in the rear of the window. A. Yes, it is in the background of the window, that is leaded glass partition.

Q. I show you C 117, do you notice it in the picture? A. I can't see it only in the monogram

on the curtain, an "H", there is no leaded glass in the back of our Forteenth Street window.

Q. Here is another picture, C 118, does it appear there? A. Yes.

Q. What store is that? A. That is our Thirty-seventh Street store.

Q. Which window? A. There is three "H's" on the side.

Q. Do you happen to know who dresses the windows of these stores of Joseph Hilton in New York? A. Yes, Mr. Joe Rikower, an assistant of mine.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. You said you taught McGovern? A. How to make that particular style of a drape, yes, sir.

Q. When he was connected with us? A. No, sir, when he was connected with The Hilton Company.

Q. I mean with the Hilton Company? A. Yes.

Q. When and where? A. Well, it took place in several stores, because he didn't pick it up very readily.

Q. Newark? A. In Brooklyn I gave him his first lesson on that particular style of a drape, as well as I can remember.

Q. Are you sure about that? A. Yes.

Q. Eh? A. Yes.

Q. When? A. Well, I can't say just when.

Q. Well, as near as you can fix it, please? A. Oh, it must have been four or five years ago.

Q. Was he then employed by the Hilton Company? A. I ain't sure as to the time, I am only guessing at the time.

Q. I am trying to have you fix it. A. He must have been employed, yes, at that time.

Q. At any rate, whenever you did give him instruction, if any, it was when he was in the Hilton Company employ? A. Yes.

Q. Do you say you and he were in the Hilton Company employ together? A. Yes.

Q. Are you sure about that? A. Yes.

Q. How long? A. I guess two or three years.

Q. This man Rikower, or whatever you call him, is the same man that you referred to in your affidavit filed in this cause? A. Yes, sir.

EDWARD A. DRISCOLL sworn:

Direct-examination by Mr. Stanley:

Q. Where do you live? A. 115 West Eighty-Fourth Street, New York.

Mr. Hardin: Before this witness begins I should like to ask the witness last on the stand another question.

JOHN A. SCOTT, re-called:

Direct-examination by Mr. Hardin:

Q. With reference to the signs that you have testified about that you have gathered up from the different stores, from whom did you receive

instructions as to the signs that you should get, and did those instructions have any reference to dates? A. No, sir, they had no reference to dates at all.

Q. Was anything said about the earlier signs rather than later? A. I was told to get the signs as old as I possibly could.

Q. And with reference to any particular recent time? A. I was not supposed to get any signs that were used since June of 1916.

Q. And that instruction you received from Mr. Stanley? A. Yes.

EDWARD A. DRISCOLL resumed:

Direct-examination by Mr. Stanley:

Q. What is your business? A. I am connected with The Hilton Company, 85 Nassau Street.

Q. In what capacity? A. Manager.

Q. How long have you been such manager? A. Will be a year in April, coming April.

Q. How long have you been connected with the Hilton Company? A. Between four and five years.

Q. In what capacity before you were manager? A. Salesman.

Q. Where? A. Thirty-seventh Street and Broadway and Fourteenth Street and Broadway.

Q. Do you keep in your Nassau Street store a list of the names and addresses of the customers to whom you sell clothing? A. We do, yes.

Q. Have you recently been over that list to ascertain how many of your customers live in Pat-

erson and vicinity? A. Up until about four months ago we did keep a list of names, then it was referred to our headquarters in Newark.

Q. Did you go over that list? A. I did.

Q. Do you know how many customers—

Mr. McCarter: I think we ought to have the list.

The Court: Let him ask his question.

Q. Do you know how many customers lived in Paterson?

Mr. McCarter: I object.

The Court: Yes or no.

Q. Do you know? A. No, I do not.

Q. Do you know how many addresses of customers you have got in Paterson? A. At that time I had about fifteen.

By the Court: Q. Where is that list? A. It is in our Newark headquarters now.

Q That will be produced. And does this fifteen represent all of your Paterson customers? A. It does not.

Q. How do you know that? A. Why, there is quite often—we have customers that live in Paterson, we deliver merchandise that they buy to their office address in New York.

Q. Do you know that personally? A. Why, no, I couldn't say personally; I know some cases in which we have.

Q. Have any instances of confusion between the store of Joseph Hilton, any of the stores of Joseph Hilton and stores of the Hilton Company come to your attention? A. Why, yes, from our store; of course, I can't account for their stores; I can for our store, 85 Nassau Street.

Q. Will you give us one instance? A. Of people being confused with the name?

Q. Do you remember Mr. Pormellen? A. He is from Paterson, I believe, Paterson, New Jersey.

Q. Did you ever have a conversation with Mr. Pormellen? A. I did.

Q. Tell us what it was.

Mr. McCarer: I wonder if that is competent.

The Court: Mr. McCarter, do you object to it?

Mr. McCarter: I am not thinking out loud, your Honor.

Mr. Hardin: I think it is competent.

The Court: I will save you the trouble, Mr. McCarter, you can object to it and I will admit it over your objection.

Q. When did you have a conversation with Mr. Pormellen? A. It was in the month of November.

Q. What year? A. 1916.

Mr. McCarter: That is after this suit, so I don't think that is competent.

The Court: I will admit it.

Q. What was the conversation you had with Mr. Pormellen A. Mr. Pormellen came in our store at 85 Nassau Street and looked at some of our suits and there were none there that seemed to please him, and I recognized the coat he had on as a suit he had bought of the Hilton Company, he was a customer of ours.

Q. Had been a former customer of yours? A. Yes, the label on the suit; he admitted he bought the last suit there and coming back to buy another, and there wasn't any suit there that seemed

to please him, and he made a remark that we had opened a store in Paterson and he would go there and see if he couldn't find something to suit him.

Q. Who had opened a store in Paterson? A. He thought we had opened a store in Paterson, and I told him at the time we were in no way connected with that concern.

Q. What did he say to that? A. Why, he said there was a sign there that read "Stores all over" and he naturally supposed it was the same concern, and I told him it wasn't.

Q. Did you keep a memorandum of these occurrences? A. A few of them, yes.

Q. You may refer to any such memorandum that you have to refresh your memory.

The Court: As to what?

Q. As to occurrences of this kind about which I am going to ask him.

Mr. McCarter: He don't seem to need memorandum yet.

Q. Do you remember any other instances of customers mistaking any store in Paterson or elsewhere as store of the Hilton Company? A. Can I refer to a book here?

Q. If you have any memorandum you made yourself and made contemporaneously at the time when the event happened.

Mr. Hardin: You undersand you can not use that unless you made it at the time it happened.

The Court: That does not follow; he can use it if he made it at any time, provided it was true at the time he made it, and can not now remember it.

Q. Do you remember meeting and talking to a Mr. Pennell? A. Mr. Pennell, yes.

Q. Where did he live, do you remember? A. He lived in some place right near Paterson.

Q. What was his conversation with you? A. Why, he came—

Q. When did it occur? A. That occurred in the last of October or around the first of November, around that time, and he purchased an overcoat of us, and he said, "Well, I bought a coat of you, anyway, I was in your Paterson store and could not find anything there to please me, in your Paterson branch."

Q. What did you say to him? A. I told him that was in no way connected with the Hilton Company whatsoever.

Q. Do you remember Mr. Moonch? A. Yes.

Q. Of Clifton, New Jersey? A. Clifton.

Q. What was your conversation with him? A. Why, he was in our Paterson store and found no coat there to suit him.

Q. What did he say to you? A. He supposed it was a branch of the Hilton Company.

Q. Did he say anything about the store in Paterson? A. About the store?

Q. Yes. A. No.

Q. How did he come to speak of it, about the Paterson store? A. He said he was in there and looked at some clothes and there was nothing there to please him.

Q. Did he say anything about the convenience of the two stores to him? A. No—yes, he did, now, I recall that he said that, it would be, that when he made a purchase that he could make it in our Paterson store, it was more convenient and

then was told that it was in no way connected with the Hilton Company.

Q. Did he say anything more about it? A. That is all.

Q. Do you remember Mr. Schell? A. Yes.

Q. Where did he live? A. In New York City.

Q. What was his conversation with you and when was it?

Mr. McCarter: All this is objected to?

The Court: Yes, and permitted over your objection.

A. Mr. Schell, he purchased a suit in our 85 Nassau Street, and there was nothing there at the time that seemed to please him, and he objected to the way the coat was made, it was just a question of sleeve lining, he wanted silk sleeve lining; he said, "I live right in the neighborhood of your Thirty-third Street and Fifth Avenue store."

Q. Did you have a store there? A. No, he naturally thought it was the same concern.

Q. Did you tell him it wasn't your store? A. I did.

Q. What did he say to that? A. He supposed it was the same concern.

Q. Have you got any memorandum in reference to the date when Mr. Pormellen came into your store? A. We have in our Newark office here.

Q. You haven't got it in your possession? A. I have not, no.

Q. Are there any other instances where you conversed with customers about Paterson stores or other stores of yours? A. Is it necessary to have the name?

Q. No. A. An instance where a man came in one day and looked at an overcoat and he said when he got ready he would either buy it in one of our stores, he said he was a customer of our uptown store, and he presumed he could get the same thing in Paterson; he was told the same story, not connected with the Hilton Company, so he said, "He almost contradicted me in that regard, he said, "There is a salesman with the Hilton Company and I bought a suit of him at the uptown store at one time, he is working your Paterson store, big man, he said he worked in your Thirty-seventh Street store."

The Court: The last part of it will be stricken out, conversation between this party and alleged clerk of Hilton. I will exclude that.

Q. Do you remember about Mr. Gerkins? A. Mr. John Gerkins.

Q. What about him? A. He is a customer of our Nassau Street store and he made a remark what a beautiful store we had at Thirty-third Street and Fifth Avenue, that it was the same concern, what a nice store we had opened there.

Q. What did you say to him? A. What I told the rest of them, in no way connected with our concern.

Q. Do you remember Mr. Phillips? A. Yes, Mr. Phillips, his address is 41 Park Row, he is a customer of mine in New York, and he asked when we intended to move into our new store, 243 Broadway, and that he thought it was the same concern, we was going to move over there.

Q. Have you a store at 243 Broadway? A. We have not, no.

Q. What is there at 243 Broadway? A. There is announcement out there that Hilton's is to open a store there.

Q. I show you Exhibit C 16 and ask you if that is photograph of what was in front of 243 Broadway; did you see that sign in front of 243 Broadway? A. I did, yes.

Q. Have there been any instances of confusion of mail or telephone calls? A. Yes, many.

Adjourned to Wednesday.

Continuation of examination on July 23, 1917, at the place and in the presence of the Court and counsel as before.

Mr. Stanley: At the last hearing on the 5th of March, Mr. Driscoll, one of the managers of the complainant's store in New York, downtown manager, was on the stand; the direct-examination was proceeding.

EDWARD A. DRISCOLL resumed for further direct-examination by Mr. Stanley:

Q. Mr. Driscoll, since you were on the stand last has any new store been opened under the name of the Hiltons in New York City? A. One to my knowledge.

Q. Where? A. 243 Broadway.

Q. Will you describe where that is with rela-

tion to the City Hall? A. It is practically opposite the City Hall, a distance of a block.

Q. Will you describe the sign over that store? A. The sign reads, "Hilton's."

Q. "ton's"? A. Yes.

Q. What business do they do at that store, what sort of business? A. Clothing.

Q. When was that store opened? A. That was opened in April.

Q. Of this year? A. 1917.

Q. At the last hearing you were telling us about some experiences of customers of yours that you personally knew about in confusing the two stores. Have yon any further instances to tell us of such confusion? A. I have, yes.

Q. Will you give them to us please. A. A man by the name of Mr. Sweetmeister, he lives in Brooklyn, he is a customer of 85 Nassau Street.

Q. How long has he been such a customer? A. A year, to my knowledge he bought a suit there in less than a year, and he made a purchase at 243 Broadway, he made it about a week or so go, and we had sent out notices—

By Mr. McCarter: Q. How do you know he purchased it at 243 Broadway? A. He come in and showed it to me.

Q. Was he talking to you? A. Yes.

Q. What did he say?

Mr. McCarter: I object.

The Court: Admitted.

Q. He came in you said? A. He said he received a letter notifying him of our July sale and addresses of our stores and he said he bought a suit over there.

Q. Over where? A. 243 Broadway, and want-

ed to know if it was connected with this store; I said no; he said he supposed it was connected with the same branch; he went up and bought a suit there; after he received a letter he came in making inquiries; we told him it was not connected with the Hilton Company.

Q. Any other instance? A. Yes; Mr. T. O'Rourke, 35 Vesey Street, New York, he bought stuff of our Nassau Street store.

Q. Did you talk to him? A. Yes, he came in; he was in 243 Broadway, he was a very large man, couldn't find a suit there large enough for him; he made remarks, couldn't we fit him there with a suit, he had been in our Broadway store and they didn't have a suit, large enough, and he supposed it was the same concern.

Q. Have you any stores on Broadway? A. Two stores on Broadway.

Q. 243 Broadway? A. No.

Q. Did he make any reference to the store 243 Broadway? A. I asked him which Broadway store it was and he said right across from the City Hall, he didn't give the number, he said across from the City Hall.

Q. Any other such instances? A. Mr. Roberts, of Passaic, New Jersey, he made a purchase 85 Nassau Street, Saturday, he said that he come pretty near buying a suit in our Paterson store and received notice of our July clearing sale and addresses of our stores; at that time he thought before this notice we were connected with the Paterson store.

Mr. McCarter: I don't keep objecting, but my view of the law is that these conversations are utterly incompetent.

The Court: All these are under your objection.

Q. Do you remember any other such instances? A. There was a customer bought stuff of us in our Thirty-seventh Street store.

Q. What is his name? A. I can't tell.

Q. Somebody you haven't testified about before? A. Yes.

Q. What was your experience with him? A. My experience with him was he had purchased a suit in 243 Broadway, at the time they didn't have the suit and he paid a deposit on it and he waited about a week for the suit and had not received it and came into our store and wanted to know if we had the suit there and I told him it was different concern, and he doubted my word.

Q. What did he say? A. He said he thought I was sore because he didn't buy the suit in 85 Nassau Street and said he would find out whether it was connected with Hilton & Company and he went over to 243 Broadway and they didn't seem to want to tell him there, but he said he was going to find out, and he was introduced to Mr. Joseph Hilton and Mr. Hilton explained the circumstances and told him he was in the concern, how he was at one time connected with the Hilton Company.

The Court: That will be stricken out. Didn't you testify to this before?

A. No, sir.

The Court: I am permitting hearsay, but I am not going to permit double hearsay.

Q. Do you know of your own knowledge of any instances of confusion of mail or telephone or telegraph? A. Yes.

Q. What are they? A. There is hardly a day we haven't a call making inquiry from different people connected with Mr. Hilton, Mr. Joseph Hilton, Mr. Yonkers, and it seemed there was some trouble, the telephone book, he had bought stuff at 243, had made inquiries in our store and wanted to know the number of 243, such as delivering goods; we had a load of stuff delivered there one day, trimming and linings.

Q. At your store? A. Yes; the man wanted to put it in; at that time 243 was not open, and the man wanted to leave it there, couldn't get in.

Q. Any other such circumstances? A. People that bought clothes at 243 and brought them into our store, wanted us to make alterations on them, it would be more convenient, or something to that effect.

CROSS-EXAMINATION by Mr. McCarter.

Q. How long have you been at 85 Nassau Street? A. A year last April, about eighteen months now.

Q. So that you have not been at the Thirty-seventh Street store since any of Hilton's stores have started in New York, have you? A. I have not.

Q. You mentioned some incidents at the Thirty-seventh Street store, didn't you? A. I haven't worked there, I haven't worked at the Thirty-seventh street store.

Q. You said something or other that a customer at the Thirty-seventh street store said? A. Yes, at that time I sold a man, yes, I made remark that this man, I didn't know his name, went to 243, I had sold him at the Thirty-seventh Street store.

Q. Who had sold him at the Thirty-seventh Street store? A. I had.

Q. When? A. Must have been over two years ago.

Q. I understand one or two of the witnesses to whom you have alluded this morning live in New Jersey.

Q. Mr. O'Rourke? A. No, Mr. O'Rourke's business address is 35 Vesey Street.

Q. Have you ever been at 243 Broadway? A. I have not.

Q. You said they did a clothing business; don't you know they do a men's furnishing business, too? A. Yes, I see furnishings in the window.

Q. Why didn't you say that when you said what business they did, why didn't you say that? A. I know they carry clothing.

Q. You don't do men's furnishing business, do you? A. No.

Q. You do know 243 Broadway ever since they opened have been doing a gent's furnishing business? A. I couldn't say; I have seen it in the window.

Q. You have seen it ever since they have been there? A. Yes.

Q. You notice they have gent's furnishing goods in the window? A. They had very small display of them.

Q. You spoke of another experience where a man had purchased a suit at 243 Broadway; you have never sold him a suit at 243 Broadway? A. Which man is that?

Q. Well, the last man, I don't know his name. A. I didn't sell him, but the salesman had who work-

ed there, 243 Broadway; No. 85 Nassau Street, he sold that.

Q. I am referring to an instance where you testified that a man had purchased a suit at 243 Broadway? A. Yes.

Q. And he came in to see if you had the suit? A. That is this man here that you refer to, Thirty-seventh street; I sold suit at Thirty-seventh street and Broadway.

Q. Will you answer my question? A. Yes.

Q. Did you sell him a suit at 243 Broadway? A. No, I don't work there.

Q. How do you know he bought a suit at 243 Broadway? A. I took his word for it; he showed me the suit.

Q. He told you so? A. Yes, and he showed me the suit.

Q. Have one of our labels in it? A. Had the Hilton label.

Q. Absolutely different from your label, isn't it? A. It is different label, yes.

Q. Yes. I show you in this black book entitled "Photographs" a label "Hilton's, Fifth Avenue and Thirty-seventh Street, New York, Newark Bridgeport, Paterson and Waterbury" in black, with white print. Was that the kind of label it had in it? A. Similar label, yes.

Q. Now, the label on the left of the same page with the shield with the background in black and all the print in Orange, and with printing, "the Hilton Company," New York, Boston, Philadelphia, Newark, Chicago, Brooklyn and Pittsburg" is your label? A. Is the Hilton Company label.

Q. The Hilton Company label? A. Yes.

Mr. McCarter: I don't think it is neces-

sary to mark this for identification; we are going to offer the whole book later on.

Q. How long have you worked for the Hilton Company? A. Between four and five years, about four years and a half.

Q. And you are aware of the dissolution? A. I was.

Q. And continued with Mr. Philip Hilton? A. I did.

Q. Since the dissolution you have been located altogether at 85 Nassau Street? A. 85 Nassau.

Q. Exactly where is 85 Nassau? A. 85 Nassau is east of Broadway between John and Fulton streets, the centre of the block.

Q. Sure it is east of Broadway? A. Yes.

Q. Did you ever hear of a Nassau street west of Broadway?

Mr. Hardin: You asked him where it was.

A. Between John and Fulton on Nassau Street.

Q. Now, 243 Broadway is how far away? A. I should say about six or seven blocks.

Q. And 85 Nassau street is on the west side or east side of Nassau? A. It is on the west side.

Q. You have no Broadway store nearer, 243 Broadway, than the corner of Fourteenth street, have you? A. That is the nearest store we have got.

Q. Which of these persons who had these talks with you at which you said they indicated some confusion in their own minds, which of them lived in New Jersey? A. One was named Roberts.

Q. Roberts, where did he live in New Jersey, do you know? A. He lives at Passaic.

Q. Do you know what his first name is? A. C. A. Roberts.

Q. Do you know where in Passaic? You knew him personally, or did he tell you at the time he lived at Passaic? A. He told me at the time.

Q. That is all you know about it? A. That is all.

Q. Anybody else from New Jersey? A. Parmellend, he lives in Paterson.

Q. How do you spell that? A. Parmellend.

Q. Do you know his first name? A. We have got his address in the office.

Q. Will you try to procure that for me and let me have it later? A. Yes.

Q. I think you said that some gentleman had a talk with you that referred to a July notice that he had received which warned him not to make a mistake, or something of that kind, didn't you speak of something of that kind? A. Notice of our July sale and giving the addresses of our different stores, three in New York and one in Brooklyn.

Q. Look at the two papers which I show you and see if they are the July notices you just referred to?

Mr. Hardin He hasn't said two notices; he said he was referring to one notice.

A. I haven't even read one of these notices; they were sent out from our Newark office, I haven't read them.

Q. How do you know anything about these July notices? A. By the customers saying they had been notified, they were sent out from Newark.

Q. You never had seen them? A. I have not, they were sent out from Newark.

Q. How do you know they were? A. Because I have been told they were sent out from Newark.

Q. Who told you? A. Mr. Murray told us he was sending out circulars of the July sale and customers told me they had received letters from the Hilton Company.

Q. But you never have seen them? A. I never read one.

Q. You have never read them or never seen them? A. I never saw one of these notices of July sale.

Q. Why did you say just now you never read it? A. I never read it or seen it.

Q. You never read or saw either one of these July notices? A. No, I have not.

CHARLES KIPPING, sworn:

Direct-examination by Mr. Stanley:

Q. Where do you live? A. 555 Sanford Avenue, Newark.

Q. Where is your place of business? A. 210 Market Street, Newark.

Q. What is your business? A. Sign painting.

Q. In that business do you paint signs on paper as well as on wood? A. Yes, sir.

Q. Prepare what is known as transparencies? A. Yes.

Q. Will you describe what you mean by transparencies?

The Court: Is there any necessity of going into that? We know what it is.

Q. Have you been employed by the Hilton Company with which Philip Hilton is connected? A. Yes.

Q. How long have you been employed by them? A. Since the inception of the firm.

Q. How long ago was that, do you remember? A. That I can't say positively; I should imagine about eight or nine years perhaps.

Q. And what did you do for them? A. Why, I practically did all their large signs and transparent signs, general advertising signs excepting card signs.

Q. Are you doing any work on that for Mr. Joseph Hilton? A. Not at this present time, no, sir.

Q. Have you done any work for him since June 24, 1916? A. Yes.

Q. And you have also done work for Philip Hilton, haven't you? A. Yes.

Q. Since June 24, 1916? A. Yes.

Q. And prior to that? A. Yes.

Q. Have you got in your possession any copies of the transparencies or signs you prepared for the Hilton Company, Mr. Philip Hilton? A. Not at this time, no, sir.

Q. What has become of them? Do you preserve them? A. We do on a certain length of time.

Q. Then what do you do with them? A. Then we destroy them.

Q. Have you destroyed all such copies? A. All but one, yes.

Q. And what was the one copy which you have, of what sign was that? A. Referred to a half price sale.

Q. When was that prepared? A. The latter part of January or the forepart of February, I am not positive.

Q. Of this year? A. Yes.

Q. Prepared by the Hilton Company? A. Yes.

Q. I show you a transparency and ask you if that is the transparency of which you say you have one copy left? A. That is the one, yes.

Q. Prepared in January? A. Yes.

Mr. Stanley: I offer that in evidence.

Mr. McCarter: I object to it until it appears it has been used.

Mr. Hardin: It is proper to show its preparation whether it has been used or not.

The Court: It can be marked for identification.

Mr. McCarter: I think everything they do after suit was commenced is self serving declaration. My specific objection is that there is no evidence it was used.

Marked Exhibit C-139 for identification.

Q. You have examined C-139 for identification? A. Yes.

Q. Will you describe these transparencies you had prepared for the Hilton Company prior to November, 1916? A. Why, in what way do you want me to describe them?

The Court: The particular thing is whether the name Hilton was there used in that same way.

Q. Was the name Hilton on such transparencies you prepared? A. On some there was and on some there was not.

By the Court: Q. Going back to what time? A. Going back to 1912, three years ago, four years ago, during that period.

Q. Did you prepare for the past four or five years for the Hilton Company signs similar to

C-139 for identification? A. Somewhat similar to that, yes.

By the Court: Q. Were they similar in that top line, did they use the word "Hilton"? A. Yes, sir.

By the Court: Q. In that form? A. Yes, sir.

Q. Did you prepare half-price sale signs more than once a year for them? A. Yes.

Q. How often? A. That I couldn't say, probably twice a year.

Q. And on such half price sale signs the name Hilton appeared the same as it does on C-139 for identification? A. Invariably, yes.

Q. Have you ever seen any of the signs prepared by you on the windows of the Hilton stores? A. I can't say that I have, except perhaps in Newark, I have seen signs there and I assume I prepared them, yes.

Q. You know, don't you, that at Newark for a time the business was conducted under the name of George Watson & Company? A. Yes.

Q. Did you see such signs as these before or during that time?

Mr. McCarter: Such signs as what?

Q. As this C-139 for identification. My question is did they use Hilton's during the time when they were conducting business under George Watson & Company? A. Not to my knowledge, no, sir.

Q. You prepared signs for other than half-price sales for Hilton, didn't you? A. Yes.

Q. Did they also have the name "Hilton's" on it? A. In some cases when they ran the quarter off sale it was "Hilton's quarter off sale."

Q. Can you remember the sales, any other sales

that you used on signs? A. They had different priced signs, $13.75. and so on; on this the name "Hilton" did not appear.

Q. Did they use Hilton in connection with clearance sales? A. They possibly did; I don't recall at this time.

CROSS-EXAMINATION by Mr. McCarter:

Q. You as I understand it, for a number of years have done considerable painting both of wooden signs and of window what do you call it, transparencies? A. Yes.

Q. And cards, too? A. No.

Q. You have done the transparencies and done the wooden signs? A. Yes.

Q. Did you do any other material beside wood and transparencies? A. Yes, oil cloths and brass.

Q. You have also done the wooden signs for Hilton's haven't you? A. Yes.

Q. In this same black book that has already been referred to I show you a fac simile of the sign "The Hilton Co.," background black, with an emblem on either side, with an H in the centre, and the lettering as well as the border in gold. Do you recognize that as being the sign as facsimile of the wooden sign of the Hilton Company that you prepared? A. Yes.

Q. Is that a facsimile of it? A. That is, yes.

Q. And how many wooden signs of that character of the Hilton Company did you prepare? A. Why, I do not at this particular moment know the exact amount, probably five or six.

Q. For use in different stores? A. Different stores, yes.

Q. In Newark? A. No, sir.

Q. Where? A. New York and Brooklyn, Boston, Providence.

Q. Now, I will turn to the same book to a sign which reads "Hilton's art craft clothes, Brooklyn, Newark, Paterson, Waterbury and Bridgeport." Did you prepare a sign for Hilton's like that? A. Yes.

Q. And is that a correct facsimile of the sign that you did prepare? A. It is.

Q. In color and type and so forth? A. Yes.

Q. What is the color of the background? A. Green.

Q. Green? A. Yes.

Q. And the color of the type is gold? A. Yes.

Q. Do you know where those signs are used by Hilton's? A. Yes.

Q. Where? A. Why, at Waterbury, at Fifth Avenue and Thirty-third street and at Broadway and Thirty-fourth street; also that same type of sign at 243 Broadway.

Q. Can you distinguish or characterize the two signs so that the record would display that? Take first the first sign, the Hilton Company's sign. A. The first distinction would be the color of the sign, one is black and other is green; the next distinction is that this has sanded surface.

Q. The Hilton Company has sanded surface? A. Yes, and Hilton's sign finished surface, polished surface; as to the letters on them they are both raised letters, no distinction there; this is trade-mark on the end of it which would distinguish it from the other one; also this uses, they use here the words "Art Craft Clothes," which is the distinction.

Q. Does not appear on the other? A. No, sir.

Q. Now, how big are these signs? A. Well, they vary in size, I should judge the one corner of Fifth Avenue and Thirty-third Street is 25 feet in length on Fifth Avenue and probably 65 feet on Thirty-third Street.

Q. About how wide are they? A. About 3½ to 4 feet wide.

By the Court: Q. Is that opposite the Waldorf? A. Opposite some big hotel there, yes.

Q. You are not familiar with the Waldorf? A. No.

Q. How about the size of the Hilton Company signs that you have prepared? A. This I assume to be a facsimile of the sign at 85 Nassau Street, the sign is about 20, 22, feet long, probably 3½ feet wide.

By Mr. Hardin: Q. May I make this inquiry? This green sign with gilt letters on, Hilton's, is sign at what location? A. Fifth Avenue and Thirty-third.

By Mr. Hardin: Q. That is Joseph Hilton's store? A. Yes, sir.

Q. Don't you know that they are in the other New York stores, too? A. Of Hilton's?

Q. Hilton's. A. Yes.

Q. The same thing? A. Yes.

Q. That is the regular sign? A. Yes.

By Mr. Hardin: Q. Which Hilton? A. Joseph Hilton.

Q. Now, in addition to these wooden signs you have painted some transparencies, by that you mean more or less thin? A. Thin paper, transparent paper, is termed transparencies.

Q. Have you ever painted any cardboard or thin

card signs to be put in the windows? A. No.

Q. Your work other than the wooden signs has been confined entirely to thin transparent paper of which this C-139 is an example? A. Yes.

Q. Now, have you painted a good many of these for the old concern? A. Good many, yes.

Q. If I understand your evidence correctly you did not testify from recollection to having painted any transparencies containing the word "Hilton" as opposed to the Hilton Company that did not apply to some reduced sale, did you? A. That is right.

Q. A half price or quarter price or something of that kind? A. Yes.

Q. And those kind of sales you would sometimes paint "Hilton's"? A. Yes.

Q. But where the goods were described or the location, or anything of that kind, or so far as you can recall now in the case of a clearance the Hilton Company was used, is that right? A. Usually signed the Hilton Company? A. Yes.

Q. Now, the Hilton Company on these transparencies accordingly predominated in the price over those upon which the word "Hilton's" was used, didn't they? A. Why, it would be hard for me to answer because I do so many I couldn't say.

Q. Couldn't say? A. Yes.

Q. The wooden signs that you have referred to they are permanent signs that remain on the store front in both cases permanently, do they not? A. Yes.

Q. Now, these transparent signs describing reduction sales they are more or less temporary, aren't they? A. Yes.

Q. From your knowledge of the wooden signs

of the two concerns in their actual real presence, size and position, and what not, what have you to say as to their being any liability to confusion or mistake or imitation of one over the other?

Mr. Hardin: I object. That is not for this witness to pass an expert opinion on.

The Court: I overrule it, Mr. McCarter; I do not see how this witness's expert testimony can be taken on that subject.

Mr. McCarter: I think myself the signs speak for themselves, your Honor; I won't press it.

Q. Which was the larger proportion of the work that you did in the transparencies, those signs upon which the words "The Hilton Company" appeared, and those signs, transparencies, upon which the word "Hilton" appeared? A. I believe you put a question somewhat similar before. It is hard for me to answer, as I did so many, and I can not very well define just how many I did.

Q. Well, did the mark off sales, either quarter off or half off, or whatever they were, occur as frequently and therefore give use for transparencies, as the other kind of markings occurred? A. Yes.

Q. Do you recall a conversation that occurred between Mr. Scott and Mr. Yonkers and you, and Mr. Joseph Hilton was present, too, which gave rise to the use of the green color by Hilton, that is the new concern? A. Yes.

Mr. Hardin: That is not cross-examination.

The Court I will admit it.

Q. What was that fact? A. Why, Mr. Scott offered a suggestion that in order to make the

signs very distinctive for Joseph Hilton that they be painted a white with a maroon white trimming, and I suggested that a green would wear better outdoors, be better color outdoors since the white would dirty and have to be painted too often, and that was the color finally decided upon.

RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. I show the witness Exhibits C-126 and C-129. Did you prepare the signs shown on those exhibits? A. What are they, Paterson?

Q. I think so, yes. You can tell by looking at the back; Main Street, Paterson, yes. A. Yes.

Q. And you put that symbol on both sides those signs? A. Yes.

By the Court: Q. That symbol, referring to the shield that appears in the foreground of the picture about the middle of the sign?

Q. And are those the signs you prepared following the conversation Mr. McCarter just asked you about? A. No, sir.

Q. From whom did you receive instructions about these signs? A. Mr. Alexander Hilton.

Q. That is Mr. Joseph Hilton's son? A. Yes.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. There are no shields on any of the signs but the Paterson, are they? A. That is the only one.

By Mr. Hardin: Q. Did you put the window signs on the Paterson store also? A. No, sir.

By Mr. Hardin: Q. I don't mean the window signs that are displayed inside, I mean on the surface of the glass? A. I surmised you meant; no, sir, I did not.

HARRY SALZER, sworn:

Direct-examination by Mr. Stanley:

Q. Where do you live? A. 1247 East Eighth Street, Brooklyn.

Q. And where is you place of business? A. 100 Nassau Street, New York.

Q. What is you business? A. Show card writer.

Q. Have you been employed by the Hilton Company at any time? A. Yes.

Q. For what period of time? A. About twelve years, I should judge, twelve or thirteen years.

Q. Have you ever been employed by Joseph Hilton? A. Yes, sir.

Q. Are you employed by him now? A. No, sir.

Q. Are you employed by Philip Hilton or the Hilton Company now? A. Yes.

Q. What sort of show card do you prepare for the Hilton Company? A. Card signs.

Q. What we call window cards? A. Window cards and price tickets.

Q. How big are the price tickets? A. They measure two by three, two by five, various different sizes.

Q. Inches? A. Yes.

Q. Have you prepared price tickets for Joseph Hilton? A. Yes.

Q. Did you prepare price tickets for his New York stores? A. Yes.

Q. I show you a couple of pasteboard price tickets and ask you whether you prepared those? A. Yes.

Mr. Stanley: I ask to have them marked for identification.

New Jersey State Library

Q. Who did you prepare those for? A. For Joseph Hilton.

By the Court: Q. Co. or Company or Joseph Hilton? A. Joseph Hilton.

Q. By the Court: When? A. I should judge about a year or so ago.

Q. Do you know when Joseph Hilton opened his store in New York? A. I can't recall just the exact date now.

Marked 140 and 141 for identification.

Q. Did you prepare similar price cards with crest on them for Philip Hilton? A. Yes.

Q. Where do the two differ? A. The Hilton Company's crest is all red with gold color and the Joseph Hilton crest is gold, blue and white.

The Court: Haven't we got a sample here so I can see it.

Mr. Hardin: We can get one, I think.

Q. Do you know whether such cards as C-140 and 141 are used by Hilton's? A. No, sir.

Q. Do you know or not? A. No, sir.

Q. Did you ever look at their window Thirty-third Street and Fifth Avenue after their store was open? A. Yes.

Q. Can you say whether those cards were in the window or not? A. I can't recall that; they were not used long enough.

Q. Do you know whether these cards were used for three or four days? A. I couldn't say, no, sir; I know they were made, that I am sure of, but I don't know whether they were used.

Q. Did you at any time receive an order to make up plain price tickets for Hilton? A. Yes.

Q. When was that? A. Shortly after we made these up, probably two or three days after we made these up.

Q. Tell us the circumstances of that? A. The circumstances of that was, to the best of my recollection, that the Hilton Company objected—

Mr. McCarter: Speak of what you know.

The Court: What was said to you by any officer of Joseph Hilton or by anyone connected with Joseph Hilton? A. I couldn't recall that, no.

Q. Who was it that gave you the orders from Joseph Hilton to prepare price tickets or window cards? A. Sometimes Mr. McGovern, sometimes Mr. Scott, occasionally, very rarely, Mr. Murray; those occasions are very rare.

Q. That is for the Hilton Company? A. Yes.

Q. Who gave you orders for preparing price tickets and window cards for Joseph Hilton? A. The window dressers.

Q. Who were they? A. Joe, his name is, I don't know his other name.

Q. Who else? A. That is all.

Q. Did that same man give you any orders about plain price tickets? A. Yes.

Q. What were his orders, what did he say to you? A. That I couldn't recall; I couldn't recall the exact words; I know the sum and substance of the words was that there was an objection to using the crest, and for that reason he asked me to make up plain cards.

Q. He asked you to make up plain cards? A. Yes.

Q. Did he say why he had to have them made up? A. I can't recall the exact words, but I believe there was some trouble that caused that.

Q. Was there anything said about the necessity for speed at the time that the order was given to you for plain cards? A. I wouldn't recall that.

Q. Was it given to you as a rush order? A. Yes.

Q. What was said? A. I couldn't say just what was said; as I said before, that was the sum and substance of the conversation, I believe, that there was an objection on the part of the Hilton Company of Hilton's using this trade-mark, and for that reason the order was given to make new ones; this happened perhaps two or three days after these signs were delivered.

Q. Did you ever see the plain cards in Joseph Hilton's window? A. No, sir.

CROSS-EXAMINATION by Mr. McCarter:

Q. Now, Mr. Salzer, you had done work for the old Hilton Company for several years? A. Yes.

Q. Did you design their crest? A. Yes.

Q. Yourself? A. Yes.

Q. How long had that crest been in use? A. Since I am working for them, about twelve years, I guess.

Q. And is that crest similar to the crest that appears on the facsimile of the wooden sign in the black book which I show you? A. No, it was not.

Q. It was not similar to that? A. No, it was not like that at all, vast difference between the two; I designed both of them.

Q. I am speaking now of the crest of the Hilton Company, I am speaking of the old crest? A. Yes, I designed that.

Q. And that was not similar to the crest on the sign? A. No.

Q. Of the Hilton Co.? A. No.

Q. You had nothing to do with designing that? A. No, sir.

Q. The crests that you designed are for price tickets on all show cards? A. Yes.

Q. Lest we are not presented wtih the old crests that the Hilton Co. used for several years, won't you please again describe it? A. Red back ground and gold initial "H."

Q. Red back ground where the green is on this? A. That is blue, yes.

Q. Where the blue is on this? A. Yes.

Q. And the gold "H"? A. Yes.

Q. Was there something upon it? A. Practically the same identical thing in red.

Q. Now, who desgned Exhibits 140 and 141? A. I did.

Q. Did anybody give you any directions or did you just make them up yourself? A. I made them up myself; I had orders to make an emblem, a crest.

Q. Yes, and you designed that? A. I designed that.

Q. Who gave you the order to make an emblem or crest for the new concern, I will call it that? A. That I don't know.

Q. Eh? A. That I don't know.

Q. It wasn't Joseph Hilton, was it? A. No. sir.

Q. Was it one of his boys? A. Possibly.

Q. I am asking you, I don't know? A. I really don't know.

Q. Don't know? A. No.

Q. Was it Mr. Yonker, that gentleman sitting there? A. No.

Q. You cannot now recall really who it was? A. No.

Q. What? A. I can't, no.

Q. Was it the window dresser you spoke of a moment ago? A. I hardly think so.

Q. Well, what did the window dresser tell you? A. He told me to make some sort of a crest, some sort of a design on the ticket.

Q. Then it was the window dresser that gave you the order? A. Yes.

Q. You are an intelligent man; I ask you again was it the window dresser that gave you the order to make up a crest, or was it someone else? A. I believe he was the only man that could have given it to me; I don't recall it any more.

Q. You made use a little while ago of the window dresser? A. Yes.

Q. Do you remember what his name was? A. Joe.

Q. Joe what? A. I don't know his other name.

Q. Now, when was that? A. About a year ago, I should judge.

Q. Haven't you nearer way of fixing it than that; can't you get more accurate? A. I didn't come to answer that, I don't know.

Q. I suppose you could look it up? A. I could look it up.

Q. It might have been more than that? A. I hardly think it is more than a year ago.

Q. Was it within two or three days of the time that the window dresser, whoever it was, that gave you this order that it was revoked? A. Yes.

Q. And so you made no more? A. No.

Q. And you never have seen a single one of these cards that are marked 140 and 141 in use in any windows of the defendants here, have you? A. No.

Q. You spoke of a rush order for these price cards; what you recall rush orders? A. No, usually would get three or four days.

Q. How much time did you have to prepare the plain cards that you spoke of? A. The same day.

Q. The same day? A. Yes.

Q. They are simply cards without anything on them at all? A. No, they were lettered, but prices were marked on them on the price tickets.

Q. You haven't any prices marked on C-140 and 141? A. No, I have not.

Q. How did that happen? A. Mr. Scott took those away before they were finished.

Q. Scott? A. Yes, he was in the shop and seen them there and took them away.

Q. When was that? A. Quite some time ago.

Q. These were not complete then? A. No, sir.

Q. And this Scott came to your store and got them, did he? A. Yes, he asked me for a few and I gave them to him.

Q. How long ago was that? A. Shortly before the store opened, the first store opened of Joe Hilton.

Q. What store are you referring to? A. I believe Fifth Avenue store was the first one or the Paterson store, I don't know really which.

Q. How long after you made C-140 and C-141 which were incomplete was it that Scott came to your store and got them? A. Probably two or three days previous, previous to the delivery.

Q. Scott you knew worked for Philip Hilton, didn't you? A. Yes.

Q. Was a window dresser for Philip Hilton? A. Yes.

Q. Did he se them in your store or did he ask

you for them? A. He seen them there.

Q. And he asked you to let him have them? A. Yes.

Q. You gave them to him incomplete? A. Yes.

Q. Had the order then been revoked? A. No, sir.

Q. How soon after that was it revoked? A. About a week after that I believe.

Q. Are you sure about that? A. No, sir, I am not sure.

Q. Had they been delivered at this time, any of them? A. I am not sure of that either.

Q. How long a time elapsed between the time of ordering by the window dresser the cards of which C-140 and C-141 are examples and the time of delivery of such as you did deliver? A. Probably between two and three weeks.

Q. To whom did you deliver those that you gave this window dresser? A. I won't be sure whether they were mailed or whether they were delivered; I won't be positive of that.

Q. Were they mailed to Paterson? A. I say I wouldn't be quite sure whether they were mailed or delivered.

Q. If they were mailed, where were they mailed, to Paterson? A. Possibly so.

Q. Do you know about that? A. Not sure of it, no sir.

Q. Have you any recollection of it at all? A. No, sir; I am not sure of it.

EXAMINED by Mr. Hardin:

Q. His Honor has asked for one of the shieldr

in use by Hilton & Co.; do you recognize that as one of them? A. Yes.

Marked 142 for identification.

Q. And in describing the difference between the two shileds on price cards as you did, you were describing the difference between Exhibit for identification 141 and Exhibit for identification 142? A. Yes.

Q. Was the Exhibit for identification 141 embossed from the same block as the Exhibit for identification 142? A. No, sir.

Q. You made a new block? A. New block and new die.

Q. Was any question asked you as to whether you could use the old block? A. No, sir.

By the Court: Q. Could you have used the old block A. No.

By the Court: Q. Why not? A. I will have to show that to you, I can't explain it very well; you see in the old block, 142, couldn't be changed, and, furthermore, it couldn't be changed on account of the solids here, red solids, could not be taken out in order to leave this white insert.

Q. I show you Exhibit C-125 which is a photograph already in evidence of the Paterson window; did you make that kind of card also? A. Yes.

Q. Make them for both concerns? A. Yes.

Q. Notice the shield on top of that card? A. Yes.

Q. That is a shield similar to Exhibit 141 for identification? A. Yes.

Q. When did you make that sign? A. About a year ago, thereabouts, at the same time when these were made, when the tickets were made.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Who ordered the large cards which you have recognized as being in the window of the Paterson store, the same window dresser? A. Surely.

Q. Eh? A. Surely.

Q. At the same time? A. Yes, sir.

Q. And were they delivered about the same time that those of the small tickets were? A. Yes.

Q. Do you make a specialty of this kind of business? A. Yes.

RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. I show the witness Exhibit C-131; did you make that sign? A. Yes.

Q. And Exhibit C-132? A. Yes, I made that sign.

Q. Exhibit C-133? A. Yes, I made that.

Q. Exhibit C-134? A. Yes.

Q. Exhibit C-135? A. Yes.

Q. Exhibit 136? A. Yes, that is mine.

Q. Exhibit 137? A. Yes.

Q. Exhibit 138? A. Yes, that is mine.

Q. Exhibit C-98? A. Yes.

Q. Did you make that? A. Yes.

Q. Exhibit C-99? A. Yes, all mine.

Q. Exhibit C-102? A. Yes.

Q. Exhibit C-103? A. Yes.

Q. Exhibit C-104? A. Yes.

Q. Exhibit C-105? A. Yes, all mine.

Q. Exhibit C-106? A. Yes.

Q. Exhibit C-100? A. That is mine, too.
Q. And C-107? A. Yes, that is mine.
Q. C-108? A. Yes.
Q. C-109? A. Yes.
Q. C-110? A. Yes.
Q. C-111? A. Yes.
Q. And these were signs that were all made for the Hilton Company? A. Yes.
Q. You made many other signs also? A. Oh, yes.
Q. I notice in all these signs that you have identified as having been made by you the word "Hilton" or "Hilton's", "Hilton Policy" the word "Hilton" is given prominence? A. Yes.
Q. Is that characteristic of the signs you made for the Hilton Company? A. On state occasions, on several occasions, yes, such as sale signs.
Q. And they had a great many sales? A. Yes.
Q. How far back—

Mr. McCarter: I do think there ought to be a line of policy pursued for examining. I don't think one counsel ought to take up a witness and then another counsel take it up.

The Court: Have you any further questions?

Mr. Hardin: I have no further questions.

Further CROSS-EXAMINATION by Mr. McCarter:

Q. Did you design those cards or signs as they appear, these last ones? A. Yes.
Q. You designed them? A. Yes.
Q. The whole thing is yours? A. Yes.
Q. Well, I find on the back of Exhibit C-98 Den-

dorf Studio, is that you? A. No, that refers to the picture.

Q. Then what part did the Dendorf Studio play, and what part did you play, in making Exhibit C-98? A. They made these cards.

Q. They made the cards? A. Yes.

Q. Then you did not make this card? A. Just the lettering, this is all my work on that in this particular one.

Q. Then it is not accurate that each one of these were made by you? A. No, not completely.

Q. Well, you said so. What is the fact about it? A. No, I didn't make this particular one, well I didn't make it complete, just the lettering; in fact, any of those that has pictures on I don't do the pictures.

Q. Then why did you tell Mr. Hardin that you made all of these? You failed to note the picture, that part, is that the idea? A. I didn't think it was important.

Q. Now I understand that you made during the period that you worked for the Hilton Company and did this work a vast number of these painted cards, haven't you? A. Yes.

Q. Have you any idea how many? A. Oh thousands.

Q. That would represent what, permanent things to be put in the window signs? A. All temporary signs.

Q. Now, you spoke of having made signs with the word "Hilton's" on them at stated intervals to represent particular kind of sales what kind of sales would they be? A. Such as ten dollar style, half price sale.

Q. Did you, if you recall, ever use the word "Hilton's" on these thousands of cards you have made, except to characterize a half price or a ten dollar or some kind of a cheap sale? A. Yes.

Q. What other kind of sales? A. In describing the garment, for instance, "Hilton made," "Hilton Trim."

Q. How many compared with the whole quantity of cards which you made do you suppose did the word "Hilton's" appear, what proportion? A. Pretty hard to say.

Q. Well, give your best judgment? A. Usually in a set of cards there may be probably two or three letters describing the garment, and in those cases the words "Hilton Made" or "Hilton Policy" may be used and the rest of the cards some other reading matter would appear.

Q. A set would be how many? A. It depends to which store they go; the smaller stores naturally would use less number of cards than the larger stores.

Q. Well, those with "Hilton" or "Hilton's" on them would be very much less than half of those you made, wouldn't they? A. Naturally, yes.

Q. Naturally? A. Yes.

Q. They would be less than a third of those you made? A. Well, sometimes; it all depends on how many copies I have for a set.

Q. Except as describing either the "Hilton Made" or the kind of sale, as I understand your evidence, you never used the word "Hilton's" or "Hilton"? A. No, not in any other kind, no, sir.

Q. Now, can't you tell us what other kind of cards you would get, you would make for them,

where the Hilton Company or something else then "Hilton's" would appear on them, what kind of cards would they be? A. I don't quite understand that.

Q. You told us on what character of cards you would use the word "Hilton" or "Hilton's"? A. Yes.

Q. Now what would appear on the cards when you didn't have the word "Hilton" or "Hilton's"? A. Just reading matter.

Q. Like what? A. Pretty hard to say what, describing general conditions probably, conditions of how the garments are made, may be, or probably some patterns, the way they were made up.

Q. And on them the word "Hilton Company" would appear, name of the firm? A. No, it would be just Hilton Co.

Q. I say the firm name would appear? A. Yes.

Q. Now, of all that you make of these thousands for this concern for all their stores which were in the majority, those that had on it "Hilton Company" or those that had on "Hilton" or "Hilton's"? A. I couldn't answer that, I don't know.

Q. Now, Mr. Salzer, are you still working for the Hilton Company? A. Yes.

Further RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. You are also working for Joseph Hilton? A. Yes.

Q. When you say the "Hilton Company" was it in small letters at the bottom? A. Yes.

Q. I show you Exhibit C-109, does that illustrate what you mean? A. Yes.

Q. Sometimes in that same sign that word "Hilton" would be in larger letters on the very top of the same sign, wouldn't it, illustrating by C-107? A. Naturally, yes.

Q. I show you C-133, no prices on that sign, no sale specially indicated on that sign? A. No.

Q. That is still a third type of sign descriptive of the Hilton policy? A. Yes.

Q. And I show you Exhibit C-105; that illustrates again, does it not, the small letters of the Hilton Company at the bottom and usual display of Hilton's higher up? A. Yes.

BERNARD FORTUIN, sworn:

Direct-examination by Mr. Stanley:

Q. Where do you live? A. I live in Bayonne, N. Y.

Q. Where is your business? A. 120 Broadway, N. Y.

Q. You are there pretty nearly every day, aren't you? A. Yes.

Q. Have you been a customer of the Hilton Company for your clothes at any time? A. Yes.

Q. For how many years? A. Last ten years.

Q. Where did you buy most of your clothes? A. 85 Nassau Street, Brooklyn, and when they had the old Astor House store.

Q. Where was the old Astor House store? A. In the old Astor House on Broadway opposite where the postoffice is now.

Q. Have you ever bought a suit of clothes from Hilton's rather of Joseph Hilton? A. I understand I have.

Q. Which store? A. Store on Broadway opposite the City Hall.

Q. 243 Broadway? A. I presume that is the number

Q. When did you buy that? A. About three weeks ago.

Q. How did you come to buy it, tell us the circumstances? A. I happened to be going up Broadway and noticed the similarity of the display between that and the other store, saw the sign said "Hilton's" and went in there to see what I could get, went in there Saturday morning and bought a suit there; I was telling the salesman when I bought the suit I had been buying clothes from him ten years since he had these other stores.

Q. What did he say to that?

Objected to.

Overruled.

Q. What else did he say, the salesman.

Objected to.

The Court: I will permit that.

A. I told him I expected him to take care of me just the same, I was fussy, wanted heel stays on my trousers; he said, "We always take care of our old customers that way."

Objected to.

The Court: Strike that out.

Q. When did you discover that was not a Hilton Company store? A. After I tried to get them on the telephone. I sent up to the Nassau Street store and they said it was not the same company.

Q. What did you do? A. I just sat down and waited, that was all, until the suit came.

Q. Did they put in the heel stays?

Objected to.

The Court: Strike that out.

CROSS-EXAMINATION by Mr. McCarter:

Q. Your office is 120 Broadway? A. Yes.

Q. What is your business? A. Steel business, tool steel.

Q. For whom? A. Century Steel Co. of America.

Q. Now, you have bought for some time clothes at 85 Nassau Street, that is quite near the Equitable Bldg., isn't it? A. Yes.

Q. When did you buy your last suit at the Astor House store so called? A. Oh, I can't tell you exactly, it must be about six years ago.

Q. That was in the old Astor House, wasn't it? A. Yes.

Q. And I suppose your familiarity with New York is sufficient to give you the knowledge that that has all been torn down, that building, and the Woolworth Bldg. put up? A. Yes, where the old Astor House store was.

Q. New building put up? A. There is a new building there.

Q. So that during all that time that that construction was under way there was no clothing store at the old stand, was there? A. No, no indeed.

Q. And you knew that? A. Positively.

Q. So that during all this period if you had occasion to buy a suit of clothes of the Hilton Com-

pany you went to the Nassau Street store? A. That store was not there all the time either.

Q. Then where did you go? A. Brooklyn; at that time I resided in Brooklyn.

Q. So that you had not bought previous to the Saturday experience a single suit at the locality of the Astor House for five or six years, had you? A. No.

Q. Now, Saturday you were going up Broadway, were you? A. I passed the store several times, not last Saturday, previous Saturday.

Q. You were going up Broadway? A. Yes, I passed it several times.

Q. Did you observe the sign? A. I saw the sign "Hilton;" I supposed it was Hilton Company.

Q. You saw the sign "Hilton"? A. I didn't take note of the name.

Q. Did you tell us the truth a moment ago when you said you saw the sign Hilton? A. Hilton or Hilton Company, I didn't take notice of the name.

Q. Did you notice the color of the sign? A. Yes.

Q. What color was it? A. Gold letters, raised letters on dark back ground.

Q. Two hundred forty-three Broadway? A. I believe that is the number; I didn't take note of the number.

Q. You mean opposite the City Hall? A. Yes.

Q. Will you say it was dark back ground, are you sure of that? A. As I took it, it must have been; I don't know whether it is dark green as it was explained here.

Q. Your observation was not very specific, was it? A. No; I don't think it was; I don't generally

observe signs; when I go in a store I presume it is the store I want to go in.

Q. Is the location of 243 exactly where the old store was? A. That is not the old Astor House, or where the old Astor House used to be.

Q. So it is not the same location? A. It is not the same building; it is in the same locality.

Q. How far away was the old stand from 243 Broadway? A. About two blocks.

Q. Further uptown? A. Yes.

Q. What else did you observe? A. I observed that they had display of shirts, collars, I believe, and ties.

Q. Did you ever observe a shirt or collar in the window of the Hilton Company? A. Of the old company where I bought clothes, no, I did not.

Q. You knew very well that the old company did not deal in mens furnishing goods, did they? A. I don't know whether they did or not, I didn't know there was any difference between the companies.

Q. Did you look at the label on your suit that you bought? A. Not when I bought it, no, sir.

Q. Had you ever observed the label on the suit? A. Of the suit I bought at 243 Broadway?

Q. Had you ever observed the label on any suit you bought either at the Astor House or 85 Nassau Street? A. On that I did.

Q. What kind of a label was that? A. As I remember it was black label.

Q. Did you observe the label you had on the suit you bought two weeks ago Saturday? A. Since I bought it.

Q. What kind of label is it? A. Practically the same label to me.

Q. You have observed it since, have you? A. Yes.

Q. Have you got the suit on? A. Yes.

Q. Suppose we look at the label and see if it is practically the same. In the first place, we will look at this label the Hilton Company, do you recognize that as being the label that you used to recognize? A. To be honest with you, I don't recognize any special label, it was label with Hilton Company on it, that is all.

Q. You say the label you got on the coat you bought two weeks ago was very like that? A. I said it was dark label, it was dark label, just as I said, that is all I remember about it; what it has got on it, I don't know; I haven't read it.

Q. Didn't you say it was very similar? A. I say it was; I still say it was black label.

Q. Now, the label that you show on your coat appears on the inside lining right below the pocket, don't it?A. Yes.

Q. And you have the word "Hilton's"? A. I will have to read it for the first time.

Q. You haven't even read the label? A. No, I have not.

Q. Read it. A. "Hilton's, Fifth Avenue and Thirty-third Street, Thirty-sixth Street and Broadway, 243 Broadway, New York, Brooklyn, New York, Newark, Bridgeport, Paterson, Waterbury."

Q. Now that is what color, black with white letters? A. Yes.

Q. The other, has it got any crest on it at all? A. No.

Q. Now, if the other label on the same page of this book, is the same they are very different aren't they? A. As long as you call it to my attention, they are.

Q. Now, what was the similarity then that you observed? A. Similarity in the signs and window display.

Q. What was the similarity in the signs? A. I told you gold letters on dark back ground, gold raised letters, but I can't tell you how they were spelled.

Q. Tell us on the old Hilton Company sign? A. I don't know.

Q. "The Hilton Company," wasn't it? A. I don't know; I can say that honestly, I don't know.

Q. Don't you know that the sign on 243 Broadway where you bought this suit was green background? A. No.

Q. Will you say it was not? A. I won't say it was or it was not; I say it was dark background.

Q. You did not observe it carefully enough to know? A. No.

Q. You simply assumed,—in other words, it is not true that because you saw the words "Hilton" that that was the old place and you went in there, was that the idea? A. No, I didn't assume it was the old place, I assumed it was new store.

Q. But kept by the old people? A. Yes, I positively did.

Q. You hadn't heard of the dissolution? A. No, not at all.

Q. You did not even observe any dissimilarity in the signs? A. Not in the signs.

Q. You didn't know how long that store had been opened? A. No, sir.

Q. Did you notice any dissimilarity in the design of the windows? A. Only the right window as you go in the store had some silk shirts, I believe.

Q. Didn't you notice that this window was very deep and that you had to walk a long distance in to get in, 243 Broadway? A. Yes, I noticed that.

Q. Did you ever see a store of the Hilton Company at the Astor House or at 85 Nassau Street that had that characteristic? A. Eighty-five Nassau Street you walk quite a ways into the door?

Q. As far as this? A. I don't know exactly the distance, quite a distance I know.

By Mr. Stanley: Q. When you went in there, I think you spoke of having been a customer of theirs for some time past, did you there open your coat and show the label? A. I did that.

Q. So that you knew what the label was? A. I knew I had label that said something about Hilton on it, that is all I know.

Q. Who asked you to come out here? You volunteered to come out? A. Yes.

Q. And to whom did you volunteer to come out? A. The manager of the Nassau Street store, as I understand it.

Q. Who is that? A. I don't know his name.

Q. You were so anxious to come here that you volunteered? A. I called up; after I called up—

Q. I say you were so anxious to come you vol-

unteered to come? A. I must explain it to you to show how I volunteered.

By Mr. Hardin: Q. Go ahead and explain it? A. When I called up to find out the telephone number I told them, "That is funny, I certainly was mislead, I certainly did not intend to go in any other company but you;" the manager and sales man come up to see me; I said. "If there is anything I can do I will do it;" I said, "If I can be of any service I will do it."

Q. I asked you who it was that asked you to come here? A. It must have been the manager of the Nassau Street store; I volunteered previous to that.

Q. The manager of the Nassau Street store, the gentleman that was on the stand this morning? A. Yes.

Q. Do you know the name of the clerk in the store to whom you showed your label? A. No, sir; the only name of any man I know in the other store was Mr. Marx.

Q. What does this clerk look like to whom you showed your label? A. As I recall, he was an elderly gentleman there, he seemed to have a sort of thin face; I think his hair was tinged with grey, if I am not mistaken.

Q. Beard? A. No, he didn't have any beard.

THOMAS E. WHITE, sworn:

Direct-examination by Mr. Hardin:

Q. Where do you live? A. Newark.

Q. What is your occupation? A. Private detective.

Q. Are you connected with any detective agency? A. Cosgrove's Detective agency, Park Place.

Q. Did you go anywhere on a mission for that agency on July 20th of this year? A. Yes, sir.

Q. Where did you go? A. Paterson.

Q. And to what place in Paterson? A. To a store 203 Main Street, corner of Ellison and Main Streets, Paterson.

Q. Were you accompanied by anyone? A. I went alone.

Q. Please tell us about your visit to this store, what store was it? A. Clothing store.

Q. Was there a sign over the door to indicate whose store it was? A. There was a sign over the door that reads "Hilton's" in two places.

Q. Now, tell us what took place on your visit there? A. I entered the store there and a man approached me, a man about forty years of age, dark thin man, thin face, rather, and I told him I wanted a suit of clothes; he showed me some clothes; I said to him, "I have bought clothes before at Hilton's Clothing Company, Fourteenth Street and Broadway, New York, also on Broad Street, Newark; is this the same company?"

Mr. McCarter: I object to the answer now. This is not a customer dealing *bona fide;* he is a detective going to make evidence, and any statement of the salesman in that store can not bind us under such circumstances.

Mr. Hardin: It seems to me in a case of

this kind it is almost the only way to prove transactions that take place in a store.

The Court: I will admit the testimony, but I am frank to say I don't think it is competent; I will deal with its competency later.

Q. You may proceed. A. I asked the man waiting on me, who later on told me he was manager of the store, whether this man was the same company, Hilton Company; he said, "Yes, it is." And later on trying on some clothes I said, "Are you really going out of business or is this an advertisement?" He said, "We are not going out of business, but we are going to move, this store doesn't pay." I then said, "Well, I think I will come back again and if I do I will ask for you; what is your name?" He said, "Manning." I said, "Are you the manager of the store?" He said, "I am." I then left the store.

CROSS-EXAMINATION by Mr. McCarter:

Q. The man's name was Manning, was it, Mr. White? A. That is what he said, yes.

Q. You were employed by Mr. Murray, this young gentleman sitting there, to go up there? A. Yes.

Q. And it was untrue that you bought a suit at 243 Broadway? A. Not at all; I have bought suits at both places.

Q. You have bought suits at both places? A. Yes, sir.

Q. So that that was not an inaccurate statement when you said that? A. It was not, sir.

Q. When had you bought a suit at 243 Broadway? A. Why, about three or four months ago, sir.

Q. And engaged on a similar business? A. No, sir, just for my own.

Q. Don't you know that 243 Broadway was not open three or four months ago? A. I don't say 243; I don't know the number, what store it was; I said Fourteenth Street.

Q. Now, your mission up there was to find out whether the advertising that Hilton's were not to continue business at Paterson was true or not, wasn't it? A. Yes, sir, apparently so.

Q. Well, I ask you the fact; was that it? A. I don't quite understand you.

By the Court: Q. What were your instructions, what were you told to find out? A. Whether they were going out of business and whether it was the Hilton Company .

Q. Whether what? A. Whether it was the Hilton Clothing Company.

Q. You had two missions then, first to find out whether they were going out of business? A. Yes.

Q. Were you shown an advertisement showing that they did expect to go out of business in Paterson? A. I saw one in the window.

Q. Had you seen that before you went to Paterson? A. No.

Q. But you were told they were advertising that? A. Yes.

Q. You were hired to go up there for one purpose, to find out whether that was true or not, is that right? A. Yes.

Q. And they said they were going to move? A. He said they were not going out of business, they were going to move.

Q. Say where they were gong to move to? A. No.

Q. You did not pursue that inquiry further? A. No, sir.

Q. What was it you said about the other branch of your mission? A. I asked him whether this was the same company, the Hilton Clothing Company, he said, "Yes, it is."

Q. Have you given us that accurately now? A. Yes.

Q. You asked him if this was the same company, the Hilton Clothing Company? A. Yes.

Q. And he said it was? A. Yes.

Q. That is exactly what occurred? A. Yes.

Q. You said this man was named Manning, he told you? A. That is what he told me.

Q. What did he look like? A. He was a man forty years of age, thin.

Q. He also told you he was manager? A. Yes.

Q. Did you buy a suit of clothes? A. No, sir.

Q. Told him you might come back? A. Yes, I thought possibly I would come back, it was not impossible that I would go back.

Q. When you bought a suit of clothes at this store in New York which you call 243 were you then on detective work? A. No, sir.

Q. Where else did you tell this man that you had bought clothes? A. Hilton Company, on Broad Street, Newark.

RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. When you talk about 243 Broadway store, New York, how do you locate that store, where is it? A. Fourteenth Street.

Q. Do you know the number on Broadway? A. No, sir, I don't know the number.

The Court: It isn't 243.

Mr. Hardin: I know it isn't 243; I want to clear up the confusion.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. What was it you told the Paterson man when you first went in there? A. The manager, the man who told me he was manager, approached me as I entered the door.

Q. What did you tell him? A. I told him I was looking around, if I saw a suit of clothes that suited me I might purchase it.

Q. What did you tell him about having purchased clothes elsewhere? A. I said, "I have bought clothes before from Hilton Company in New York and in Newark, is this the same company?" He replied, "It is."

Q. Didn't you specify where in New York you bought clothes? A. Fourteenth Street in New York, and Broadway.

BARNEY GOLDBERG, sworn,

Direct-Examination by Mr. Hardin:

Q. Where do you live? A. Passaic and Bloomfield Avenues, West Caldwell.

Q. Are you related to Joseph Hilton and Philip Hilton? A. Yes, nephew.

Q. What is your father's name? A. Joseph.

Q. Has he a middle letter? A. Not that I know of, he might have.

Q. I show you a postal card addressed to Mr. J. R. Goldberg, Passaic Avenue, W. C., Caldwell, N. J., have you ever seen that card before? A. Yes; that was taken out of our letter box.

Q. When? A. I think it was about a week ago.

Q. By whom was it taken out? A. By my mother, and she gave it to me, because she couldn't make anything out of it, and she gave it to me and when I first read it I couldn't make anything out of it myself, because it was not typewriting, it was just written, and until I read it a couple of times, then I got some sense out of it.

Marked 143 for identification.

Mr. Hardin: Now, Mr. McCarter having read it I am going to offer it in evidence.

Mr. McCarter: I object to it.

Mr. Hardin: I assumed you would, and it is possible you may be right, although I think in a case of this kind it bears on its face sufficient evidence of the genuineness of it for the purposes of evidence; a postal card that has come through the mail, it is identified by the witness as having been taken from the box at the home of the recipient, whose address is upon it, and it is lithographed advertisement of the Paterson store without signature.

The Court: I will admit it at this time.

Anybody might have put those in the mails for the purpose of making evidence, as far as that is concerned.

CROSS-EXAMINATION by Mr. McCarter:

Q. You work for the Hilton Company, don't you? A. I do not, sir.

Q. When did you cease working for them? A. About four years.

Q. About what? A. About four years.

Q. What business are you in? A. I go to school.

Q. You are supported by your uncle Phil, aren't you? A. By my father; I have a father who supports me.

Q. And that is the man whose name is Joseph? A. Yes, sir.

Q. Is he a brother of Joseph Hilton? A. No, sir.

Q. What relation are you to Joseph Hilton that sits at my left here? A. Nephew.

Q. You are his nephew? A. Yes.

Q. And your father, Joseph. his brother? A. Isn't my brother; my mother is Mr. Hilton's sister.

Q. Now, you were at school when that postal card arrived? A. Yes.

Q. You don't know it was found in the box except as your mother told you? A. My mother and my little sister.

Q. Do you live in the same house with Philip Hilton? A. Yes, sir.

Q. So that the postal card if it were found in the mail box as you say your mother and sister

told you it was was found in the mail box which is used by the family in which Philip Hilton is a member? A. Yes.

Q. Don't you work in the store on Saturdays? A. I do not.

Q. You never have? A. No, sir, not for the past four years.

Q. Who else lives in this house besides your uncle Philip? A. Married sister.

Q. And your mother? A. And my grandmother.

Q. And your father? A. Yes.

JAMES F. GALWAY, sworn,

Direct-Examination by Mr. Stanley:

Q. Where do you live? A. Three hundred forty-five Forest Street, Jersey City.

Q. By whom are you employed? A. By the Hilton Company.

Q. How long have you been employed by them? A. Why, about eight years.

Q. What is your present position with them? A. Manager of the Thirty-seventh Street store.

Q. How long have you been such manager? A. Year ago last October 1st.

Q. Before that time where were you employed? A. In the Brooklyn store and Chicago store and Newark store.

Q. In what capacity? A. Salesman.

Q. As manager is it your business to meet customers? A. Yes.

Q. As manager of the store in Thirty-seventh Street and Broadway have any instances come to your notice of customers confusing your store and the store of the Hilton's? A. Yes, great many.

Q. Of the stores of Hilton's in New York? A. Yes, great many.

Q. Will you tell us some of such instances?

Mr. McCarter: The same objection.

A. May I refer to notes?

Q. If you can remember without notes? A. Since what period do you speak about?

Q. Since Joseph Hilton started up business, do you remember when that was? A. About first part of November, Thirty-second Street and Fifth Avenue.

Q. Early part of November last year? A. Yes. Well, one customer that I can recall, his name is Mr. Nostrand, I can give you correct address of these names from notes I have got if necessary; he has been a customer of our store ever since I have been up there, and he was looking for a certain style of overcoat, he said he had seen a style of overcoat he liked in Thirty-second Street and Fifth Avenue window; he said he had always bought Thirty-seventh Street, he would like to buy it there; after considerable argument and trouble we finally sold him the overcoat; he still insisted upon seeing the overcoat he had seen in the Fifth Avenue window and we told him it was not our concern and he seemed better satisfied to buy our coat.

Q. Do you remember Mr. Weelock? A. Yes, Mr. Weelock lives in Leonia, I think, New Jersey;

he had bought a suit in our Paterson store, he said, and was well pleased with it, and while in New York wanted to get another suit, and we fitted him up with a suit thinking it was the same concern.

Q. Do you remember Mr. Christie? A. Mr. Christie is an old customer of ours, and he remarked previous to their opening their store, he saw we were opening a new store at Thirty-third Street and Fifth Avenue and said it would be more convenient for him to trade there.

Q. Did you say anything to that? A. Of course, I told him it was not our store.

Q. How about Mr. Mann? A. Mr. Lester Mann, of Albany, he called me on the long distance 'phone one day after the opening of the Thirty-second and Fifth Avenue store, was very indignant in regard to delivery of suit he had purchased and given check for; it seemed he was promised delivery of this garment on a certain day; he called up and demanded delivery; he said he had always bought clothes of Hilton & Company and couldn't understand it: I explained it was a different concern and he apologized for his rough talk to me.

Q. Tell us the story about a man who bought a coat in Philadelphia? A. Yes, he paid $2 deposit on a coat in Philadelphia.

Q. Just tell the story? A. Customer paid a deposit on a coat in Philadelphia.

Q. Did he tell you about this? A. Yes, and he was coming to New York and he asked the manager of the Philadelphia store to have it delivered at the New York store, it was not convenient to

call in Philadelphia; when he came to New York he forgot the exact location of our store and happened to go in Thirty-second Street and Fifth Avenue and went in there looking for his coat, and instead of being shown his coat he said they prevailed on him to buy another coat; after he told them he had deposit paid on the coat in Philadelphia they told him where the store was.

Q. Did you have the coat in your store? A. Yes,

Q. And delivered it to him? A. Yes.

By Mr. McCarter: Q. What was his name? A. Reilly, some such name as that.

Q. Do you remember any other customers? A. Why, last week or the week before last a young fellow named Tesla dropped in there and paid $5 deposit on a suit of clothes, and walking further up the street noticed our store was still where it is and recognized one of the salesmen—

Mr. McCarter: This is in as evidence, what this young man knows?

Q. Tell what the young man said to you? A. He said he had just paid a deposit on a suit down on the next corner thinking he was in our store, and as he always bought our stuff he was not exactly satisfied with the suit selected, so he bought a suit from us; went there and got a $5 pair of flannel pants in exchange for his $5 deposit.

Q. Do you remember about Mr. McNeil? A. Mr. McNeil?

Q. If you have any notes you made yourself you may look at them? A. Yes; I can't remember all these instances all offhand. Mr. McNeil got in the Thirty-sixth Street and Broadway store

thinking he was in our store, discovered his mistake after he was in there, come out and come up to our store and made his purchase.

By The Court: Q. It that what he said? A. Yes.

Q. Any other instances? A. Yes, plenty of them, one that come under my personal observation that I took notes of, a few I have got here I can state them.

By Mr. McCarter: Q. When did you make these notes? A. I made these notes day before yesterday from memorandum book I had taken.

Mr. McCarter: I object.

By The Court: Q. When was the memorandum made? A. At the time of the occurrence.

By The Court: Q. Where is the memorandum now? A. It is in my pocket home; don't want to wear a vest this hot weather so brought the notes.

Q. Can you recall these from memory? A. I think so. Mr. Lyon came in our store one day, well, I think it was in March, last, looking for a fur collared overcoat and said he saw one in the Thirty-sixth and Broadway store, our new store, didn't have the size there and thought he would find it in our Thirty-seventh Street store and remarked at the time he was surprised we were opening a new store in such close neighborhood to the old one. And Mr. Staub was in there quite recently, last week or week before last, said he had bought a suit at Thirty-sixth and Broadway and had inquired at the time if this was the same concern that had a store Thirty-sixth Street and Broadway and was told indirectly it was.

Mr. McCarter: I object.

By The Court: Q. Who was told indirectly? A. The customer.

Mr. McCarter: It isn't what he said at the time he came into this store in connection with a business transaction, but, as I understand it this man Lyon came into their store, said he had been in another store into which he went by mistake and while there was told by somebody in that store that they were the same as the Fourteenth Street store. That is hearsay twice removed.

The Court: I won't permit that.

Mr. McCarter: That part of his answer then will be stricken out?

The Court: Yes; only that part of his answer in which he assumes to say what the customer said the clerk in the Hilton store told him as to relations existing between the two concerns.

Mr. Hardin: You allow him the statement though by the customer that he had been in the other place and had come away from there having learned his mistake.

The Court: Certainly.

Q. Do you remember Mr. Parnelly? A. Yes, Mr. Parnelly is a good customer of ours and he bought a suit in the Thirty-first Street and Fifth Avenue store thinking it was our concern, and later came in to us and bought a suit.

Q. What did he say to you? A. He said he had bought a suit there thinking it was the same concern. And there was an old chap by the name of General Snyder, quite a customer of ours, quite

a favorite around the store, comes in there a great deal; he had been out of the city and came back recently and was looking to me to borrow $2.

Q. Was he formerly assistant attorney general of Pennsylvania? A. Yes; he has got a habit of buying a suit of clothes and coming in in a few weeks and borrowing a dollar; he got in the other store and asked the manager, he said he would come in again later on; he come in the doorway of our place and told me a long story about it. I could recall numbers of them on the same lines as the others if it was necessary.

Q. What are some of the others,—Mr. Costello? A. Mr. Costello has been a customer of ours for years; he comes in usually every Saturday night; everybody connected with the concern knows him. He mentioned the fact that we had opened a store at Thirty-sixth Street and Broadway; we told him it wasn't our store; he wouldn't believe us; he saw Joe Hilton in there and wouldn't take my word for it, in fact I don't think he believes it yet.

Q. How about Mr. Horowitz? A. Mr. Horowitz found fault in regard to the delivery of one of his suits. After I explained it was a different concern he said he had made a mistake, thinking it was the same concern.

Q. Did he tell you where he had bought the suit, Horowitz? A. Thirty-sixth Street and Broadway. And a gentleman from Long Island bought a suit from Thirty-sixth Street and Broadway and sent his wife in to exchange it; she brought it in to us and we told her to go to Thirty-seventh

Street and Broadway, that is where she bought it; after considerable explanation I told her she had made a mistake and brought it to the wrong corner. Dr. Howard come in the store one evening and bought a $35 suit. He and his wife were in New York the following evening, were passing Broadway and Thirty-sixth Street in which it said $35 were reduced to $24.75, I think.

Q. Where was that sign? A. Thirty-seventh and Broadway. She called me up the next morning and was very indignant and didn't see why we charged $35 for a $24.75 suit, that they were entitled to a refund. After consierable explanation I told her the mistake in the store and she was perfectly satisfied.

Q. Where did she see the sign? A. Thirty-second Street and Broadway, thought it was the same store her husband had bought the suit.

Q. Did you have any inquiry from any bank in New York? A. Yes, sometime ago an official of the National City Bank called me up and said that a client of theirs had referred to them a financial statement from the Hilton Company as they were opening up a new store at Thirty-fourth Street and Fifth Avenue, and would like to have us mail them a statement; I told them it was a different concern entirely and they rung off.

Q. Are there any other instances of confusion in the mail? A. Every day there is an average of three or four calls to my customers in regard to suits not being delivered, some mistakes, troubles attached to suits.

Q. Customers of what store? A. Thirty-sixth Street store.

Q. Is that your store? A. No, sir.

Q. Any confusion in the mail? A. Why, occasionally, yes.

Q. How about the delivery of packages and goods? A. Well, we have never received anything; nothing has ever been left there; several times truckmen have driven up to our store with packages; they always come in with the statement before they deliver the package and we always tell them it is the wrong store.

Q. They have stopped at your store with packages for Thirty-sixth Street? A. Yes.

Q. Who has called there? A. I don't recall any particular one of them, but several truckmen.

Q. Do you remember Felix Eisman real estate office? A. Yes, at the time they were opening that Thirty-sixth Street and Broadway store the Felix Eisman office called up and wanted to know if I could give information in regard to who was fixing the new front, they were fixing up a new store, like the pattern and wanted to know if I would give them the name of the contractor who was doing the work.

Q. Were you putting in a new front? A. No, sir.

Q. Where was the new front going in? A. Thirty-sixth Street and Broadway, the front inquired about.

CROSS-EXAMINATION by Mr. McCarter:

Q. Do you recall in your experience in Brooklyn, Chicago, Newark or New York an instance where the same people have opened a new store within a block of a successful store?

Mr. Hardin: Objected to as immaterial.

The Court: I will admit it; I don't know its purpose.

A. Why, no, I can't say that I can.

Q. And I understood you to say that Mr. Lyon expressed great surprise to think that the store on Thirty-sixth Street which he said he thought was run by you should be located so near to yours? A. Yes.

Q. Now, you can't recall a single instance where the same people have opened and operated a store selling the same goods within a block of a successful store, can you? A. I can not, because I am familiar with merchandising and perhaps Mr. Lyon was not.

Q. I am not asking you about Mr. Lyon at all; I am asking you about your recollection; you have no recollection of any such instance, have you? A. If I had time to think perhaps I could answer your question more definitely; I don't know of any right now that I can think of.

Q. Now, when was this Thirty-sixth Street store opened? A. Why, about the middle of February, I should judge; I am not quite sure about the date.

Q. Of this year? A. Yes.

Q. You were then manager of the Thirty-seventh Street store? A. Yes.

Q. And how long had you been manager of that store? A. A year ago last first of October, about.

Q. Year ago last October? A. Yes.

Q. Showing you in our black book a picture on the bottom of which is written "Complainant's Thirty-seventh Street and Broadway, New York,

store, do you recognize that so-called Thirty-seventh Street store where you have been manager? A. Yes.

Q. Is it on a corner? A. Yes.

Q. And that is corner of course there? A. Yes.

Q. Now, I show you Exhibits C-112 and C-113; look at them and see if you recognize C 113 as the front of the defendant's Thirty-sixth Street and Broadway store? A. Yes.

Q. And see if you recognize C-112 as the side view of the same last store? A. Yes.

Q. Now, the defendant's store at Thirty-sixth Street and Broadway has sort of glass block showcases, hasn't it? A. Well, it has got window that acts as sort of showcase on the corner, yes.

Q. Entrance on either side of that block? A. Yes.

Q. You have no similar thing to that at all, have you, at your store? A. No, not that particular thing.

Q. And can you point to any similarity at all in the appearance of those two stores beyond the fact that in the one the name Hilton appears, and the words "The Hilton Company, and in the other the name Hilton's appears? Can you point to any other similarity? A. Yes.

Q. I mean on the photographs now? A. The signs are exactly the same proportionate size, the style of window dressing is practically the same, the color they use in the velour is practically the same, the general construction of the front, the glass edges are the same.

Q. You say the signs are the same? A. About the same proportionate style of sign, yes.

Q. What do you mean by that? A. About the same size sign.

Q. Are you speaking about wooden sign now? A. No, the signs in the windows.

Q. You mean the cards? A. The cardboard signs.

Q. Is there anything particular about the size of the cardboard signs that you use in your windows that are distinctive? A. It is distinctive with the Hilton Company.

Q. What is it? A. Always use about the same size.

Q. Don't the others, don't Stoutenburgh, didn't Watson and doesn't McGregor and doesn't all the retail clothing stores have these signs in their windows? A. Not exactly the same.

Q. You say they are practically the same? A. Yes.

Q. How about the wooden signs? A. The wooden signs are different because they are different color.

Q. You say the glass is the same? A. Metal glass corners characteristic of the Hilton Company stores.

Q. You say the Hilton Company stores are all alike in that respect? A. Almost.

Q. You say the Hilton Company stores are all alike? A. Yes, the stores have got corners of glass, yes.

Q. What do you mean by that? A. I mean where the glass comes together on corners no wood or metal.

Q. Do you say ours has metal? A. No, it has the same thing.

Q. No wood or metal? A. Yes.

Q. Here is block with door behind on our store where yours is simply front with the entrance between? A. All Hilton Company stores are attractive fronts, different formation, different styles, stores are not all alike; that front, Brooklyn front is fancy front.

Q. You do not pretend to say there is any similarity in the front between Thirty-seventh and Thirty-sixth Street? A. Yes.

Q. That is as you mentioned? A. Yes.

Q. Namely, edges of the glass? A. Edges of the glass and general construction of the front and the way the windows are trimmed and style of velour used.

Q. What similar general construction of the front? A. As I explained to you.

Q. What? A. The way the glass is trimmed, the corner of the glass. general construction, height of the window from the floor, height of the window from the street.

Q. How tall are the windows from the street? A. I don't know, I never measured them.

Q. Is there anything distinctive about that? A. Yes.

Q. Now, do you say that the window dressing in your windows is distinctive? A. It was up until the time Hilton's opened up, we were about the only people that dressed our windows in those styles. I have had customers remark—

Q. Never mind.

The Court: Answer the question; don't volunteer.

Q. What is the peculiarity or was the peculiarity in the dressing of the your windows that you have referred to? A. Why, general layout.

Q. Now, general layout; other clothing stores dress their windows, don't they? A. Yes.

Q. There is a regular profession of window-dressers, aren't there? A. I don't know as you call it a profession.

Q. Trade? A. There are men that make a speciality of doing that.

Q. And every clothing store you know in New York dresses its windows, don't it? A. Yes.

Q. What do you say is the way you dress your windows? A. Dress it a little better than the average.

Q. What was the peculiarity about that? A. The way they draped the garment, the way the garment is put on the model, the way the velour is arranged in the window.

Q. Down over the pedestal? A. Yes.

Q. You say that is peculiar to your store? A. It was when we were doing this work before the Hilton's opened.

Q. Stoutenburgh never did that? A. Yes, they have.

Q. Some other people have done it, haven't they? A. Yes.

Q. I don't mean the other Hilton's now, I mean other people? A. Yes.

Q. Have you never seen glass come together without any metal or wooden corners except at your store and our stores? A. Oh, yes.

Q. Eh? A. Yes.

Q. Isn't that a very, very common practice to make glass corners that way? A. No, I don't think so.

Q. You have seen it several times, haven't you, in other stores? A. Yes, I have seen it but it is not common practice.

Q. Where have you seen it? A. I can't recall.

RE-DIRECT-EXAMINATION by Mr. Stanley:

Q. Do you recognize Exhibit 143 for indentification as having been used in your store in New York or in any of the other stores? A. Yes.

Q. Is that the style of ticket that is used always? A. Except at the sale time we use other tickets.

Exhibit 142 for identification offered in evidence and marked Exhibit C-142.

Q. I show you Exhibit 139 for identification and ask whether you have ever seen a transparency like that in your window at Thirty-seventh Street and Broadway? A. Yes.

Q. Exactly the same? A. Well, now I can't be as positive as to detail in regard to the lines on it, but the general construction of it was the same.

Q. Did it have the word Hilton above here and "Half-price sale" on it? A. Yes.

Q. Has that been used often since you have been connected with Thirty-seventh Street and Broadway? A. Yes.

Q. How often? A. Every time we had a sale of that kind.

Q. Did you use transparency similar to that for that quarter-off sales? A. Yes.

Q. Did it have the name "Hilton's" at the top? A. Yes.

Q. Where were these placed? A. On the glass in front of the window.

Q. Pasted on the glass? A. Yes, pasted on with stickers.

Q. You say you have been connected with the Hilton Company for some eight years? A. Yes.

Q. During what period of time have these transparencies been used by the Hilton Company? A. Ever since I have been with them.

Q. Have they been used in the New York stores during all that period? A. I never worked in the New York store except the store I am in at present; in the Brooklyn store.

Q. In the Brooklyn store were they used? A. Yes.

Q. During the period you were connected with the Newark store it was run under the name of George Watson & Company wasn't it? A. Yes.

Q. Did they use any such transparency as the Hilton's in the George Watson store? A. No, sir.

Exhibit Marked C-139 for identification offered in evidence.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Will you swear you have ever seen a duplicate of C 139, which is this document, at the Broadway and Thirty-seventh Street store? A. Well, that is a pretty hard thing to do because the construction of these signs has changed slightly; I would not positively swear that I have seen this particular sign or facsimile of this particular sign any place, but I have seen signs similar and on the same order, lots of them; it is a pretty hard thing

for a person to remember the construction of the sign in detail.

Mr. McCarter: I object to it.

The Court: It may be used for the purpose of illustrating the testimony and for that purpose only.

Marked Exhibit C-139.

Further DIRECT-EXAMINATION by Mr. Stanley:

Q. I wish to ask you whether you remember these window cards that I am about to show you having been displayed in your New York stores since you have been there. I show you Exhibit 105; was that displayed in New York? A. It is very hard to recall these exact signs because there are so many of them on this same order, it is almost impossible; we used similar signs to this; it is pretty hard for me to say this is the positive sign displayed in our store.

By the Court: Q. Prior to June, 1916, did the Hilton Company use signs similar to these? A. Yes.

By the Court: Q. With the world "Hilton's" on? A. Yes.

Further CROSS-EXAMINATION by Mr. McCarter:

Q. Now, the transparency that you remember, do you recall any of them in the Broadway and Thirty-seventh Street store? A. Do I recall any particular transparency, that one you mean, or any transparency which we have used?

Q. I am asking you if you can recall any transparencies showing mark-off sales, half or quarter,

at the Broadway and Thirty-seventh Street store prior to June, 1916? A. Oh, yes.

Q. They invariably represented mark-off sales, didn't they? A. Yes.

Q. Now, how often do you change these window cards of which Exhibit C 105 is a sample? A. Well, sometimes we change them often, then if we have a particular good card and the sale continues right along we don't change the card, we used the same card during the period of the sale.

Q. Are these cards always used to designate sales? A. No, descriptive cards are used in the regular line of business.

Q. How often do you change them, once a week? A. No, I wouldn't say once a week, say probably once in two or three weeks, sometimes once a week bring new ones up.

Q. Have you any specific recollection of any one of these, or any one of which these are samples, these window cards that are before me, being used in the Thirty-seventh Street store with the word "Hilton's" on it? A. No one sign in particular, sir, only we use the word "Hilton's" on most of those signs in the Thirty-seventh Street store; I couldn't identify any particular sign because I didn't make them.

Q. You frequently used window signs with the words "Hilton Company" on it, didn't you? A. Very seldom.

Q. Didn't you have both "Hilton Company" and "Hilton" on the same sign? A. Yes.

Q. Frequently? A. Yes.

Q. That would be quite frequently? A. Yes.

Q. C.105, and you would have them without the

word "Hilton's" wouldn't you? A. I don't recall any without the word Hilton's on them.

Q. You don't? A. No.

Q. You mean to say you don't recall the use of any window signs without the word "Hilton"? A. No.

Q. What, do you say that now honestly? A. I actually do; I don't recall any particular sign we have ever used so far as that in particular is concerned, but I can recall signs in general.

Recess.

THOMAS F. DUFFY, sworn.

Direct-examination by Mr. Hardin:

Q. Where do you live? A. 36 Webster Sreet, Newark.

Q. What is your business? A. Investigator.

Q. Are you connected with any detective agency? A. Yes, Mr. C. J. Cosgrove, 86 Park Place, Newark.

Q. Did you in the course of your business make a call on the twenty-first of July last at the store Fifth Avenue and Thirty-third Street, New York city? A. Yes, sir.

Q. What signs are on that place that you observed? A. Well, on the corner of Fifth Avenue and Thirty-third Street there is two signs, one facing Thirty-third Street and one facing Broadway; each sign is about twenty five feet long by about three feet in width.

By Mr. McCarter: Q. Broadway? A. Fifth Avenue and Thirty-third Street.

By Mr. McCarter: Q. You said one of the signs faced Broadway. A. Fifth Avenue rather, one facing Fifth Avenue and one facing Thirty-third Street, about 25x3, located above the show windows on the front side of the building.

Q. What words are on the sign, as you remember? A. Well, at Fifth Avenue and Thirty-third Street on the large signs, they are wooden signs, there is "Hilton" in large letters, and I am pretty sure on that store on that sign it had "Stores in Newark, Brooklyn, Paterson, Bridgeport" and a couple of other cities; then it had "Art Craft Clothes For Men" if I am not mistaken, all on the same sign, that is on each one of these signs.

Q. How about the Fifth Avenue sign? A. Fifth Avenue sign was the same, both them signs are the same; then in each window they had a sign that appeared to be made of some kind of a thin paper, such as this paper here, glued to the window, and they had one in each window, they are about three and a half by three, and on each one of those signs it had the same, "Hilton Semi-Annual Clearing Sale, Nothing Reserved"; that was on each one.

Q. Did you go in the store? A. Yes, sir.

Q. For whom did you ask? A. Why as I went in the store there was a salesman came to meet me.

Q. And did you ask him for the manager? A. Well, after trying on two or three, about three coats, why I asked him for the manager.

Q. Well, did you meet the manager? A. Well,

that is in the Fifth Avenue and 33rd Street store, there was a gentleman came to me, I couldn't get his name, he was about five feet six, and I judge him to be about one hundred and eighty-five to ninety pounds; the gentleman, the salesman that brought him to me, his name was Holgard, the salesman, he was about five feet seven, thin, about one hundred and sixty pounds.

Q. Did he say, or did anybody tell you that this other man that you mentioned, whose name you cannot remember, was the manager? A. Yes.

Q. Who? A. Why Mr. Holgard told me this gentleman was the manager, but I couldn't remember his name after leaving the store.

Q. Then did you talk with the manager? A. Yes, sir.

Q. What conversation did you have with him?

Mr. McCarter: I object to that.

Admitted.

A. When he approached me he asked me what he could do for me; I told him I wanted to look at a nice suit of clothes; he asked me what price I wanted to go, about; I told him about eighteen dollars; so he asked me what kind did I want; I told him something like I had on, meaning this suit here, and he said that they didn't keep them kind any more, that they had them about two years ago; so I told him I had seen one in the window while passing Hilton & Company's store Fourteenth Street and Broadway, and I asked him if it was one of their stores, and he said yes, that was one of the Company's chain of stores, he said they have a store in mostly every large city in the country.

Q. Any reference made to Brooklyn? A. No, sir.

Q. Did you on same day visit the store at 243 Broadway? A. I did.

Q. What were the signs on that store? A. Why the building is a three story brick affair, and there is one large electric sign about twenty-five to thirty feet in length, and about two feet in width, standing in an upright position on the front of the building, it runs from about the ceiling of the ground floor to the roof, and on that sign in large electric light letters it says "Hilton" on both sides of the sign, and in the main show windows on the ground floor they had two paper signs, and on each one of these signs it said "Hilton Semi-Annual Clearing Sale, Nothing Reserved"; there was one of these signs in each one of the windows. Then on the bottom, the base of the window, there was a brass sign about two feet long, and it said "Hilton" on it, each letter about three and a half feet in size, or three and a half inches in size.

Q. Did you meet the manager at that store or somebody who was indicated to you as the manager? A. Yes.

Q. Was he introduced to you? A. Yes.

Q. Do you recall his name? A. Why I am pretty sure it was Edelman; he gave me one of his cards.

Q. Did you keep the card? A. I have turned the card in with my report.

Q. Did you talk with the manager? A. Yes, sir.

Q. What conversation did you have with him?

Mr. McCarter: Same objection.

The Court: The same ruling.

A. Why I told him I would like to get a suit of clothes, and he was assisted by some other salesman, I didn't get his name at the time; they showed me two or three different light suits of clothes; I tried them on and told them I was dissatisfied with each one of them, that I wanted a suit something like I had on, and he said they didn't carry any checkered suits, that they were out of date; so I also told him how I had seen a suit in the window at Fourteenth Street and Broadway of Hilton & Company's clothing store, and I asked him was that one of their stores, and he kind of hesitated, he didn't say nothing at all at first; so making out I was dissatisfied and going to leave the place, why he tried to persuade me to leave a deposit on one of the suits, and I told him then how I would like to get a suit something like I had on; so he mentioned again they were out of date; then I mentioned how I had seen one in the window, and he tried to tell me I was mistaken, that I couldn't see one in there, and I said "Well" I said "is that one of your stores, one of the company's stores at Fourteenth Street and Broadway," and he said "Yes, that is one of our stores, and" he said "what we carry there we carry here," he said "the prices are the same."

Q. I show you a card; can you tell me whether that is the card you received from Mr. Edelman? A. Yes, sir; I marked that on the back as a little memoranda for myself.

Q. You put that memorandum on contemporaneously, on the back? A. Yes.

Mr. Hardin: I offer the card in evidence.

Marked Exhibit C-144.

Q. You told us now about the store at 243 Broadway and the store at—A. At Broadway and Thirty-sixth is next.

Q. Did you go the same day to the store at Broadway and 36th Street? A. I did.

Q. Did you notice the signs on that store? A. Yes, sir, over the show windows.

Mr. McCarter: What store is this, please?

The Court: Thirty-sixth and Broadway

A. Over the show window facing Thirty-sixth Street there was a sign about twenty to twenty-five feet long and three feet in width, of wood, with large letters, about a foot and three-quarters in size, and it said "Hilton," and on each side of that name "Hilton" it had "Art Craft Clothes For Men." There was the same sign on the Broadway side of the building over the show window, about the same size, and the same saying on that same sign, and in the window they had a sign about the same size, and the same saying on that same sign, and in the show window they had a sign about three and a half by three, with the letters "Hilton Semi-Annual Clearing Sale, Nothing Reserved."

Q. I show you exhibit C-112, being a photograph as of March 3, 1917, of Thirty-sixth Street and Broadway store; are the signs there as you remember them? A. Well this sign here (indicating) is there, and this sign (indicating) is on that side there; that is the sign I refer to and this is the sign I refer to (indicating), where it says "Hilton Art Craft Clothes For Men" up over the window. And then in this window here—

Mr. McCarter: That is not indicating anything.

A. This here sign—

Q. This picture, exhibit C-112, shows the Thirty-sixth Street signs on Broadway and Thirty-sixth Street, does it not? A. Yes.

Q. Now you may describe it? A. All but the signs in the window here, all but the paper signs in these windows here mentioning the "Hilton Semi-Annual Clearing Sale, Nothing Reserved," they are all pasted in the windows.

Q. Did you notice the words on the end of the sign showing list of cities? A. Yes.

Q. At the end of the sign nearest Broadway? A. Yes.

Q. I show you now exhibit C-113, which is picture of the Broadway front of the same store, Broadway and Thirty-sixth Street, this was taken March 3, 1917; does that describe the signs as you saw them last week? A. That describes the sign, but that other picture appears to be a little longer. Is this the Broadway side here?

Q. Yes. A. Well the other picture appears to be a little longer on the Thirty-sixth Street side, that is just by the picture, but this is a good picture of the Broadway sign.

The Court: Referring to Exhibit C-113.

Q. And you recall the names of the cities underneath the name "Hilton," as shown on this photograph? A. Yes, sir.

Q. You have already described your visit to Thirty-third Street and Fifth Avenue. I show you exhibit C-115, being photograph of the front

of the Thirty-third Street and Fifth Avenue store taken November 22, 1916.

Mr. McCarter: If it will save any time we will concede there has been no change in those signs since the photographs were taken as I understand it. That is the fact, there has been no change; the photographs are presumably accurate, and we will save time by admitting there has been no change.

A. I think I made a mistake by mentioning the size of the sign according to my note book.

Q. Well, if you want to correct anything correct it now. A. Well, I made a note at the time of the Broadway and Thirty-sixth Street store; there were two signs about fifty feet,—oh, Broadway and Thirty-sixth Street store, about fifty feet in length and about two feet in width, at Broadway and Thirty-sixth Street.

Q. That is Exhibit C-112 and C-113? A. Yes, sir; those are the large ones.

Q. You recall that the word "Hilton" appeared twice on that sign? A. Yes.

Q. Does this picture I have last shown you, C-115, correctly show the front of the Thirty-third Street and Fifth Avenue? A. Yes.

Q. Do you recall the matter that is shown in the photograph on the top sign over the door as being still there? A. Yes, sir.

Q. I understand that Mr. McCarter now says there have been no changes in these signs since these photographs were taken. Did you meet the manager in the store at 243 Broadway? A. Why, do you mean Broadway now, or the one you were finishing on?

Q. Thirty-sixth Street and Broadway. A. Yes, sir.

Q. Do you remember his name? A. Why it was given to me as a Mr. Aaron or Eron, as near as I know.

Q. Did you have a conversation with him? A. Yes.

Mr. McCarter: The same objection.

The Court: The same ruling.

Q. And please tell us what it was? A. Why there was a salesman, and I pretended that I hadn't been satisfied with the salesman showing me the clothes, so the manager came over, the salesman introduced him as a Mr. Aaron or Eron, and he asked me what he could do for me; so I told him I would like to look at some clothes, I told him about eighteen dollars; so he brought a couple of suits to me, and before trying them on I told him I wanted to get something in a check, and he said he was sorry, that they were out of style, and they didn't have any in stock; I said "That is funny," I said "I have seen one in the window of Hilton & Company's store at Fourteenth Street and Broadway," I said "isn't that one of your stores;" he said "Yes, but" he said "you must be mistaken, you couldn't have seen one there or we would have them here."

CROSS-EXAMINATION by Mr. McCarter:

Q. Did these visits to these three stores take place the same day? A. Yes, sir.

Q. You went, I suppose, as an investigator? A. Yes, sir.

Q. You didn't really intend to buy any suit? A. No, sir.

Q. What was the information you were seeking to get? A. Why to see whether he was representing Hilton & Company, which he did.

Mr. McCarter: I move that "which he did" be stricken out.

The Court: It may be.

Q. Just answer the questions, young man. A. Yes, sir.

Q. Your purpose was to do what? A. To see if the managers of these three different stores were representing their stores to be controlled by The Hilton & Company.

Q. By the Hilton & Company? A. Yes, sir.

Q. Who gave you those instructions? A. My boss, Mr. C. J. Cosgrove.

Q. Did you see this young Mr. Murray that is sitting there, before you went? A. No, sir.

Q. Had no interviews with him at all? A. No, sir.

Q. You had on the same suit of clothes that you now have on? A. Yes, sir.

Q. Had you in fact seen any clothes in the Fourteenth Street Store? A. I had.

Q. When? A. Why on different occasions that I passed there; my business takes me through there quite often.

Q. I am not talking about your business taking you. I asked you when you had seen any clothes in the Fourteenth Street store? A. Well, I would say only Tuesday of last week.

Q. Plaids? A. Yes, sir.

Q. Or checks, rather, if you will? A. Well, not exactly a check, not exactly like this; I wouldn't know what you would call it, I don't know whether

you would call this check or not, but goods something similar to this, stripes.

Q. Didn't you tell them that you had seen in the Fourteenth Street Store a Shepherd's Plaid? A. Well, I don't know what that is.

Q. Didn't you tell them that you had seen a suit in the Fourteenth Street store like the suit you had on? A. Something like, yes, sir.

Q. And in each case each one of the gentlemen to whom you talked replied that they had no such style of goods on hand and that they were out of date? A. For the last two years, yes, sir.

Q. There is no doubt about that? A. Yes, sir.

Q. In each case the manager, as he was introduced to you, was accompanied by a salesman at the time the conversation occurred? A. No, sir.

Q. In what case was that true and in what case wasn't it true? A. As the manager started giving me the service the salesman would walk away, in each case.

Q. Invariably? A. In each case.

Q. How much did you get a day for doing that kind of work? A. Well, that depends, the salary depends upon, three dollars a day and a dollar and five cents for meals.

Q. Then you get besides your expenses three dollars a day; is that it? A. Well, no, the expenses go outside of that, that is $4.05 a day.

Q. I say, you get besides your expenses three dollars a day? A. $4.05.

Q. Well, did you notice the color of the wooden signs on our stores? A. Which stores is that?

Q. Hilton.

The Court: Those that you went in?

A. Yes, sir,—well, I can't exactly describe, I know there was sort of gilt lettering and dark colored signs in general, I just can't explain the color of them.

Q. Do you know the color green, if you see it? A. Yes, I do.

Q. Do you think the sign was green? A. I can't say.

Q. You d d not notice, eh? A. No, sir, I can't, —didn't observe it close enough.

Q. What color is the sign on the Hilton Company's store? A. Which one do you mean, Fourteenth Street and Broadway, Hilton & Company; is that what you mean; the Hilton & Company, corner of Fourteenth and Broadway?

Q. On Forty-seventh and Broadway? A. Well, The Hilton & Company, Broadway, I just can't say that now, I can't say what k nd they are.

Q. What kind of signs is it on Fourteenth Street and Broadway? A. I am pretty sure it is electric sign.

Q. Any wooden sign there? A. Not that I know of.

Q. You don't know. Did you go to any of The Hilton Company stores? A. No, sir.

Q. What was the name that you asked them, as to whether they were representing that concern? A. Hilton & Company.

Q. Hilton & Company? A. Yes, sir.

Q. And they said they were? A. Yes, sir.

Q. You put that down in your book, did you? A. No, sir, I did not.

Q. You are quite clear though that is what you said? A. Yes, that in each one of the stores, every one of them.

Q. What do you say is the printing on the sign at Fifth Avenue and Thirty-third Street? A. Fifth Avenue and Thirty-third Street. I am pretty sure it says "Hilton."

Q. Well is it "Hilton" or "Hilton's"? A. "Hilton Art Craft Clothes for Men".

Q. Said that on each? A. And then the different cities where they have their stores.

Q. It had the word "Hilton's" on it, has it not, "Hilton's" and not "Hilton"? A. "Hilton."

Q. Spell it, will you? A. H-i-l-t-o-n.

Q. That is the end of it, nothing else? A. Well, let me see now, I don't know whether it would be or not, no, I have "Hilton," I think, on the note I made of it.

Q. Well, which was it? A. Well, "Hilton's," if I made the note of it.

Q. Was it that at each one of them, was it that at each one of our stores that you visited? A. The electric sign was that on Broadway, and the sign corner of Fifth Avenue and Thirty-third Street, in fact both signs had that, and this store corner of Broadway and Thirty-sixth Street had the same.

Q. What day was this? A. Saturday, July twenty-first.

Q. In other words, last Saturday; is that right? A. Last Saturday, yes, sir.

Mr. Hardin: I find by inadvertence the Thirty-third Street side of the store, corner of Thirty-third and Fifth Avenue, a photograph of that was omitted; we have got the Fifth Avenue front, but we left out the side street front, and would like to of-

fer that to make the set complete; the other sets are complete.

The Court: Any objection, Mr. McCarter?

Mr. McCarter: Oh, I think not, if that is the fact.

Mr. Hardin: There they are, both of them, one is already in and the other was left out by inadvertence.

Marked Exhibit C-145.

Mr. Hardin: Also offer a larger photograph of the exhibit in the window of the Fifth Avenue store, which Mr. McCarter has seen, and there is no objection to.

Marked Exhibit C-146.

Mr. Hardin: Also offer in evidence photograph of the Paterson store before it was actually opened for business, to which Mr. McCarter has no objection I understand.

Mr. McCarter: I do not remember anything about this one. Well, all right.

Marked Exhibit C-147.

SAMUEL JACOBSTEIN, sworn:

Direct-examination by Mr. Stanley:

Q. Where do you live? A. 226 West Fiftieth Street, New York.

Q. Where are you employed? A. With the Hilton Company.

Q. In what capacity? A. Auditor.

Q. How long have you been employed by the Hilton Company? A. About eight and a half years.

Q. Have you been auditor all that time? A. I have.

Q. Mr. Jacobstein, did you make an inspection of the store of Hilton's in Paterson? A. Yes, sir.

Q. Last year? A. Yes.

Q. What time, what date did you make that inspection? A. One time, I think it was during October, last year.

Q. Did you make any particular observation as to the price cards and show cards in the window? A. I did.

Q. I show you 141 for identification, and ask you whether you saw that in the window of the Paterson store of Hilton's? A. That looks like the one.

Q. How close were you to the Paterson window? A. Right up to the window.

Q. Did you also make an inspection of the store of Hilton's in New York, at Thirty-third Street and Fifth Avenue? A. I did.

Q. When was that? A. The night of their opening, I think it was about November.

By the Court: Q. Well, of what year? A. Last year.

Q. Did you look in the window of that store? A. Yes, sir.

Q. Did you see any price tickets there? A. Yes, sir.

Q. Describe them. Can you say whether or not they were the same as 141? A. The same as the Paterson tickets.

Q. They also were the same as 141 for identification? A. Yes, sir.

Mr. Stanley: With that proof I offer 141 for identification in evidence.

The Court: Any objection?

Mr. McCarter: I would like to cross-examine.

CROSS-EXAMINATION by Mr. McCarter:

Q. Are you positive, Mr. Jacobstein, that the price ticket that you saw in Thirty-third Street was identical with this 141? A. I can't say it was identical, but it looked the same as the ones we were using, and ours looks like that design.

Q. I am not asking you whether it looked like some other thing or not; I am asking you if you are positive that in the Thirty-third Street store on the evening of November fourth you saw on price tickets an emblem identical with that displayed on 141? A. I won't say that I am sure it is identical.

Q. Are you sure that the price ticket that you saw displayed at the Paterson store is identical with 141? A. No, sir.

Q. How close in each case were you to the window? A. Right up to the window.

Q. How near to the price tickets were you? A. As near as the garment was to the glass.

Q. And how near was that? A. I judge about a half a foot or a foot.

Q. Now you went for the purpose of making an inspection to see whether these windows did imitate The Hilton Company windows, didn't you? A. Yes.

Q. That was your object in going? A. Yes.

Q. Your sole purpose in going to both these stores was to find out whether or not they were using similar symbols or emblems like the signs, like those that The Hilton Company use and which you were familar with, was it not? A. Yes.

Mr. McCarter: We object to the admission of the document, your Honor.

The Court: It may retain its mark for identification.

Further DIRECT-EXAMINATION by Mr. Stanley:

Q. Did you have one of these cards with blue ink with you for purposes of comparison at that date? A. No, sir.

Q. So that your comparison is solely by memory, is it? A. Yes, sir.

Q. Now Mr. Jacobstein, have you anything to do with the checking up of the advertising of the Hilton Company? A. I have had some to do with it, yes.

Q. Is it your business to clip and identify advertisements that appear in the newspaper? A. I have done all of it in the last year or so myself.

Q. Since when? A. Well, just about that time, about a year or so.

Q. Have you prepared a list of the advertisements that you have clipped and identified? A. I have.

Mr. Stanley: Mr. McCarter, we have prepared a list, in order to save a long examination, that Mr. Jacobstein has put in

the form of an affidavit, and I have the original advertisements here.

Mr. McCarter: I would like to ask the witness a question or two, and we will get along much quicker perhaps.

Further CROSS-EXAMINATION by Mr. McCarter.

Q. I understand that you have gone through some book of advertisements and have personally checked up the fact that on the days named in this affidavit of yours the advertisements marked as appearing on a certain day in a certain paper did so appear? A. Yes.

Q. Is that what you have done? A. Yes.

Q. In every case what did you do to verify the fact, what formality did you go through? A. I first received the paper, cut out the ads, measured them, checked them with their bills, newspaper bills.

Q. That you did at the time you paid the bills? A. The time that the ads appeared, checked the bills and sent them to the office, carried my O. K. on the bill.

Q. I am asking you what you did when you made up this statement? A. I went through the advertisements that carried my O. K. on them, went through the book of advertisements that carried my checking up.

Q. Each advertisement had a check of yours? A. Yes, carries my own check.

Q. Some mark of yours? A. That I check from the bill to show it has been checked.

Q. And having gone through it, bearing your

check, then what did you do? A. I don't get that.

Q. Having gone through those that bore your check what else did you do before you prepare this statement? A. I made record of the dates that they bore, the names of the papers, etc.

Q. That appeared on the advertisements themselves, did it? A. Yes, each ad. carries the name of the paper and the date it appeared, surely.

Q. Are you sure about that? A. Positive.

Mr. Stanley: Here is the book, and there is his mark on it, "S. J.," Samuel Jacobstein, and the date, and the paper. This is the scrap-book, and that contains the advertisments.

Q. And this gives the name of the paper as well? A. Yes, sir.

Q. In each case? A. Yes.

Mr. Hardin: This was done in accordance with an understanding we had at an earlier hearing, and we have another similar list by another witness, Margaret S. Walling, which Mr. McCarter can look at also.

Mr. McCarter: We have no possible objection to the use of this memorandum if Mr. Jacobstein says it is accurate, instead of going through countless pages of this document. We renew our objection to advertisements appearing in other cities other than in New York or Paterson, and of course expect to have the right to look at the advertisements.

Mr. Hardin: Certainly; and here is the other list.

The Court: Let that be marked in evidence as what the witness would swear to if he were examined.

Marked Exhibit C-148.

Mr. McCarter: I would rather have a chance to see Miss Walling, I don't know anything about her.

Mr. Hardin: We did this, as I understood, in accordance with stipulation that it was to be done by this witness, rather than have witness come here and identify each statement in the book, and there wasn't much use of our taking the pains to do it if there is to be a misunderstanding now.

Mr. McCarter: I recall that the Court said that he would very much prefer rather than to take time to go through this entire book that there should be some effort made to shorten up this thing, and I did not then and do not now object to that, but I do not think we are bound to take some Miss Walling's whom we have never heard of, verified statement without seeing her and find out a little more about it.

Mr. Hardin: The same kind of identification appears in the book under "L"; her name was Lloyd at that time; exactly the same method, and if she was here she would go through the book and identify the same way as Mr. Jacobstein would.

Mr. McCarter: I am unwilling without seeing Miss Lloyd or Mrs Walling to let that whole thing go in. Mr. Jacobstein we know about and have confidence in him,

and I am satisfied that what he says he has done he has done accurately, but this lady is accessible and she can come here; we won't take long.

Mr. Hardin: She would have been here but for our understanding that it was not necessary to bring her.

Further DIRECT-EXAMINATION by Mr. Stanley:

Q. Mr. Jacobstein, have you kept a reckoning of how much has been paid for advertising by The Hilton Company in the years 1915 and 1916? A. I have.

Q. Have you made up a statement of figures showing how much was spent? A. Yes, sir.

Q. This is with respect to newspapers only? A. Newspapers only, yes.

Q. I show you two statements prepared on the bill head of The Hilton Company; are these statements you prepared showing what was spent for newspaper advertising during those years? A. Yes.

Q. Are they correct?

The Court: Ask him how much.

Q. What was the total that was spent in 1915 for newspaper advertising? A. $36,615.58.

Q. Is the statement divided by separate cities? A. Separate cities, separate months.

Mr. Stanley: I will offer these in evidence now, your Honor.

Q. These figures were prepared yourself, by you? A. Yes.

Q. Did you prepare a statement for the year 1916 also? A. Yes.

Q. Showing what was spent for newspaper advertising during that year? A. Yes.

Q. Divided by cities? A. Yes

By the Court: Q. Is that the statement before you? A. Yes, sir.

Mr. McCarter: What year is that, 1916?

Mr. Stanley: 1916.

Q. What is the total of this? A. $30,846.39.

Mr. Stanley: I wish to offer these two statements in evidence.

Marked Exhibits C-149 and C-150.

Q. Mr. Jacobstein, have you prepared statements showing the amount of business done in all the stores of the Hilton Company for the years 1915 and 1916? A. Yes, sir.

Q. I show you a piece of paper and ask you whether that is the statement showing the business done during the year 1915 for all the stores? A. Yes, sir.

Q. What is the total amount of business done for 1915?

Mr. McCarter: That is immaterial I think. However—

Q. What is the total?

The Court: I will admit it. I do not see its materiality quite.

Mr. Hardin: I think it shows the value and good will.

The Court: I suppose it is conceded that they did a large usiness. However offer it, it cannot do any harm to anybody.

Q. What is the total? A. $1,239,294.12.

Q. Have you prepared similar statement showing amount of business done in all The Hilton

Company's stores for the year 1916? A. Yes.

Q. Is that such statement that I show you? A. Yes.

Q. What is the total for the year 1916? A. $1,316,546.14.

Mr. Stanley: I offer those two statements in evidence.

Marked Exhibits C-151 and C-152.

Q. Mr. Jacobstein, can you tell me the number of customers that the store at Fourteenth Street, New York, has had? A. I cannot tell the exact amount.

Q. Up to March of this year?

Mr. McCarter: From when?

Q. From the time the store opened?

Mr. McCarter: That must be immaterial, your Honor.

The Court: I do not think I should admit any more of this.

Mr. Stanley: To show the quantity of business that has been done, and therefore the value to those people of the trade name which they are using.

The Court: I think you have gone far enough in it; undoubtedly they are doing a large business.

Q. Mr. Jacobstein, have you been in Bridgeport recently? A. Not recently.

Q. How lately were you there? A. Some months ago, I can't say just when.

Q. What month? A. Probably six months ago, probably about that time.

Q. Was there any store in Bridgeport that time of Joseph Hilton? A. I didn't see any.

Q. Did you look for one? A. Yes, sir.

Q Do you know whether Joseph Hilton had any stores in Brooklyn? A. I don't know of any in Brooklyn.

CROSS-EXAMINATION by Mr. McCarter:

Q. You havn't any store in Bridgeport, have you? A. The Hilton Company? No, sir.

Q. Have you the figures, Mr. Jacobstein, for 1913 and 1914, the same as you have given us for 1915 and 1916? A. What figures?

Q. The business done in several cities? A. Yes, sir.

Q. Have you got them here? A. I haven't them here, no, sir.

Q. Will you get them for us and produce them at some time? A. I can.

Q. And you will? A. Yes, sir.

Mr. Stanley: I wish to put in some formal proof. We have called upon you for a certain letter dated May 5, from Philip Hilton to Joseph Hilton. Have you got that with you?

Mr. McCarter: I do not remember the call and I do not remember the letter.

Mr. Stanley: Here is the call, with service acknowledged.

Mr. McCarter: Yes, we have this letter dated May 5, 1916, if that is what you refer to.

Mr. Stanley: That is the one.

Mr. McCarter Do you propose to offer this?

Mr. Hardin: Yes, we wish to offer in evidence this acceptance.

Mr. McCarter: I do not think it can go in unless you offer the other too.

Mr. Hardin: Well, here is the copy. Mr. Murray says he gave me the original but I cannot find it.

Mr. McCarter: I would very much prefer, Mr. Hardin, that you see if you can find it. Cannot you postpone that until later?

Mr. Hardin: I didn't know until this minute that I did not have it.

The Court: Let that go over until another day, Mr. Hardin, if you have not got it handy now.

Mr. Hardin: We wanted to put in the offer and the acceptance.

Mr. Stanley: I also call upon you to produce a certain letter written by Mr. Hardin to Mr. Joseph Hilton, dated October 4, 1916, requesting that Mr. Hilton stop the use of the name Hilton, and also requesting that he stop the use of the emblem.

Mr. McCarter: There is the letter. (Producing letter)

The Court: Any objection to it, Mr. McCarter?

Mr. McCarter: Of course we are not responsible for the composition of that letter. That is a notice to desist, and I suppose from that point of view it is competent. There is a lot of stuff in there that sounds very well from their standpoint but we do not admit by producing the letter.

The Court: It may be marked.

Marked Exhibit C-153.

Mr. Stanley: We also call upon you to

produce the original bond given by Philip Hilton to Joseph Hilton. Mr. Mindes showed that to me and then by my consent put it in the safe deposit vault. I have here a typwritten copy of it.

Mr. McCarter: That is all right, Mr. Stanley.

Mr. Stanley: This is offered as a copy of the original bond. The signatures do not appear on this copy but that, I take it, you do not object to.

Marked Exhibit C-154.

Mr. Stanley: The Court will remember that at the last hearing we had upon the stand a Mr. Miller, who was the advertising manager of the Hudson Tunnel Advertising Company, and instead of calling him back it was agreed that he could send us by mail certain figures of passenger traffic of the Hudson tunnels, which he has done, which I have here and I wish to offer in evidence; they are composed of two letters written to us.

Mr. McCarter: Suppose you let us look at those over night.

Mr. Stanley: Yes. I have subpoenaed the advertising manager of the Newark Evening News with circulation figures, and then we felt that it was unnecessary to have him come up because he furnished statements for each year of the circulation of the Newark Evening News to show the circulation of the News in Newark and Paterson and elswhere, and I wish to offer those.

The Court: Any objections?

Mr. McCarter: We won't require the presence of the statistical man; we will let those go in.

Mr. Stanley: I offer as one exhibit circulation figures of the Newark Evening News for the years 1910, 1911, 1913, 1914, 1915 and 1916.

Marked Exhibit C-155.

Mr. Stanley: We had upon the stand at the last hearing a Mr. Hanser, who has done the advertising for the Hilton Company, and he referred to publications in various foreign newspapers. We are prepared at this time to offer circulation figures of those newspapers; they are in the nature of correspondance to Mr. Hanser and they are all here.

Mr. Hardin: That is the evidence Mr. McCarter said would be satisfactory.

Mr. McCarter: Of course we feel from our point of view—your Honor has noted the objection and admitted the evidence—that the advertisements in the Chicago and Boston and Philadelphia papers are irrelevant to this controversy. Subject to that objection we have no objection to these apparently official documents going in to indicate what the circulation of these papers is. We won't require the production of the statistician of the papers.

The Court: They may be marked as one paper, and all subject to that objection. I suggest that they be marked "Circulation of foreign newspapers" and as one Exhibit.

Marked Exhibit C-156.

Mr. Hardin: We will have to keep these papers until later in the case. That acceptance is a literal copy of the original letter, but if you want me to look further for it I will try and find it. Also you will have to wait for us to produce Mrs. Walling, who was formerly Miss Lloyd, and who made up this list, which we assumed we were having made up in accordance with mutual understanding and with the suggestion of the Court. We can produce the lady, but we cannot do it today, and with those omissions supplied complainant rests.

FRANK J. MURRAY, sworn.

Direct-examination by Mr. McCarter.

Q. You are a member of the bar, Mr. Murray? A. Yes, sir.

Q. You are the Frank J. Murray who is now the general manager of the Hilton Company? A. Yes, sir.

Q. You had been counsel of the Hilton Company how long prior to the dissolution in June, 1916? A. Since 1907.

Q. You were a friend of Joseph Hilton's? A. Yes, sir.

Q. I show you a document which I have been called upon to produce, but as long as you are here on the stand I will ask you about it now; we won't offer it in evidence. I ask you if this docu-

ment dated Orange, New Jersey, May 5, 1916, the body of it is in your hand writing? A. Yes, sir.

Marked for identification D-1.

Q. This refers to a paper designated therein "Your offer"; was that also in your hand-writing? A. Yes, sir.

Q. You knew of course that Mr. Joseph Hilton could not read? A. Yes, sir.

Q. After the dissolution how soon did you become manager? A. I think it was within two or three weeks.

Q. Wasn't it earlier than that? A. Well, it was, I remained in my office in Orange for two or three weeks to get through with my legal affairs.

Q. As a matter of fact you commenced your duties within a day or two after the dissolution, did you not? A. No, sir.

Q. Well, whenever you did commence, you have since been the general manager in general charge of the business? A. Yes.

Q. Did you compose and send out a paper dated July 3, 1917, which I show you? A. Mr. Hanser, our advertising man, wrote the letter, and I suggested, I edited it.

Q. You edited it? A. Yes.

Q. And that bears the impress of your signature? A. Yes.

Q. And it was sent out? A. Yes.

Q. Generally to the trade? A. 1917.

Q. Yes.

Mr. McCarter: I offer it in evidence.

Q. While Mr. Hardin is reading that I will ask you if that is Mr. Philip Hilton that sits there in

the back row of this room? A. Not the back row, the second.

Q. The second row? A. Yes, sir.

Q. Right behind Mr. Jacobstein? A. Yes.

Q. He was here all day today, was he not? A. Yes, sir.

Q. Here all day the last time we were here? A. Yes, sir.

Q. He is the Hilton Company, is he not? A. Yes, sir.

Mr. McCarter: I offer in evidence this letter of July 3, 1917.

The Court: Any objection?

Mr. Hardin: No.

Marked Exhibit D-2.

Q. I now show you a card entitled "Warning", please look at that and see if you ever saw a card like that before? A. I saw the copy; yes, I have seen the card today, but I saw the copy before it went out.

Q. Did this card go with the letter which I have just shown you and which is marked Exhibit D-2? A. I understand it did, but I didn't have charge of the mailing, but I understand it did go with it.

Q. You had seen the matter in the warning or card before it went out? A. Yes.

Q. And it went out with your sanction? A. Yes.

Mr. McCarter: I would like to offer that in evidence.

Marked Exhibit D-3.

Q. I show you an advertisement or clipping from the Newark Star Eagle, Tuesday, October 31, 1916, also contained in this black book; please look at it and see if you know anything about that

advertisement? A. I know that such an advertisement appeared.

Q. I imagine you furnished the photograph for it, which incidentally I remark seems to me to be pretty good. A. Why I believe that Mr. Hanser got the photograph from,—well, I am not sure whether I did or not, I might have.

Q. And you saw the advertisement before it went out, did you not? A. Yes, I knew the advertisement was going out; it went out against my wishes.

Q. Against your wishes? A. Yes.

Q. Still, as general manager you—A. I had nothing to do with the matter whatsoever; it was Mr. Hilton and—principally Mr. Hilton, thought it would be a benefit to the business, and Mr. Hanser and he were really the ones.

Q. For instance, I see it says at the bottom "Signature. The Hilton Company, Philip Hilton, president." Is The Hilton Company, a corporation? A. No, sir.

Q. Is Mr. Hilton the president of it? A. No, sir.

Q. How did that error come about? A. You will have to ask Mr. Hanser, because he is the one who engineered the proposition.

Q. I see this advertisement says that this event namely, the reorganization of the company, when you assume your duties on November first as general manager, will mark the completion of nearly ten years continuous service as the company's general counsel. You had been general counsel of the company then for nearly ten years? A. Well, I had been connected with them in a legal way; there had often been other counsel with me;

I was a young attorney and didn't attempt to be the sole counsel of this concern.

Q. What I am asking is whether that advertisement is true, that you had been general counsel of the company for ten years? A. Yes, sir.

Q. The shield on Exhibit D-3, was that meant to signify the shield indicated on the price slip C-142? A. Yes, except that it was meant to be the same shield; this is a more complete detailed drawing of the shield that appears in the clothing, you see, with the little cross on top of the crown. Of course in making the window signs they do not make them as detailed or minute.

Q. But it was intended for all intents and purposes, although a little more specific in detail? A. Yes, it was meant to refer to this shield that is in the label.

Q. It was meant to refer to the shield that is in the label. A. Yes.

Q. How long to your knowledge has the label which appears in the book, and you also indicate on the lining of your coat, been on the label used by he Hilton Company? Ever since you have known it? A. No, I don't think it has been used as long as that.

Q. Well, how long has it been used? A. I think it has been used about, I should say probably seven to eight years?

Q. Seven or eight years? A. Yes, sir, around that time.

Q. I show you the label The Hilton Company in this black book, designated above it "Complainant's label"; do you recognize that as the label of The Hilton Company? A. Yes.

Q. And that as being the label that you say they have used for seven or eight years? A. Yes; it might have been a little different shape or a little larger, or might have been a little different color during that time.

Q. But substantially that has been the label they always used? A. Yes, with this shield on.

Q. Always had the shield on? A. As far as I remember.

Q. Every suit of clothes you sold had the label on it, did it not? A. I wasn't so intimately connected with the business end of this business to know that, but as far as I know.

Q. As a matter of fact it is the practice now to always have the label in the clothes? A. Yes.

Q. I refer you to another page in this black book which has some stationery in it. Did you read the bill of complaint in this case before it was filed? A. I think I did, yes, sir.

Q. Did you intend it to be accurate? A. Bill of complaint?

Q. Yes. A. Why certainly.

Q. Do you recognize the stationery that I show you "The Hilton Company, Makers of Men's Clothes, 85 Nassau Street near Fulton, New York" as being the stationery that was used by The Hilton Company? A. The Hilton Company—

Q. Now answer the question, please. A. I cannot say that I do, because this is the New York store and it has not been used to my knowledge since I have been with the concern, but it is probably so, that is their stationery.

Q. And how about the envelope? A. I believe that was their stationery.

Q. Now did you ever see any stationery or can you produce any stationery used by The Hilton Company prior to or at the time of the filing of the bill, which was on November 18, 1916, which showed the use of the word "Hilton" or "Hilton's"? A. I do not think I can, Mr. McCarter, I have made no search for any.

Q. Why did you permit the bill, which you say you read, to be field making that allegation? A. Which portion do you refer to?

Q. The third paragraph, which reads: "In the course of such business and continously during the periods above set forth, said partnership used the words 'Hilton' and 'Hilton's' alone and in combination with other words, as Hilton-made, Hilton sold, Hilton's clothes, etc., to describe and designate merchandise manufactured and sold by said partnership and to designate and locate the places where said clothing was manufactured and the retail stores where said business was conducted. Hilton's clothes &c. to describe and designate the said words were used variously by said partnership and appeared on its stationery, in correspondence, in advertising," etc. Now I am asking you where is any stationery or where is any correspondence in which the word "Hilton's" or "Hilton" appear? A. There is the word "Hilton" as part of "The Hilton Company".

Q. Is that your answer to that question? A. The bill says—

Q. Is that your answer to that question? A. Yes, sir.

Q. Where is there any label on any correspondence? A. This label here. I think I should have

tne opportunity, or would like to have it, of explaining my answer to the question with reference to—

The Court: You will have that when examined by your own counsel.

A. I don't want to be impertinent, I didn't intend that.

Q. No, I don't think you did, I haven't any such idea, I am not supersensitive. What I want to know is where the word "Hilton's" apostrophe "Hilton "appears on any stationery. You say that the word "Hilton" appears in the title "The Hilton Company." Now if that is your answer on that I will ask you where the word "Hilton" appears in the stationery? A. As I understand this paragraph it says the use of the word either "Hilton" or "Hilton's" standing alone or in connection with other words, its use in connection with other words where it is part of the name "The Hilton Company," and therefore it is correct.

Q. "Hilton's" too? A. No; it says "Hilton" or "Hilton's" or "Hilton made"; it doesn't mean that all of those things appear on all stationery. That is my understanding of the meaning of the paragraph. That is why I did not object to it.

Q. Do you make the same answer with reference to that part of the bill which said that the same words appeared upon labels which were sewn in the said clothing? A. Yes, that would be my same explanation as to that.

Q. Can you recall a single piece of stationery, a single label, or a single bit of correspondence upon which the word alone "Hilton" or the

word alone "Hilton's" appeared? A. I am not sure that I can, although I believe that Mr.—

Q. I didn't ask you what you believed. Answer my question, please. If you can recall a single label or a single letter head or a single paper on which correspondence was conducted, in the language of the bill of complaint, upon which the word either "Hilton" alone or "Hilton's" with an apostrophe, appeared? A. No, I cannot recall that.

Q. Now during the several years prior to the dissolution you were very intimate with Mr. Joseph Hilton, were you not? A. Why I was intimate with both members of the firm.

Q. Was your education paid for by Mr. Joseph Hilton? A. No, sir.

Q. You had an active acquaintance with the business as it was conducted in Newark? A. I had a general idea of it, yes.

Q. You were consulted very frequently by both of the gentlemen? A. Well, I don't know whether you would say very; I was consulted occasionally.

Q. Now during the time that you were in conference with Joseph Hilton, at and about the occasions when the yellow paper marked Exhibit D-1 and its predecessor, both of which you say were in your handwriting, were prepared, you knew, did you not, that you were to become general manager of the business? A. No, sir.

Q. Didn't you have arrangement to go into that enterprise? A. No, sir.

Q. When was that first made? A. Why this offer and acceptance were executed about in the early part of May, and then there was until June

twenty-fourth, the bill of sale hadn't been executed.

Q. Now you are going into a lot of things I am not asking you about.

Mr. Hardin: I am bound to ask, I think, at this stage about what may be the purpose of this cross-examination. There is no plea in this case or no answer which attempts to rebut this bill of sale or set up that it was procured by fraud or any other method, and this testimony can have no other intimation except the insulting intimation to the witness that he connived to procure the illegitimate exercise of the option of purchase that Mr. Joseph Hilton gave to his brother, and I therefore object to it as irrelevant. It does not reach the equities in this case that I can see at all.

Mr. McCarter: Counsel has told us he is going ot offer this Exhibit D-1 when its predecessor and twin is produced, which he hopes to do to-morrow morning, and in view of the statements made in this paper I think we are entitled to bring out from this witness just what occurred at the time that these documents were written by him.

The Court: I do not know what the purpose of offering this is.

Mr. Hardin: I said myself I didn't think it made any difference whether I got them or not, if I can find them maybe I will offer them and maybe I won't; they identify the subject matter; but my objection goes deeper than that in the line of examination that counsel is engaged in.

Mr. McCarter: Well, I will withdraw the question under the objection, at the present time at least.

Adjourned until Wednesday, July 25, 1917, at Chancery Chambers, Newark, New Jersey at 10 a. m.

Continuation of examination pursuant to adjournment at the place and in the presence of the Court and counsel as before.

SAMUEL JACOBSTEIN recalled:

Direct-examination by Mr. McCarter:

Q. I think you were to give us some more figures? A. Yes, sir.

Q. What were they, please? A. Figures of 1913 and 1914.

Q. Of the amount of business done? A. Of the amount of business done, yes.

Q. Have you compiled them? A. Yes.

Q. Will you just let us have them please, 1913, first? A. I have different figures here of the clothing and of the furnishings of the different years. Do they all go together?

Q. I didn't know you did any furnishings; we will come to that later. What I want now is the clothing? A. I have that.

Q. 1913? A. 1913, $1,529,073.41.

Q. Now, will you give them in the different stores? A. Philadelphia, $316,524.47; Thirty-seventh Street, $167,349.00; Brooklyn, $217,310.-

40; 219 Broadway, $75,576,25; Chicago, 233,060.-05, Pittsburg, $120,757,05; Boston, $251,199.53; Newark, $147,296.66.

Q. That is for 1913, that is all? A. 1913, that is all.

Q. 1914, total amount of clothing? A. Of 1914?

Q. Yes. A. $1,417,985.02.

Q. Now, Philadelphia? A. $177,668.21.

Q. Thirty-seventh Street? A. $136,111.08.

Q. Brooklyn? A. $215,625.99.

Q. 219 Broadway? A. There was not any 219 Broadway then. Fourteenth Street and Broadway, $86,966.59; Nassau Street, $18,797.50; now Chicago, $278,348.10; Pittsburg, $181,898.66; Boston, $170,016.57; Providence, $10,332.30; Newark, $142,220.02.

By the Court: Q. Total what? A. $1,417,985.02.

Q. In 1913 do the figures that you gave for Pittsburg represent the full year? A. 1913?

Q. Yes. A. From July, 19th, on opening day.

Q. Six months practically? A. About that opened July 19, that year. That was the opening of the Pittsburg store, and that is for the same of some of the other stores.

Q. Give us those. What is the fact with reference to Boston? The figures you gave with reference to Boston? The figures you gave for 1914, is that for the full year? A. No, sir.

Q. What is it for? A. Up to September 9, the clothing of the store, of that one store.

Q. Then after that the store did not operate? A. Not that store, no, sir.

Q. Were the rest of the figures all for the full years? A. For 1914?

Q. Yes, 1914, for instance, how about Philadelphia? A. Philadelphia is the full year.

Q. And is that true of all the other stores except the Boston store? A. No, sir, Fourteenth Street and Broadway.

Q. How much is that? A. May 9th.

Q. May 9th you commenced then, eh? A. Commenced May 9th; Nassau Street August 1st, Providence November 7th.

Q. Now, does that complete the 1914? A. With the exception of the furnishing business.

Q. Now, with reference to 1913 were any others not for the full year beside Pittsburg? A. 219 Broadway.

Q. From when? A. Up to September 5.

Q. Any others? A. Chicago, May 24 on.

Q From May 24? A. Yes, sir.

Q. Any others? A. That is all.

Q. Now, as I understand it, correct me if I am wrong, when your concern bought out George Watson & Company below here they had done a men's furnishing business as well as clothing business? A. Yes.

Q. And you continued that branch of the business there, is that right? A. Yes.

Q. For how long? A. Up to the finish of 1913.

Q. None of the other stores of the Hilton Company did a furnishing business, did they? A. Yes.

Q. Which one? A. Brooklyn.

Q. Brooklyn? A. Yes.

Q. And that was where they bought out Mr. Levy and continued his furnishing business, More Levy? A. Yes, sir.

Q. After they finished his stock did they con-

tinue to do a furnishing business over there? A. Yes.

Q. Always have? A. It continued up to 1914.

Q. Up to 1914, including 1914? A. During the year 1914.

Q. And ceased then?

The Court: Haven't done a furnishing business since when?

A. I have records up to 1915.

By the Court: Q. In 1916 they did no furnishing business? A. No.

By the Court: Q. And they have not since? A. No, sir.

FRANK J. MURRAY recalled:

Cross-examination by Mr. Hardin:

Q. Mr. Murray, you told Mr. McCarter you were a member of the bar; where do you live? A. In the city of Orange.

Q. And do you occupy an official position there? A. I am a member of the Board of City commissioners.

Q. Under commission government? A. Yes, sir.

Q. Orange has commission government? A. Yes.

Q. At the time of the adoption of commission government did you occupy any official position?

Mr. McCarter: Is that material?

The Court: I will overrule that question; I don't care whether he was mayor or member of the commission government or what it was.

Mr. Hardin: I want a word to say about that before your Honor overrules it. Mr. McCarter made a rather insidious attack on this witness.

The Court: I am not going to pay any attention to that.

Mr. Hardin: This gentleman has a standing in his community.

The Court: Whether he did or not I am going to pay absolutely no attention to it. I will not permit any further question on that.

JOSEPH HAAS sworn:

Direct-examination by Mr. Mindes:

Q. Where do you live? A. 163 East 184th Street, New York.

Q. Do you know Philip Hilton? A. Yes.

Q. How long have you known him? A. About ten or twelve years.

Q. Do you know Joseph Hilton? A. Yes.

Q. How long have you known him? A. About the same length of time.

Q. Did you have any business relations with them? A. Yes, sir.

Q. Do you know under what name they were doing business? A. Yes.

Q. What was the name? A. The Hilton Company.

Q. When did you first become acquainted with them as doing business under the name of the Hilton Company? A. 1908 and 1909, I think.

Q. And in what connection? A. I sold them goods.

Q. Were you ever a tenant of theirs? A. Yes.

Q. Where? A. In Boston.

Q. How near to their store in Boston? A. Next door to their store.

Q. In what year? A. Must have been in 1908 and 1909, 1908 or 1909, I am not sure of that.

Q. Have you ever visited the Hilton Company stores? A. Yes, sir.

Q. And in what period, and where? A. In 1908 and 1909 I visited the Newark stores, and I visited the Thirty-seventh Street store, visited the Astor House store; I visited the Boston store while I was there next to it nearly every day; I visited the Thirty-seventh Street store.

Q. How recently have you visited their New York stores? A. The New York stores only I pass by, I was not in there.

Q. Do you pass by it? A. One of the stores I passed by nearly every day.

Q. What store? A. The Nassau Street store.

Q. And have you noticed the form of display cards in their Nassau Street store? A. Yes.

Q. And what is the form that you have seen? A. Simply the Hilton Company.

Q. Have you seen any signs in that Nassau Street store such as Exhibit C 103? A. I don't remember seeing that kind of a sign.

The Court: This is negative evidence, Mr. Hardin; do you object to it? I am not going to permit a great number of witnesses to be called to swear that they did not see these signs in past years or at this time.

Mr. McCarter: I suppose there is a question of authenticity of the complainant's witnesses.

The Court: You might call fifty or a hundred witnesses that they passed these stores during the last year and did not see some of these signs. That is negative testimony, that has no weight at all. I am not going to permit the piling up of evidence of that kind, if this is only one of the samples.

Mr. McCarter: The complainant's case is based upon the idea that they were constantly using these signs. The bill alleges they were, they were constantly displayed. A gentleman goes by, observes the window every day and never saw one. Won't that be evidence?

The Court: He might go by and not see it and it still might be there. The mere fact that he did not see it is no evidence it was not there.

Mr. McCarter: Your Honor bears in mind negative evidence in that way.

Mr. Hardin: Mr. Stanley says he has a case that supports the ruling of the Court.

Q. Now, during your relationship with the Hilton Company did you receive any correspondence from them? A. Yes, sir.

Q. And I show you six letters on the Hilton Company letter head and ask you whether you recognize those letters? A. Yes, sir.

Q. Now, when did you receive these letters? A. June 15, 1908.

Q. Did you receive many letters like that? A. No, sir.

Q. Eh? A. I don't remember as I got any more, as I received many more of them, I know only that one, that was receipt given me for goods delivered.

Q. Did you ever receive any letters with the words "Hilton" or "Hilton" alone on? A. No, sir.

Q Any letterheads? A. No, sir.

Mr. Mindes: I offer those in evidence.

Marked Exhibits D 4, D 5, D 6, D 7, D 8, D 9 and D 10.

Mr. Hardin: There are seven of these letters and all dated in 1908 except one, that is dated in January, 1909.

Q. Did you receive any letters from them since 1908? A. Oh, yes.

Q. About how many? A. I couldn't say; not lately I haven't.

Q. I mean in the last six years? A. No, sir.

Q. Now, I believe you did not state what the character of the signs were that you saw in the Hilton Company, Nassau Street store during the period of time you say you have been accustomed to pass by? A. I saw some white signs.

Q. What did they have on? A. I didn't pay particular attention to what they had on, the prices, &c., only just happened to see white sign.

Q. Did they have "Hilton's" on it? A. I can't say to that. I just merely glanced at the sign; I said some of them had price on; I didn't pay any particular attention what they had on.

By the Court: Q. You did not look particularly to see whether it said "Hilton Company" or "Hilton"? A. No.

By the Court: Q. It wouldn't have made any difference, if you had seen Hilton's on there you would have thought it was the Hilton Company, wouldn't you? A. Since I found out there was—

By the Court: Q. Since you found out there was dispute, but it made no particular difference to you whether the word Hilton Company was there or Hilton, did it? A. It did a little.

By the Court: Q. Because you knew there was dispute? A. Not a dispute when I passed the store and looked whether this was Hilton Company or Hilton store.

By the Court: Q. But if you had not known there was dispute between Philip Hilton and Joseph Hilton it would have made no difference to you whether the word Hilton's was on there or Hilton or the Hilton Company, wouldn't it? A. It would make a difference if I was interested; if I was not interested it wouldn't make any difference.

Q. If you were buying a suit of clothes would it make any difference? A. Yes.

Q. Under what name have you known Philip Hilton to be doing business? A. Under the Hilton Company.

Q. Under what name have you known Philip and Joseph to be doing business? A. The Hilton Company.

Q. Have you ever known Philip Hilton or Joseph Hilton to be doing business as Hilton's? A. No, sir.

Mr. Hardin: That is the same question over again.

The Court: I know it, it has no influence on me at all.

No cross-examination.

BARNEY TAYLOR sworn:

Direct-examination by Mr. Mindes:

Q. What business are you in? A. Clothing business.

Q. How long have you been in that business? A. About six years for myself.

Q. In what locality? A. Broad and Market, Newark, Fireman's Building.

Q. Anywhere else? A. Nassau Street, New York.

Q. Where else? A. That is about all for myself.

Q. How long have you been in the tailoring business either for yourself or in connection with anybody else? A. About twenty-six years.

Q. Do you know the Hilton Company? A. Yes.

Q. Were you ever connected with them? A. Yes.

Q. For how long a period of time were you connected with them? A. Between three and three and a half years.

Q. And in what stores? A. The Newark store, 146 Market Street at that time; then I went to Philadelphia for a week every six months when they run their half-price sale in Philadelphia.

Q. Were you working for Joseph Hilton when he was doing a busines under the name J. Hilton? A. I just started then.

Q. And you continued with Joseph Hilton doing business as J. Hilton until when? A. They were just about going into the Hilton Company, right after that when I started.

Q. Will you state just what you recall with reference to the establishment of the Hilton Company?

Mr. Hardin: That is objected to. It is admitted in the answer that the business was done for many years under the name of the Hilton Company. There is no dispute about it. What difference does it make about the time when they adopted that name? What is the use of going back in ancient history?

The Court: What is the materiality of the testimony.

Mr. Mindes: The materiality is to show why the Hilton Company was established as the trade name.

The Court: What difference does it make why it was made? I can not conceive that it makes one particle of difference. They chose the name The Hilton Company for some reason or other; now, what difference does it make why they chose it? The question here is unfair competition. I can not conceive how any conversation which had to do with the adoption of the trade name has any materiality in determining whether there is unfair competition to-day. I do not care what the parties intended. The question is whether or not the word Hilton's infringed on the Hilton Company. That is the only question in this case. Let him answer.

Q. (Question read.)

Mr. Hardin: I object to that question because it does not indicate his recollection has anything to do with these parties?

The Court: Let him answer.

A. Well, they spoke of forming the Hilton

Company so as to make it a real big concern.

By Mr. Hardin: Q. Who. A. We were together.

Q. Who was there? A. Philip Hilton, Joseph Hilton, I was there.

Q. Will you please give us the conversation the best you can recall about having the name made Hilton Company? A. To make it look like a real big concern; of course, they figured on opening stores then.

Q. Where was the first store they opened under the Hilton Company? A. Philadelphia.

Q. Who had charge of the manufacturing? A. I started their first manufacturing plant.

Q. Did you have charge of it alone or in connection with any of the other members of the firm? A. Well, they opened up the shop themselves, they took charge of hiring the help and managing the work there for them.

Q. What did Joseph have to do with the manufacturing, if anything? A. He had everything to do, he told me what to cut, talked about the styles, whether it should be a three button or two button; whatever he suggested we went ahead and cut and made up.

Q. What did Philip have to do with the manufacturing, if anything? A. Well, at that time nothing; he come up to the shop occasionally.

Q. What was his duty, what was he doing, rather?

Mr. Hardin: I object.

The Court: I overrule it unless you can show me how it is material.

Mr. Mindes: The contention is that these goods had acquired a superiority of

style and fit and make, and it was due to somebody.

The Court: Does it make any difference whether it was due to Philip or Joseph.

Mr. Mindes: We think it does.

The Court: I don't think so. If Joseph sold out to Philip whatever benefit the Hilton Company got from Joseph was sold by Joseph when he sold out to Philip; it don't make any difference which partner contributed to the benefit—

Mr. McCarter: I think the authorities do not support that view.

Mr. Hardin: I want to know the date before the question is answered.

The Court: Let the dates be fixed. What is the date.

A. 1914; it must have been August or September, 1904.

Q. Now, what did Philip have to do with the manufacturing, if anything? A. Well, at that time there was a merchant tailoring store run under the name of the Century where Philip used to stay in there, that was 142, two doors or three doors above this store on the same street.

Q. Did Joseph have anything at all to do with the Century tailoring? A. Not much, mostly in this 146 store, 148 I think it is.

Q. Now, during the period of time you were with Joseph and Philip trading as the Hilton Company were there any goods purchased from manufacturers? A. Oh, yes, we bought, at that time we only made about five per cent. of what we used, the rest was bought outside.

Q. What did you do with the goods you bought from the outside? A. Put them in stock.

Q. And what did you do in connection with putting them in stock with reference to labels? A. We would give labels to the people we got the goods from and they would sew them on and they would come in there with labels on, some that were not on we would sew on ourselves.

Q. What name did you sew on? A. We had labels made The Hilton Company at that time.

Q. Was there any mark of differentiation between those goods that were manufactured by The Hilton Company and those goods that were bought from other manufacturers? A. What do you mean.

Q. Was there any distinguishing mark?

The Court: Did the public when they bought know whether they bought something that was made by you or made by somebody else?

A. No, the public did not, we did.

Q. What mark was there, what was there to distinguish it? A. Nothing at all; the labels are on all the goods alike.

By the Court: Q. It is common practice, is it, for retail clothing stores to buy from different manufacturers? A. Yes.

Q. Can you tell the difference between the Hilton Company's make and the other manufacturers make? A. Not very well.

Q. Could you tell the difference? A. Well, nobody can.

Q. Why can't you? A. You hand me a coat that was made up in the shop there and tell me you bought it in Schwartz Joffreys or Hoffmans,

New Jersey State Library

any of these places, I couldn' tell the difference.

Q. You are familiar with the merchandise sold by The Hilton Company in the City of Newark? A. Yes.

Q. You are familiar with the merchandise that Joseph Hilton sold in Paterson, are you? A. Yes, I have seen his stuff.

Q. Now, has the Hilton Company any superiority, does The Hilton Company possess a reputation for superiority for make in the city of Newark?

Objected to.

The Court: I overrule that. How can he say whether they have a reputation or not.

Mr. Mindes: They claim that.

The Court: I know, but he can't say that. I have got to determine that from evidence, that is supposed to be expert testimony.

Q. Do you know the reputation of the Hilton Company for superiority of clothing as compared with other clothing sold in the City of Newark?

Mr. Hardin: I object to that.

The Court: Answer yes or no. Do you know?

A. Yes, sir.

Q. Now, what is it? A. Only what you hear. We often have customers come up—

Mr. Hardin: I object to it.

The Court: I will admit it. Go ahead.

A. We have customers that come up to buy often that have The Hilton Company suit on, and you naturally pass a remark about it; I have had a couple of occasions where people have said, "I have went into the store there thinking I was go-

ing to get so and so and here is what I got; never again;" that is about all I heard; one a few weeks ago with a blue worsted suit that had the label the Hilton Company on that I sold the man personally myself and I examined the suit and looked at it, which I naturally would; just on two occasions that I heard it from the customer that bought it.

Q. Now, do you purchase merchandise from any manufacturer that sells the same style merchandise to the Hilton Company? A. Yes.

Q. And what manufacturer is that? A. One in particular is Charles M. Meltzner & Sons, brothers, I think it is on the signs, brothers, Waverly place.

Q. Any others? A. Well, my business is mostly now merchant tailoring, I just carry a little of ready mades that I buy in these places. Schwartz Joffrey is another one, Schwartz Joffrey & Company.

Q. By what name was business heretofore carried on by them known in the trade? A. Before the Hilton Company.

Q. No, I mean now, within the last six years, say? A. The Hilton Company.

Q. Any other name? A. Not to my knowledge; in fact, I know there was not, because I make it a practice to go around to the stores and see what they are doing in the way of sales so I can keep in touch with what the different stores are doing; I usually run sales, too.

Q. How long have you been corner of Broad and Market Street? A. In business going on six years.

Q. How far was the Hilton Company store

from your place? A. Right across the street.

Q. Do the Hilton Company carry merchandise superior in quality to Stoutenburgh's?

Mr. Hardin: That is objected to. How is this witness going to know?

The Court: Do you know?

A. Yes, I know that they do not?

By the Court: Q. How do you know? A. Because they buy goods where I or Stoutenburgh or anybody else buys. I don't see why their clothes are different when they buy from the same factory.

Q. Do they carry any merchandise superior in quality, style and fit to McGregor & Company?

Mr. Hardin: I object to this witness setting himself up as an expert to compare the different clothing establishments in Newark. We have got a way of comparison between the rival litigants here, and now we are going in comparison along clothing row and even the other side of Broad Street.

The Court: I will admit it.

Q. (Question read). A. I will say no.

By the Court: Q. You will say no. Why will you say no. A. I know it because I often see the different makes; we go as a rule, sometimes go in the stores to examine their merchandise; we sell people that come up with a McGregor suit or come up with a Stoutenburgh suit or will come up with a Hilton suit or any other suit, and as a rule we look at them so as to see whether we are giving as good values as the other stores are, any legitimate house will that is figuring on keeping up the standard quality, in fact, ask some of these

customers what they paid for the suit so as to keep a line on them.

Q. Is the style, fit and character of the clothing sold by Stoutenburgh & Company superior to the style, fit and character of the clothing sold by the Hilton Company, or inferior?

Mr. Hardin: I object.

A. I would say no, they are practically the same.

Mr. Hardin: You can't tell about fit unless you have got the person.

A. One man might charge two or three dollars more for his suit, figuring overhead expense, but as a rule they are pretty near alike; every man tries to give as good value as he possibly can.

Q. What have you got to say with reference to McGregor? A. I would say the same thing about them; it is just the overhead expense; the quality of the goods, we buy the goods in the same mills, we get our linings and different things in the same place.

Q. And whether a man goes to Hilton's, Stoutenburgh's, McGregors, depends on whether or not he has been to one of the places and satisfied with what he bought there? A. Yes.

Q. And service goes into whether you can keep your customers? A. Yes, that is what we look out for.

By the Court: Q. And you make your reputation, if you can, on service? A. Yes, on service; if a man isn't satisfied try to make it right with him; we study what the customers buy of others to try and give a little better value, that is the way a legitimate house works in order to maintain his trade.

By the Court: Q. That is all through the clothing trade? A. Every legitimate house follows that practice.

By Mr. Hardin: Q. When did you leave the Hilton Company? A. It must have been about 1907 or the early part of 1908.

CARL J. SCHULTZ sworn:

Direct-examination by Mr. Mindes:

Q. What is your business? A. Printing, publishing.

Q. How long have you been in that business? A. Since 1899.

Q. Did you have any business dealings with the Hilton Company? A. Yes, sir

Q. And in what connection? A. Why, furnishing them with printing.

Q. Do you recall the style and character of the printing you furnished them? A. Yes.

Q. What was it? A. Well, the firm's name, "The Hilton Company, smart clothing," that is the way the printing read.

Q. Did you ever print for them any printing with the name Hilton's on? A. No, sir.

Q. In any shape or form? A. No, sir; I Hilton first, when they first started in business, continued the business, I. Hilton, printed the firm name I. Hilon on, then the trade name, the partnership, The Hilton Company, but never Hilton alone.

Q. What period of time was this? A. Why, the first 1903, from 1902 to about 1912.

Q. Can you state the volume of printing you

did for them during that period of time approximately? A. It ran occasionally up as far as three or four hundred dollars a year.

Q. Three or four hundred dollars a year? A. Year.

Q. Did you do all of it? A. No, sir, did the better grade of it.

Q. You are a resident of the city of Newark? A. Yes, sir.

Q. And how long have you been a resident of the city of Newark? A. Over thirty years.

Q. What is the style and name that the concern at Broad Street near Market Sreet is known as here in the City of Newark? A. The Hilton Company to my knowledge.

Q. Has it ever been known as Hilton's? A. Never seen it.

By the Court: Q. What would you think if you saw the word "Hilton's"; whose store would you think it was? A. That is hard to determine.

By the Court: Q. Well, the word "Hilton's," do you know what the possessive means? A. The man's name.

By the Court: Q. Wouldn't you think it was The Hilton Company? A. No, sir.

By the Court: Q. You would not? A. No, sir.

By Mr. Hardin: Q. What kind of printing do you do? A. Stationery or other blanks, cards.

JOHN H. CORRIGAN sworn:

Direct-examination by Mr. Mindes:

Q. What is your business? A. Building contractor.

Q. And how long have you been in that business? A. Twenty-one years.

Q. Have you been connected in the erection of any buildings in the City of New York? A. John Jacob Astor's Knickerbocker Hotel, Forty-second Street and Broadway and many other large buildings.

Q. Do you recall any occasion in 1916 being called to alter or erect the store front of Joseph Hilton? A. I do.

Q. Will you please state what conversation you had and what was done with reference to the style of construction on Fifth Avenue and Twenty-third Street store?

Mr. Hardin: I object. I think he can tell what kind of front he made or produce the contract. I don't see how he can go in the conversations with Joseph Hilton.

The Court: How can conversation have anything to do with it?

Mr. Mindes: These folks say we copied their store fronts, that it was our intent and purpose to copy their store fronts. This witness will testify along the lines to show that that was not so at all, from the express instructions of Mr. Joseph Hilton.

The Court: I will permit it, but I want to warn you it may make a different effect on the minds of the judges in the Court of Appeals; I do not know but the testimony is operating against you rather than in your favor, to my mind. It seems to me they realized the fact they were imitating the name and they got just as near to it as they could and just as far away from it as they thought it was necessary in order to

save them from an action of this kind. You can put it in if you want to.

Mr. McCarter: It may be from your Honor's view that a great deal of time could have been saved. Of course, I am struck, have been ever since the complainant closed their case, with the paucity of proof in their case, but their allegations go to the extent of showng that we have purposely endeavored to steal their trade by what they call unfair competition, have purposely imitated their store front. Now, if this man made those alterations and made them by direction of Mr. Joseph Hilton and he goes on and describes that it seems to me it will meet that allegation. If your Honor thinks that it has not been proven, as I think it has not been proven and we need not pay any attention to it, that is one thing; but if your Honor thinks even assuming they have proven an imitation it is not material for us to meet that, that we are putting our head in the noose, then I beg to differ with the Court's view about that. It seems to me that if there is any view in this case of imitation on our part of the store fronts it is important and proper that we should show not only what our store fronts are by the man who made it, but what the directions he received were with reference to making it.

The Court: You may proceed.

A. On or about the 15th day of September in the year 1916, I received a telephone communication at my office, 2 Columbus Circle, from a man

named Mr. Jacobs, real estate broker of New York City; he mentioned over the 'phone to me that he would like to meet me on the following day.

The Court: Kindly get down to the instruction that you received with respect to the building of this store front.

A. That is my object in view. Mr. Jacobs asked me to meet him and a man named Hilton at the southwest corner of Thirty-third Street and Fifth Avenue, New York City.

The Court: Strike that out. When you met Mr. Jacobs and Mr. Hilton what was said with respect to the store front? Answer that question.

A. When I met at the building Mr. Jacobs said, "This is Mr. Joseph Hilton"; that is the first time I ever met the gentleman. He said, "We are going to make alterations in this building," referring to the building Thiry-third Street and Fifth Avenue, New York City. He said, "The owner agrees to allow $4000 to make the alterations." Mr. Hilton says, "Corrigan, this work has got to be completed for this $4000; I don't expect to spend one cent of my own money on it; go up to your office, and call your architect and give me the best design for the money you can." That was all the conversation that took place; I went to my office, prepared plans and specifications in conjunction with an architect at my office and presented them to Mr. Hilton for acceptance, and after a few minor changes the plans were accepted and I proceeded and executed the contract.

The Court: That answer may be strick-

en out. Now proceed and get something important if you can.

Mr. McCarter: We respectfully object to striking out the answer.

The Court: Let it stand.

Q. What, if anything, did Mr. Hilton do with reference to designing the character of the store front? A. Absolutely nothing to do with it.

The Court: That is the important thing.

Q. Are you familiar with the store fronts of the Hilton Company in the City of New York? A. I am, most of them.

Q. When did you become familiar with them? A. Well, I have been buying goods of the Hilton Company for several years and going into their different stores, naturally being a builder, why, we look at every detail of construction the same as a lawyer looks up the points of law, that is practically the reason why. Furthermore, here, sometime ago I was asked by a gentleman named Mr. Yonker, I believe, who is the general manager of the Hilton Company, to look over those stores and refresh my memory; I did that.

Q. When was that? A. That must have been three or four months ago to the best of my knowledge.

Q. Please tell us what stores you looked at and what you found with reference to the general description and character of architecture? A. I looked carefully over the Hilton Company store, Thirty-seventh Street and Broadway, one at Fourteenth Street and Broadway, and one in Brooklyn on Fulton Street.

Q. Now, take them in order, what did you find in the first one you looked at? A. The Hilton

Company store, Thirty-seventh Street and Broadway, I found they used quarter oak backing and window ceiling, ordinary parquet flooring with a pattern that we as expert builders consider behind the times; their bulkhead, that means the store front from the sidewalk line up to the bottom bar or bottom line of glass, the bulkhead was constructed of granite. They used what is known in the building business as easy set copper; the easy set copper is copper that lies all around the store front in which the glass is encased. I further noticed that they use ordinary tile in the vestibule, that they use what we call single drop lights in the ceilings of the show windows. Those are the principal items that I particularly noticed.

Q. That is on the Thirty-seventh Street store? A. Thirty-seventh Street and Broadway, New York City.

Q. Is the store at Fourteenth Street similar or dissimilar? A. It is dissimilar.

Q. In what particular? A. In window backing, window paneling, window ceiling work in that store is constructed of what we builders call baywood, it is a cheap class of mahogany; in that particular store where the baywood was used they had it treated to bring out a mahogany finish. They used oak parquet flooring there with a few strips of cherry for border; they used a single light reflector there in lighting the windows. I also noticed they used ordinary tiling in their vestibule and they used an easy set glass. The bulkhead which I just described what it means on a storefront is principally copper down to a water table, the other is partly granite.

Q. Now, on the Thirty-seventh Street and Broadway store? A. I just described that. Nassau Street, I didn't bother looking in, not to tesify here; I know all about the store, but I didn't make thorough examination of it like I did Brooklyn. I went and examined the Brooklyn store thoroughly also.

Q. Give us the Brooklyn? A. The store on Fulton Street, Brooklyn, owned by the Hilton Company, they have what we call West Virginia marble for their bulkheads, they have copper frame, they are installing there glasswork; they have what we call Mexican mahogany window backing and panelling of a different design as to detail in any of the other Hilton stores I have seen.

Q. What did you have to do with the stores of Joseph Hilton? A. I erected them.

Q. And what stores did you erect? A. I erected Thirty-second Street and Fifth Avenue, Thirty-sixth Street and Broadway, and 243 Broadway, all in New York City.

Q. And the stores at that location as compared with the stores of the Hilton Company in the locations you have mentioned a little while ago, are they the same or dissimilar? A. Absolutely dissimilar.

Q. In what particulars are they dissimilar? A. In every manner, which I will describe if necessary.

Q. Give us the detail, if you please? A. All right. In the Hilton stores, that is the Joseph Hilton stores in the vestibule you will find I installed all rubber tile, in all the window backing, panelling, ceiling work of store fronts, parquet

ceilings, &c., you will find erected with African mahogany.

By the Court: Q. How does African mahogany differ? A. Vastly to an expert on lumber.

By the Court: Q. How does it differ to the ordinary man? A. To the ordinary man, take a carpenter or a man familiar with it he would understand the fine points of it.

Q. The general aspect? A. It is different to any man of intelligence.

Q. It has a different appearance to a man of ordinary judgment? A. It it just as different as a ten dollar suit and a five dollar suit to an ordinary man's eyes.

Q. Tell us in what particulars it is different? A. You take a piece of African mahogany wood twenty-five per cent. of that piece of wood is full of fiddleback marks, known as fiddleback mahogany, now, that is the only wood in the world where we find the fiddleback marks, in African mahogany; there isn't a piece of mahogany found in this country or in Mexico or in northwestern Russia that has those particular marks in there; that is my answer.

Q. What is the real reason for having African mahogany as compared with the other kind of mahogany? A. Owing to the fact it is a better class of materal, it makes a prettier store front.

Q. Now, was there any other marks of difference other than mahogany backing, etc.? A. Yes.

Q. What were they? A. The copper-bulkheads I just described, that part of the store front there I just characterized Tennessee marble vastly different to white marble.

Q. Give us the difference, in general appear-

ance? A. The marble is different, I used copper Calhoun in setting my glass instead of using easy set; I install my glass with span clip, all my corners; I install all my window backing known as semi-panelling instead of full pannelling; the ceiling ,I install that heavy hung beam style known in architecture, different to any other I have seen.

Q. Don' give us what you did, but give us the marks of difference? A. The difference between the bulkheads of the Hilton Company and Joseph Hilton is I used Tennessee marble on all my fronts some of theirs are copper and some are granite. I used the Rent and Canter system of copper work to install my glass in instead of what is known as easy set, manufactured by the Pittsburgh plate Glass Company. Instead of using corner bars as Hilton's have on their windows I installed a glass using the Crane clip on corner bar. I have used, as I just explained, a different style of wood on my window backing and ceiling to any of their stores. My reflectors are entirely different.

Q. Now, what is the difference between the reflectors as installed in Joseph Hilton's stores as compared with those existing in the Hilton Company's Stores? A. The reflectors in the show windows of the Hilton Company are what we call individual drops in the stores of I. Hilton or Hilton's I have used what is known as sunlight reflectors, continuous reflectors all around the ceiling. Instead of using tile in my vestibules, which they have, I use rubber.

Q. Now, what marks of difference is there between the stores of Joseph Hilton and the Hilton

Company with respect to the shapes of the store fronts themselves? A. There is a vast difference because you can never make two store fronts exactly alike even if you intended copying them. The layout of the store depends solely on its width and different height and the nature of the construction of the building in which you are going to make a change of a store front; it is impossible to make two stores exactly alike.

Q. Are there any two stores of the Hilton Company that are alike? A. There are not.

Q. Are there any stores of Joseph Hilton that are alike? A. There are not.

Q. Are there any stores similar to the Hilton Company, erected by other concerns? A. They are similar.

Q. What concerns? A. Brown and King & Co. use the same style, Rogers-Peet is using the same style of certain materials that the Hilton Company have used; Church's windows are similar to a certain extent to the Hilton Company's windows.

Q. There is no rule to arrange a store front.

By the Court: Q. Almost all large store fronts are alike? A. All similar to the one on there.

By the Court: Q. To the ordinary man they look alike? A. Not to the ordinary man, you can't very well say that, because thirty per cent. of all the citizens of New York city are mechanics or mechanics' helpers and they know pretty well.

By the Court: Q. Suppose a mechanic on the King store was looking at the window would he know whether it is constructed according to the Browning King style? A. There are no two stores

constructed alike; they look for a name more than they do for the construction of a store; if a man is looking for Smith's store he will go look for Smith's store.

Q. The style of the Hilton Company Stores I understand you to say are not similar to the styles of the stores of Joseph Hilton? A. They are not.

Q. Are any of the stores of Joseph Hilton similar to the stores, similar to the styles of stores of other concerns? A. Not exactly.

Q. What would you say with reference to the dissimilarity as far as the glass in concerned, the general layout of the glass? A. The difference of the glass is this—on the Hilton Company stores they used the corner bars principally where I do not.

Q. Don't give us what you do not. What does Joseph Hilton have in his store? A. No corner bars at all, glass with the Crane clip.

Q. What is the purpose of that? A. To give as much show window space as possible; every man desires to get all the show window space he can.

Q. From your observation of the Hilton Company stores is there anything in the Hilton Company stores that is peculiarly characteristic of the Hilton Company stores? A. There absolutely is not.

CROSS-EXAMINATION by Mr. Hardin:

Q. You do not wish us to understand, do you, that you received an order in blank to put in these fronts without any approval of your plans or anything else by Mr. Joseph Hilton or somebody representing him? A. I didn't say that.

Q. Your plans were submitted before you executed the work, and approved? A. I testified to that effect.

Q. Now, how far did your work extend, did you put in the windows, the whole front, or only the glass and the doors? A. The entire alteration for store purposes.

Q. Including the whole show window? A. Yes.

Q. And didn't you receive any instructions as to the depth of the show window before your architect went to work upon the plans? A. I did not.

Q. Who made up his mind as to the depth of the windows, for instance? A. I testified upon this. I built 150 stores in the last two years, around New York, Boston and other cities.

Q. You knew this was to be a clothing store? A. I certainly did.

Q. So just of your own notion knowing what a clothing store window ought to be, you proceeded to make the show window a certain depth according to the inside space of the store? A. Yes.

Q. Glass against glass illustrated by the glass joint on Exhibit C-146? A. That is glass hood, glass crane clip, yes, there it is, right down the line.

Q. You are looking at the Thirty-third Street and Fifth Avenue store? A. That is the joint you put there, to me it looks like Thirty-third Street and Fifth Avenue front; it is impossible to keep every front in mind.

Q. Isn't that the same kind of joint, glass against glass, that you have seen in the other picture, (showing witness Exhibit C-122)? A. Those two bars there are similar, yes.

Q. There isn't anything extraordinary in structure in glass against glass joint? A. Not there, no.

Q. I suppose from your careful inspection of the Hilton Company stores that you recognize that this last picture you have been looking at, Exhibit C-122, is picture of store 137th Street and Broadway? A. Exactly; I am well aware of it.

Q. Both of those store fronts then have glass against glass joints? A. I won't testify as to all of them.

Q. The two that I have shown you? A. As far as the entrance corners is concerned, that don't refer to the whole show window.

Q. I show you another picture of the Hilton Company store, Exhibit C-117, store, Fourteenth Street and Broadway, don't you find on there glass against glass joints? A. I do at the two entrances; that is not the whole store front.

Q. I show you Exhibit C-118; that illustrates glass against glass flat joint, doesn't it? A. This corner here looks to me—where is this store, please?

Q. Don't you know this store? A. This one particularly, is that Thirty-seventh Street?

Q. You have made careful inspection? A. This is Thirty-seventh Street store. You want me to testify as to this corner bar, is that it?

Q. No, that is not what I asked you; I asked you if this picture did not show flat glass against glass joint? A. What do you mean, flat?

Q. You have been describing corner joints? A. You can have such construction flat glass meet, flat glass, but it is all divided; they don't use it;

this may have been that way, I don't know; here is the copper here just as I testified to.

Q. You never put any continuous flat glass joints in nowadays, because it is divided? A. We do do it sometimes. When you are asking me that question refer to what you mean; in glass meeting glass where one is coming on straight line we do; when you are referring to corner ask me singly and I will answer you intelligently; don't double your question and expect my answer.

The Court: Strike that out. You will get in considerable trouble in a few moments unless you answer questions without volunteering.

Q. You do then use what I call a flat joint and what you prefer to have to call a running joint or continuous joint of glass against glass? A. Sometimes, but we protect it in a different way.

Q. You have to protect it the same way so as to keep the glass together? A. Yes.

Q. In the same place? A. Yes.

MURRAY APPLEBAUM, sworn:

Direct-examination by Mr. Mindes:

Q. What is your business? A. Real Estate Broker.

Q. And how long have you been in that business? A. About seven years.

Q. Do you know Philip Hilton? A. I do.

Q. Do you know Joseph Hilton? A. I do.

Q. Do you know Charles Hilton? A. Yes.

Q. Did you have anything to do with the nego-

tiations of the lease in Paterson? A. I did; I was the broker.

Q. And what was the location of that lease, I mean, as far as the locality of the store? A. It was in Paterson on the corner of Main and Ellis-ton Streets.

Q. When did you begin negotiations? A. About March, 1916.

Q. Please tell us what conversation you had with Philip Hilton with reference to the negotiations for the leasing of that store? A. I wanted Mr. Philip Hilton to take that store, that is, to lease the store, as it was a very good corner.

Q. Will you please tell us what you said to him and what he said to you? A. It was about two months, might be a month and a half before the negotiations for that store were closed, I was in touch with Mr. Joseph Hilton, and he liked the store very much, he told me to see Philip Hilton about that store. Joe was in favor of it and Philip was not in favor if it; and at that time there was Charlie, he was in the shrubbery business, and I told Joe that this is a pretty good store for Charlie, you don't want him in the shrubbery business, and he said his wife didn't want him in the shrubbery business; I said, "What is the use of putting the boy in something he don't know anything about and you can't help him along"; Joe didn't want to take the store that way until I had spoken to Philip; I went to Philip and says, "Philip, Joe wants to take this store, don't you want to take it under The Hilton Company," so he says, "I don't want the store"; then I told

him, "I think Joe Hilton will take it for his son Charlie's; so he said, "If Joe wants to do it let him go ahead and do it."

Q. Were you present at the time of the signing of the lease? A. I was.

Q. And will you please tell us how the lease came to be signed by Joseph Hilton? A. Why, we went up to Paterson to have Charlie sign the lease, but the attorneys for the Max Kuhn estate, which are the owners, Max Khun says they wouldn't give Charlie that lease; the reasons were, I think, Charlie was about seventeen or eighteen years old, and they didn't have any— that is, he was not old enough and it wouldn't hold good if he did sign that lease, so during the course of the negotiations Mr. Khun said, "Well, why don't you sign this lease until Charlie becomes of age, you go security for that lease." Well, he was talking with him for about an hour before Joe would consent to that lease; I took him on the side, I said, "Here is the best corner in Paterson, sign it for Charlie, take it for Charlie." Well, to make a long story short, he signed it for Charlie.

CROSS-EXAMINATION by Mr. Hardin:

Q. How early in March did you begin this negotiation about the lease? A. I think it was about the beginning, or the 15th was in that date.

Q. That was long before Philip and Joseph separated? A. No; Philip and Joseph separated after that.

Q. I say this was long before Philip and Joe separated? A. Oh, yes, long before.

Q. And were you trying to interest The Hilton

Company partnership, Joseph and Philip, in this property? A. Yes.

Q. Joseph favored it and Philip did not? A. Philip did not.

Q. And Philip would not consent to the opening of the Paterson store? A. No, he didn't want to, the town was too small he thought for it.

Q. Did you have a lease prepared in Charles' name? A. When we went up there I don't know if there was a lease prepared in Charles' name, we went up there to close the matter, that is, the attorneys for the Kuhn Estate had leases, I had not at that time.

Q. Drawn in Charles' name? A. No; I don't know whether it was drawn in Charles or whose name it was, I think that was left blank.

Q. The lease was drawn up but the name was left blank? A. Yes, I think that was it.

Q. Was that particuliar copy of the lease the one that was finally used? A. No, I don't think so; there was quite a few differences in there; Charlie Hilton was supposed to take the store and they had to change it all around on account of taking it in Joe's name for a couple of years until the son reached the age of 21.

Q. What was the date of the lease that was actually executed? A. I think May 2.

Q. The lease still in Joseph's name, as far as you know? A. As far as I know I think it is in Joe's name yet.

Q. Do you collect the rents? A. No, sir; I don't know if the name is in Joseph Hilton or Joseph and Charlie Hilton's name I don't know, I am not

positive on that; I think it is in Joseph and Charlie Hilton's name.

Q. You mean the original lease? A. I think that is in there because there was a big argument on that there.

Q. Your memory is not exactly clear about the document? A. No, it is not clear.

Q. You think probably they took Charlie in as a tenant notwithstanding the fact that he was not of age? A. Yes, as long as Joe went security for him until he was twenty-one years old.

RE-DIRECT-EXAMINATION by Mr. Mindes:

Q. Do you know whether there are any clothing stores in Paterson? A. Yes.

Q. Have you ever been in business in Paterson? A. I have never been in business, no.

Q. Have you been in Paterson? A. I have been there possibly twenty-five times a year for the last five years.

Q. And how long does it take to get from Paterson to Newark by train? A. By train about thirty-five or thirty-eight minutes from the Fourth Avenue Station.

Q. Is the service good? A. Very poor.

Q. How long does it take to get from Paterson to Newark by trolley? A. About an hour and fifteen to an hour and twenty-five minutes.

Q. Is the service good? A. Just about the same as the Erie Railroad.

Q. Do you know whether the Hilton Company is known in the city of Paterson? A. Yes, they are known, that is, I guess for the last three or four weeks they know them better, they have been advertising in full page ads.

Q. I am talking about The Hilton Company? A. The Hilton Company, no.

Q. What were you referring to? A. I was referring to Joseph Hilton.

Q. Why? A. Because they want to give the store up.

Q. What have you seen about that? A. Why I have seen great crowds and even saw policemen out in front of the building there to keep too many people from going in the store at one time.

Q. See any ads? A. No, I havn't seen any ads, only talk, heard some of the merchants talk about it.

RE-CROSS-EXAMINATION by Mr. Hardin:

Q. You do not exactly mean that the trolleys are as bad as the Erie Railroad if it takes the Erie Railroad thirty-five minutes and takes the trolley one hour and fifteen minutes? A. It is pretty bad.

Q. The Erie Railroad seems to be three times as quick? A. By the time you get up there to Fourth Avenue you wait several minutes for a train.

Q. The trolleys run quite frequently, don't they? A. Every ten minutes or fifteen or twenty minutes, or something like that.

Q. Pretty good train service between Paterson and New York, isn't there? A. I wouldn't say there was; I have only went a couple of times that way.

BENJAMIN F. EDELMAN sworn:

Direct-examination by Mr. Mindes:

Q. What is your occupation? A. Manager.

Q. Manager for who? A. Hilton's.

Q. That is the defendant Joseph Hilton? A. Yes.

Q. Do you recall having any conversation with this gentleman, Mr. Duffy? A. Yes, I do, sir.

Q. Do you recall when it was? A. Yes, I do.

Q. When was it? A. Saturday morning on the 21st of July, 10 o'clock, 243 Broadway.

Q. Will you state what he said to you and what you said to him? A. Yes. Why, Mr. Brennen, one of the men that I have in the store, I gave that gentlemen to Mr. Brennen, when he entered the store to wait on for a suit of clothes, Mr. Brennen, the second getnleman on that side there (indicating). Mr. Brennen waited on the gentleman for fifteen or twenty minutes and could not sell the gentleman a suit of clothes. It is customary in the clothing business to turn over a man if he cannot be suited by the salesman to the manager In fact, while Mr. Brennen was waiting on this gentleman he called me over and told me that this gentleman wants to see the manager, and he introduced me to this gentleman in the rear, known as Mr. Duffy, as I know his name now, and he said he wants to get a suit of clothes, so Mr. Brennen left the gentleman and I took the gentleman and the gentleman said to me, "Why I bought this suit of clothes up at your Fourteenth Store two years ago and I paid $12." I says "You are greatly mistaken; we have no store at Fourteenth

Street, we are not connected with The Hilton Company, this is Hilton's." And he walked down half way of the store and took off his coat, and while taking off his coat he said, "This is a suit I bought for $12 of you people," after he already had mentioned to me that he had bought this suit two years ago at the Fourteenth Street store. I took the the suit off, in fact he took the suit off; he laid the coat on the chair in that manner, which is not customary for buyers to do; with that I opened the coat up and he had a label in his coat of a merchant tailor; I said, "You are ashamed of Hilton Company's label?" He said, "No, I simply took the label out," and I suited the gentleman in one of our suits of clothes similar to the suit he was wearing at the time, and he said, "I will tell you, I am going to bring my wife in as I don't buy any clothes without my wife." I said, "Is it necessary for any man like you to come in a clothing store, to bother the salesman and after finding a suit that you like to bring your wife in?" He said, "You might think I am fooling" and with that he put his hand in his pocket and pulled out his pay envelope and said, "This is the way I bring my pay envelope home to my wife," and he put his coat on and asked me to lay the suite aside, and I said, "All right;" I laid the suit aside and I said, "all right;" I laid the suit aside, and I was very suspicious—

The Court: Never mind.

A. He said, "Do you carry office coats?" I said. "Yes, you mean alpaca coats?" I took him back and showed him an alpaca coat. While going out he said, "Have you got one of your cards?" I said, "Here is a card with my name on it," and I

handed the gentleman a card representing that I was manager of the store. That was the entire conversation.

Q. Did you have any suits similar to the suit he had on? A. Yes, I have one in Court at the present time.

Q. Is this the suit? A. Yes, sir.

Q. Now, did you tell him that the suit that he had on you could not duplicate because it was two years old style? A. Well, we have about seventy still in stock in our 243 store.

Q. Did you tell him that or didn't you? A. No, sir, I did not, sir.

Q. Did you state to him that your concern was the same as The Hilton Company and that you had a store at Fourteenth Street and Broadway? A. No, sir, I absolutely did not.

CROSS-EXAMINATION by Mr. Hardin:

Q. That suit you have there is new stock, I suppose. A. That is sir.

Q. That coat you have there is new stock? A. Why the coat, that coat is new stock, but the design is an old pattern.

Q. It is not a two years old garment? A. Well, the pattern is about ten years old, sir.

Mr. McCarter: Q. By the pattern, do you mean—A. I mean the design of the cloth; the coat, that coat is new.

Q. You mean the style of coat is old? A. The style of the coat is old but the cut of the coat is new.

Q. Isn't it still standard style? A. It is so standard we are giving the men fifty cents to sell them.

Q. How long have you had this coat on your shelves? A. On our shelves?

Q. Yes. A. About the first part of June.

Q. And that was a new garment then? A. Yes, sir, it is sir.

Q. You manufacture it yourself or your concern did? A. That is one of the garments that are manufactured by the Hilton's, yes, sir.

Q. Why do you offer a special inducement to sell that particular garment of fifty cents a suit? A. Checks have been in the past year or more, have not been worn very much.

Q. Did you anticipate before the season began that checks would not be worn much? A. That is something that nobody can anticipate so far as checks being worn, or stripes.

Mr. Mindes: He hasn't anything to do with the manufacturing, he is a salesman.

Mr. Hardin: I understand, I know he is salesman.

Q. What time of day was it when Mr. Duffy was in the store? A. Some time in the morning, around ten, quarter-past, half-past, somewhere around there.

Q. And you saw a great many people that day? A. Why not very many that particular day, no, sir.

Q. How many people do you ordinarily see in a day? A. In the store, sir?

Q. Yes. A. Oh, probably twenty, twenty-five.

Q. Do you sell goods yourself? A. No, sir, I do not, unless the customer is turned over to me.

Q. It was incorrect then when you were referred to by counsel as salesman? A. I am manager.

Q. You are not a salesman? A. No, sir, I am not, sir.

Q. How many people do you meet in a day in the store? A. Well, it all depends what kind of a day; there are days I see probably twenty-five; there are days I see fifty, sixty or seventy customers in the store.

Q. Do you see more people on Saturday than you do on other days? A. It depends on the weather, if the weather is nice we see quite a good many, yes.

Q. You do a little selling on Saturdays, don't you? A. Very rarely; I have extras for that purpose.

By the Court: Q. Was the weather nice last Saturday? A. Yes, it was sir.

Q. Did you have a pretty good day last Saturday in the store? A. Not in the morning.

Q. Very few people in in the morning? A. Until 2 o'clock, yes.

Q. Do you keep open all day Saturdays? A. Yes, I do, sir.

Q. Throughout the year? A. Well, not as late as we do in the fall, no, sir.

Q. You do not close up in July or August Saturday afternoons? A. No, sir, we do not; we close earlier towards the evening.

Q. When did you see Mr. Duffy the first time since last Saturday? A. You mean before last Saturday?

Q. No; when did you see him the first time since last Saturday? A. I saw him just as I entered the court room in here.

Q. Had you ever seen him before last Saturday? A. No, sir; I never did, sir.

Q. What people do you see in the store except people to whom you sell goods? A. What people?

Q. Yes. A. Why there are people that go upstairs into the factory, goes up into our offices upstairs.

Q. Well, you meet those people? A. No, sir, I have nothing to do with those people, sir.

Q. What people do you have to do with in the store? A. People that come in and buy, to make their purchases in our store, sir.

Q. I thought you said you didn't make any sales? A. I do not, sir. I stand by the door and give the salesmen their turns.

Q. You did not happen to be by the door when Mr. Duffy came in? A. Yes, I did; I address every customer that enters the store.

Q. You didn't happen to be at the door when Mr. Duffy came in? A. Yes I did.

Q. You turned him over—A. To Mr. Brennen, who gets the first turn in the morning.

Q. And Mr. Brennen turned him back to you? A. Yes, which is customary in the clothing business.

Q. Every customer that comes in the store after you turn him over to Mr. Brennen or some other body who has second or third call, that salesman turns the customer back to you? A. Provided he sells them; sometimes they run out on him.

Q. If the salesman falls down the manager takes up the job? A. Provided he gives them to me; there are times he walks out on that salesman.

Q. Uuless he does escape— A. I get them, yes.

Q. Who found this suit, you or the salesman? A. Mr. Brennen, the salesman, had showed the gentleman two other garments that I have here in Court, two checks which the gentleman, Mr. Duffy, said were not similar to what he was wearing and he wanted something similar to what he had on.

Q. Those are more popular checks, I suppose? A. Yes, they are, they are a little too loud.

Q. Not so popular? A. They are not so popular in selling as some checks are.

Q. Has this a fifty cent premium on it for the salesman? A. Yes.

Q. This one too? A. No, sir, that has not, sir.

Q. That is standard goods? A. That is not standard goods, no; we just did not put them on just at the present time, at one time; we don't put too many on; we give them certain garments only until they sell that lot.

JOHN BRENNAN, sworn:

Direct-examination by Mr. Mindes:

Q. Where do you live? A. Newark.

Q. And you are employed by Joseph Hilton? A. Yes, sir.

Q. At what store? A. 243 Broadway.

Q. Do you recall seeing Mr. Duffy? A. I do, yes.

Q. When did you see him? A. Saturday morning in the store.

Q. Will you please give us the conversation you

had with him? A. Mr. Duffy came in the office; I saw him; Mr. Edelman gave him to me to wait on, and he had a check suit on, he wanted something similar; I showed him a suit for fourteen dollars and fifty cents and he wanted something a little better, and I took a better one from the case and showed it to him; I wasn't making much headway with him and called Mr. Edelman and turned him over and heard him say to Mr. Edelman that he had bought this suit he had on in their 14th Street store two years ago for fourteen dollars; Mr. Edelman told him we had no 14th Street store, it was a different store entirely; that was Hilton Company and this was Joseph Hilton; I seen him give him his card and Mr. Duffy walked out.

Q. Did you show Mr. Duffy any suits? A. Two suits, one $14.50 and one at $25 dollars.

Q. Did Mr. Edelman say to him at that time that your store was the same as the 14th Street Store, the Hilton Company? A. No, he did not; if he did I did not hear it, and I was very close to him all the time.

Q. Did he say the check that Mr. Duffy had on was two years old and out of date? A. I didn't hear him say that; I heard Mr. Duffy say to Mr. Edelman he had bought it two years ago in the 14th Street store for $12.

Q. You have been in the clothing business for how long? A. 14 years.

Q. And have you ever been in the employ of the Hilton Co.? A. Yes.

Q. And in what stores? A. Newark, Philadelphia and Brooklyn.

Q. How long were you in Newark? A. Three years and a half.

Q. During what period? A. 1910 and 1911 and 1915 and 1916, part of 1916.

Q. During what period were you in New York? A. Never in New York; Brooklyn.

Q. And during what period were you in Brooklyn? A. From last March to last June, that is, a year ago last March and last June a year ago.

Q. Where did you work before that? A. Monroe Clothes Shop.

Q. When were you in Philadelphia? A. 1913.

Q. How long were you in Philadelphia? A. One year.

Q. During the period of time that you were in the employ of the Hilton Company did you observe what the nature of the display signs they had in their windows and stores you were employed in were? A. Well, as a rule when the windows were dressed it was customary to look at them—to the best of my knowledge I have always seen the Hilton Company on all display cards.

Q. You have? A. Yes, sir.

Q. Did you ever see in the Brooklyn store, did you ever see any display cards similar to that Hilton one-half price sale, C-103? A. Well, I can't recall it, I wouldn't say yes or no on that.

Q. Did you in any of the stores that you were in see cards similar to C-103? A. I have seen the general appearance of the cards, but the reading matter I couldn't testify on, I don't recall ever seeing it.

Q. Would you say that the majority of the reading matter on the display cards were on those stores The Hilton Company or Hilton's?

Objected to.

The Court: He says he doesn't know, he paid no attention to it.

Q. Do you know? A. The majority of the cards The Hilton Company.

By the Court: Q. Did you see any with Hilton's on? A. I can't recall.

By the Court: Q. Did you pay any particular attention to it, whether it was The Hilton Company or Hilton's? A. I have seen the distinction between the two, I have never seen these in the stores; I have seen numerous signs with The Hilton Company on.

By the Court: Q. Have you seen any with Hilton's on? A. No, I can't say that I have.

Q. Have you ever seen any transparencies such as these, such as Exhibit C-139? A. Never.

Q. With the word "Hilton" on top? A. Never.

Q. Did you ever see any transparencies similar to that? A. Yes.

Q. And what was the reading matter on those transparencies? A. "One-half price sale."

Q. Did they ever have the word "Hilton's" on? A. Never seen it.

Q. Did you ever see any goods purchased by The Hilton Company from other manufacturers? A. Why, I haven't seen them purchased; I have seen them come out of the purchasing department that I know did come from other manufacturers because I assisted in marking them and putting them in stock.

Q. When did you see them? A. During the dissolution sale, preparing for the dissolution sale.

Q. Where? A. Right in Newark.

Q. Was there any mark of difference or did

these suits that were purchased from other manufacturers have any mark on them that would show that they were manufactured by concerns other than the Hilton Company? A. Yes.

Q. What was that mark? A. Tickets on the coat red lotted.

Q. What do you mean by red lotted? A. That would come in under the manufacturer's lot number and Hilton Company would put lot number, when making out checks you would have to use a red lot.

Q. Was that a private sign? A. Well, that was a private sign just to signify the difference, that was all, in making out your sales check; I suppose they used a red lot to know exactly where the lot numbers came from.

By the Court: Q. Was there anything on it that indicated to the public one was manufactured by Hilton's and the other not? A. No, sir.

Q. Now, do you recall having any conversation with a customer at the Newark store with reference to purchase of a suit in New York City? A. Not a suit, no, an overcoat.

Q. Will you please state that conversation? A. Well, there was a lady and gentleman came into the Newark Store, I can't exactly give the date, it was last January, and they had looked at a coat at 33rd Street and Fifth Avenue, a brown coat marked $26.50 in the window, double breasted, tight fitting brown overcoat; they came in the Newark Store, I waited on them; our overcoat department is on the second floor, brought the coat down and put it on and the gentleman said, "What is the price?" I said, "$29.50." He said, "Hil-

ton's, 33rd Street and Fifth Avenue, are selling it for $26.50." I said, "Hilton's is not The Hilton Company;" he said, "Their coat looks every bit as good as yours, if not better;" so I turned him over to the manager.

CROSS-EXAMINATION by Mr. Hardin:

Q. When did you leave The Hilton Company's employ? A. February.

Q. What date in February? A. I don't know exactly.

Q. Early part of the month or latter part of A. What time is that?

Q. And where were you employed at that time?

Q. When you left, just before you left? A. Newark.

Q. How long were you in the employ of the Hilton Company all together? A. Six years off and on.

Q. You were discharged by The Hilton Company, weren't you? A. Yes.

Q. When did you go to work for Joseph Hilton? A. Five weeks ago Monday.

By Mr. McCarter: Q. Where did you go after you were discharged, where were you first discharged? A. Discharged Saturday, went to work for Monroe on Monday.

By Mr. McCarter: Q. Continued with them until five weeks ago? A. Five weeks ago, and Mr. Yonkers met me and engaged me.

By Mr. Mindes: Q. Is there any similarity in the style and fit of Hilton and Company's clothes compared with Monroe's clothes for the same price?

Mr. Hardin: I object.

The Court: I will permit it over your objection.

A. Well, Monroe's had only one price clothing. I don't know how you want me to answer that.

By Mr. Mindes: Q. Take a $15 suit of the Hilton Company and take a suit of the Monroe Company? A. The Monroe is superior, $15 dollars.

Q. That shows that the Joseph Hilton suit for $15 is superior to the Monroe suit? A. I think they are.

Henry H. Aarons

DIRECT-EXAMINATION by Mr. Mindes:

Q You are in the employ of Joseph Hilton? A. Yes.

Q. And on July 21 you were where? A. Thirty-sixth Street and Broadway.

Q. In what capacity? A. In charge of the store.

Q. As what? A. Manager.

Q. Do you recall seeing a gentleman, this gentleman, (indicating) in your store on that day? A. No, sir, I do not.

Q. Did you have any conversation with him with reference to the sale of a plaid suit? A. No, sir, not that gentleman.

Q. Did you state to him that your store was the same concern as the concern that ran the store at 14th Street and Broadway? A. Certainly not.

Q. Were you ever in the employ of the Hilton Company? A. Yes.

Q. And please state in what capacity and during what period and where? A. From July 1912 until July 1913 in the 37th Street store in the capacity of salesman; from May 1913 until December

1915 in the capacity of manager of the store.

Q. During the period of time you were in New York you say you were where? A. 37th Street and Broadway.

Q. And while there did you sell any goods that were goods made by other manufacturers than the Hilton Company? A. Yes, sir.

Q. In what way did you distinguish those goods? A. We distinguished those by a red lot number that is given so as to distinguish the price, the sale cost of the garment.

Q. Can you state just what proportion of goods of other manufacturers you sold as compared with the portion sold by the Hilton Company? A. I should say thirty to thirty-five per cent.

Q These suits that were made by other manufacturers had the same label on that The Hilton Company had or did have other labels? A. We had our own labels put on them, our own labels, always The Hilton Company.

Q. During the period you were employed with them did you ever see the label with the word "Hilton's" alone on it? A. No, sir.

Q. Did you ever see a label with the word "Hilton" or "Hilton's" used in connection with the Hilton Company? A. Not a label, no sir.

Q. Did you ever see a display of any signs in New York stores having the word "Hilton's" on it? A. Yes, I see one there now.

Q. Which one? A. There are several there describing certain patterns or giving a description about a suit of clothes.

Q. Which one is that? Will you just step over

here and pick them out? A. Yes, for instance here is one.

Q. I am now talking about the 37th Street and Broadway store. Of all the Exhibits produced here you have picked out two? A. Yes.

Q. That you saw in the windows at 37th Street and Broadway? A. Yes, sir.

Q. C 100 and C 133, Now how long was C 100 in the window? That is, the first one you have there? A. About ten days.

Q. And how frequent was it in the window? A. That was the only time.

Q. That was the only time? A. Yes.

Q. For a period of ten days? A. Yes.

Q. C. 133? A. That has been in for about three weeks, at the opening of the season as a rule.

Q. And was it used at any other time than the opening of the season? A. No, sir, no other time.

Q. I am talking about the New York store. A. Yes.

By Mr. McCarter: Q. Did he say "season" "or seasons"? A. Season.

CROSS-EXAMINATION By Mr. Hardin.

Q. What season? A. Fall of 1916?

Q. Is this C 100 exactly as you remember it was? Was there attached a shield such as appears on C-133? A. As a rule they usually had shields.

Q. Did this style of sign usually have shields on? A. Yes.

Q. Your recollection is that C 100, sign of size, had shield on like C-133? A. I wouldn't be certain,

because that is not on there now; there is no telling what might have been on that particular spot, I can't tell; that might have been waste.

Q. The signs usually had this shield on them? A. Yes.

Q. How many seasons were you in the Broadway store? A. I should judge about three.

Q. Do you use "seasons" with reference to spring and fall? A. Yes, spring and fall.

Q. So that you were in two fall seasons and one spring season or one fall season and two spring seasons? A. I am not exactly clear about that point, I can't say.

Q. Don't you remember the period of time you were? A. I just said 1912 and 1913 at the 37th Street and Broadway.

Q. You don't remember the times of the year? A. July up to May.

Q. What seasons would that cover? A. That would be finish of the spring and summer, July, the fall and opening of the spring.

Q. I am now asking you with reference to the seasonal display of signs, it would be a fall season and spring season while you were there? A. Yes.

Q. This is fall season time? A. Yes.

Q. And this is also? A. I can't recall just what season this is; it is mid season, a little stimulant to business.

Q. Were there any special sales while you were there? A. Yes.

Q. Did you have any signs with reference to them? A. Always.

Q. Do you recognize any special sale signs here

that you have ever seen before in any store? A. No, sir, not there.

Q. Never saw any of those before A. No, sir.

Q. What kind of signs did you have for these special sales? A. As a rule we usually used transparencies, in a majority of cases in fact.

Q. In the stores in which you were? A. Yes.

Q. Always used transparencies? A. In conjunction with signs?

Q. I am asking you what kind of signs, and you say you had transparencies? A. You didn't ask me whether we had signs along with them.

EXAMINED By the Court:

Q. Did you have signs? A. Yes.

Q. Similar to those? A. Yes, sir.

Q. With the word "Hilton's" on? A. No, sir.

Q. None with the word "Hilton's" on? A. We usually used the word "Hilton's" describing the garment or price, we would say "Hilton policy."

Q. On any of these signs did you have the word "Hilton's"? A. No, sir, not "Hilton's" "Hilton"

Q. Just "Hilton"? A. Yes, that is only in describing the garment; the type of the word is never featured.

Further CROSS-EXAMINATION:

Q. Hilton's suits? A. I am referring to Hilton's in this type.

Q. I am referring to it in any type. A. No, sir, not in that sign.

Q. No sign in any window that had the word "Hilton" on it? A. Hilton.

Q. What did you mean in response to the Court,

you just said clothes. A. You will find the word "Hilton" is used in the build of the garment or price of it.

Q. I want you to describe one of those signs, special price signs; you say you had special sales I want you to describe one of those special sale signs? A. Hilton Company half price sale, or whatever sale it happened to be, describing the fabric, color, models and prices.

Q. Just like these, except instead of "Hilton" it had "Hilton Company" on? A. Yes.

Q. Where would the Hilton Company be, at the top? A. Yes.

Q. Take for instance, Exhibit C 105, the sign that you are attempting to describe had "Hilton & Company" at the top? A. As a rule signs of this size never had "Hilton" or "Hilton Company;" these had "Hilton Company" on the back; I never saw signs built that way.

Q. Have you seen signs like that with "Hilton Clothes"? A. Yes, that is the first one I saw featured that way?

Q. This is the first one you saw? A. Yes, that I saw the word "Hilton" featured that way.

Q. I want you to give us the idea of the kind of sign you are endeavoring to tell us about; first you say it had "Hilton Company" at the top and bottom; now you say you didn't have it at the top? A. I was in charge of the Chicago store and we got our signs from the East and they usually came a week or ten days too late; when our sales were ready I wrote urging the matter of those signs. Our signs never started any other way than "Hilton Company," using "Hilton Com-

pa: y," commencing and finishing that way, always featuring the "Hilton Company."

Q. You did use the word "Hilton" in association with the "company," on these signs? A. Not with the "Company," just the clothes describing the Hilton suit.

Q. When you say you used the word "Hilton Company" how could you use that expression without using "Hilton" in association with "company."

The Court: He could not.

A. Certainly not, you can't say "The Hilton Company's policy;" you say "Hilton Policy;" you can't say "Hilton Company Model;" that wouldn't be correct English I don't think.

Q. You are in New York now? A. Yes.

Q. What did you do with these signs that came late, put them in the cellar? A. Destroyed them, we had no use for them.

Q. How about the New York stores? A. I had nothing to do with the New York stores; I was simply selling on the floor.

Q. I thought you were manager in New York? A. In Chicago only, sir.

Q. And your recollection of the signs in the New York stores in which the name "Hilton's" appear is it limited to the two? A. Just those you showed me.

Q. When did you leave The Hilton Company? A. In the winter of 1915, latter part of December.

Q. How long have you been employed by Joseph Hilton? A. A little over three months.

RE-DIRECT-EXAMINATION by Mr. Mindes:

Q. In Thirty-seventh Street in New York did you ever have any transparencies? A. We used transparencies but I don't recall seeing anything like that.

Q. You refer to C 139? A. Yes, sir.

Q. Will you kindly state just what was on those transparencies? A. The only transparencies I can recollect that were used was a circle with "half" on the top, "price" on the bottom, and black and white, just as that is there.

Q. Was the words "Hilton's" used on it in any shape or form? A. No, sir.

Q. How long were these transparencies up? A. About six to eight weeks in the year.

Q. And how often were they put up? A. During the half price sale.

Q. How often do you have a half price sale? A. Every season, at the close of every season.

Q. Now, you have been in what stores, you have been managing what stores for Joseph Hilton? A. Fifth Avenue and Thirty-third Street and Thirty-sixth Street and Broadway.

Q. During the period of time you were managing the store of Joseph Hilton at Fifth Avenue and Thirty-third Street did you have any inquiries with reference to whether or not your store was the store of the Hilton Company? A. No, sir.

Q. Did you ever have any person ask you whether the store at Thirty-seventh Street and Broadway was the same store as the Hilton Company? A. No, sir.

Q. Did you ever have anybody come in with the Hilton Company's suits with a label on and

ask you whether it was the same store? A. No, sir.

RECROSS EXAMINATION By Mr. Hardin.

Q. Have you been employed by Joseph Hilton except as manager? A. Yes.

Q. As salesman at what store? A. Not as salesman, sir, as manager.

Q. I say have you been employed except as manager? A. Yes; not for Joseph Hilton.

Q. You have always been a manager during your term of employment by Joseph Hilton? A. Yes, sir.

Q. And like other managers I suppose you have charge, you make actual sales only when the salesman falls down? A. Not necessarily, not the stores that I run, sir.

Q. You are salesman, sales manager? A. No, sir, but I make it my special business to be right alongside of the salesman and listen to the conversation between the salesman and customer for the express purpose of seeing that the customer is well fitted and satisfied and leaves our store satisfied.

Q. You can not be with them all? A. Our stores are not that large so as not to be in close touch with every customer.

Q. So you personally observe every transaction? A. Yes, as much as I possibly can.

Q. What store is this? A. Fifth Avenue and Thirty-third Street.

Q. Have you any idea of the volume of business you do there in a month? A. You refer to Thirty-third Street and Fifth Avenue?

Q. Yes, the store you are manager of. A. I can not state expressly or exactly as to how much, I can't keep track of it.

Q. How many customers a month? A. We don't keep track of that either, sir.

Q. How many customers in a week? A. It all depends on business.

Q. How many customers in a day? A. Also on the weather.

Q. Never so many that you can not keep in personal touch with all of them? A. No, sir, have no time, sir.

Q. These transparencies that you have referred to of half price sales, there is no indication of the proprietorship at all on those? A. No, sir.

Q. Not Hilton Company even? A. The transparencies that were used in Chicago were never used in that size; on the contrary we always aimed to use them as small as we possibly could in order not——well, it isn't a dignified thing to have on the window, not for a high-grade store; when we used them at all we used them very small and as inconspicuous as possibly could have them made.

Q. As a matter of fact did they promote you? A. Yes, for a much better man.

Q. You were succeeded by Mr. Yonkers in Chicago? A. Yes.

Q. While you were employed in New York did they use these large transparencies? A. Referring to the Hilton Company?

Q. The Hilton Company. A. As a rule they did, yes.

Q. Didn't they use the name Hilton Company on those transparencies? A. In New York?

Q. Yes. A. I can't recall the transparencies since 1915, and they have not used them to any great extent.

Q. I am referring to the time when you were employed by Hilton and Company in New York? A. Yes, that was in 1912.

Q. They used transparencies at that time, didn't they? A. Yes.

Q. Of the large kind? A. Yes.

Q. Didn't the proprietorship appear on those at all? A. No, sir, on the sign cards on the bottom.

Q. I am not now talking about the difference between Hilton and Hilton Company; I am inquiring whether Hilton Company did not appear? A. No, sir.

Q. Do you say it appeared on any of these signs? A. The idea of these transparencies is to feature the sales, and the price, that is the idea of a transparency, to attract passersby; consequently they simply show half-price, and half is in the centre, it attracts the customer to the window, he will look at the sign and get the price from that and on the coat ticket.

Q. The name is of no importance? A. No, sir, secondary consideration.

Q. Is the name of any importance on these signs? A. No, sir.

Q. Just as well off? A. The average man they will look at a suit of clothes at the first widow that attracts him; if he finds a pattern or model that suits him he will go in, if it fits him he will come in and buy it.

By the Court: Q. Your opinion is it don't make any difference what store it is? A. Absolutely not.

Further RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. Do you know anything about window dressing? A. Yes, I have dressed them considerably.

Q. For whom? A. About ten years for Fingle and Sperow, Broadway and Myrtle Avenue, Brooklyn.

Q. Having been a window dresser you know then more or less about it and I suppose have observed the window dressing that has taken place in the Hilton Company? A. Yes.

Q. Are you also familiar with the window dressing? A. Yes.

Q. Are you also familar with the window dresing in the stores of Hilton's that you are familiar with? A. Yes.

Q. What, if anything, was distinctive, peculiar, if there was anything? I don't know whether there was or was not, about the window dressing of the Hilton Company? A. Why, to my knowledge I don't see anything peculiar or anything different from any other up-to-date window of anybody else which aims and strives to have an attractive window. We all aim to have best possible forms and make every effort to have it attractive, and it is only natural to expect a man trimming that form to do the best he can to make the best appearance.

Q. Have you seen canes in connection with the suits in Hilton & Company's windows? A. I have seen them used in other windows.

Q. Nothing distinctive about that? A. No, sir.

Q. Have you seen pedestals in windows? A. Yes, that is absolutely necessary in every clothing window.

Q. Nothing distinctive about that? A. No, sir.

Q. Have you seen glasses? A. That is also necessary.

Q. Now, with reference to drapery, have you seen drapery in the Hilton Company's windows? A. I have seen it in a good many others.

Q. Anything peculiar, distinctive about that? A. No, sir; a good many merchants will try to cover up the floor which needs scrubbing and cleaning, which is expensive, can be covered by a cheap piece of velour.

HERBERT BRIGGS, sworn:

Direct-examination by Mr. Mindes:

Q. Were you in the employ of the Hilton Company? A. Yes.

Q. During what period? A. Two years and a half, I think.

Q. From when to when? When did you stop working for them? A. It was August, the 1st of August, 1915.

Q. Up to March of 1917, you left them in March, 1917? A. Yes, sir.

Q. And where were you located during that time? A. Eighty-five Nassau Street.

Q. During the entire period of time? A. During the entire period of time.

Q. What were your duties? A. Duties was porter and shipping, attending to the shipping.

Q. Have anything at all to do with the window dressing? A. Yes, sir.

Q. What did you do there? A. I generally helped the window dresser, when he comes to dress the windows once a week, take care of the signs, when they get through with the signs and transparencies generally tear them up and return the signs to the sign maker.

Q. Why did you do that? A. The reason why I returned the signs to the sign maker the sign maker used to give me from twenty-five to fifty cents if I bring back to him the old signs, because he said he was short of lumber and asked me to save all the old signs to bring back to him and he would pay me for them; that is why I gave them back to him.

Q. Do you recall having any conversation with Mr. Scott with reference to the gathering of certain signs? A. Yes, I do.

Q. Mr. Scott is window dresser for Hilton Company? A. Yes.

Q. When was that? A. Well it was early in February; Mr. Scott came down one morning, he told me, "Herbert, go downstairs and get all the signs that you can get and pack them up and send them over to Newark," and I went down and got about seven or eight signs which was left over which were downstairs at the stationary table I built down there, and I took those signs and packed them up and sent them over to Newark.

Q. And did you put any mark on those signs? A. I put a mark on every sign I sent.

Q. What kind of mark? A. I put a mark that the signs had been in the basement for about two years and they were down there at the stationery table which I built.

Q. You have examined these signs in Mr. Hardin's office, have you? A. Yes.

Q. When did you examine them? A. Yesterday.

Q. Will you step here and pick out from all these exhibits just pick out the signs you packed up and gave to Mr. Scott? A. This is the only sign that I see (pointing to Exhibit C-130); I packed up about six or seven, but that is the only one I see; the other ones I never seen.

Q. You are sure about that? A. Yes, sir, that is the only one I see.

Q. Did you ever see that sign in the window of the Hilton Company at Nassau Street? A. Not as I can remember.

Q. During the entire period of time you were there? A. Yes.

Q. Did you ever see any signs in the window of the Hilton Company at Nassau Street such as this sign C-130? A. No, sir, I never seen that at all.

Q. Who placed the signs in the window? A. Well, Mr. Scott when he dressed the window he placed them in the window.

Q. Any other window dresser? A. Yes, sir.

Q. Who was the other window dresser? A. Mr. Joe, I forget his last name, he is in Court now.

Q. That gentleman there (indicating)? A. Yes, sir.

Q. How often did Mr. Scott dress the window? A. Mr. Scott only dressed the window about once a month and Joe dressed them every week

Q. What were on the signs that were displayed in the window during the period of time that you were there, what name? A. The name of the Hilton Company.

Q. Did you have any conversation with Mr. Philip Hilton and Mr. Scott with reference to an affidavit concerning these signs? A. No, sir.

Q. Did you have any conversation with them with reference to signing any paper for them? A. Signing any paper for the signs?

Q. Yes. A. No, sir.

Q. Did Mr. Philip Hilton ever ask you to do anything with reference to the signs? A. No, sir.

CROSS-EXAMINATION by Mr. Hardin:

Q. That I take it is your handwriting on the back of C-130? A. Yes, sir.

Q. "This sign has been on a stationery table for about two years, Nassau Street store basement. Herbert." A. Yes, sir.

Q. And is this your handwriting, too, the words, "About two years"? A. No, sir.

Q. Look again? A. That is my handwriting (indicating) but that is not (indicating).

Mr. Mindes: What part is not your handwriting?

Mr. Hardin: "About two years ago"

EXAMINED by the Court:

Q. When did you leave the employ of the Hil-

ton Company? A. I left there I think it was in the middle of March.

Q. This year? A. This year.

Q. How did you come to leave? A. One Saturday morning, they generally have goods come in from Newark, generally ship their goods every night and we receive them in the morning; anyway, it happened this Friday night they shipped the goods and they ought to come in early Saturday morning. When the goods came in I was busy cleaning up the store. The manager, Mr. Driscoll, come to me and said, "I want you to open all those packages and get hangers and hang the stuff up." I told him, "As soon as I get through cleaning up the store I will cut open the packages and get the hangers and put them up," I said, "Look the way the store is, wait until I get through with it;" he said, "If you can't do it you can go," and he paid me off; that was on Saturday about eleven o'clock, he paid me off.

Q. Who did you go to then? A. I was away about a week and then I went and I inquired about another position and I got over to 243 Broadway.

Q. That is Hilton's? A. Yes, sir.

Q. When was it that Mr. Philip Hilton or Joseph Hilton or anyone connected with him knew anything about what you knew connected with this case, who did you first tell about it? A. The first man I told about this was my manager, Mr. Edelman.

Q. How did you come to tell him? A. The way it was, I heard a conversation, they were talking about the signs and I told them I had something

to do with the signs; of course, Mr. Scott told me to get the signs together, pack them up and ship them to Newark; I told him I packed those signs up and shipped them to Newark, that is how I come to tell them about it.

Further DIRECT-EXAMINATION by Mr. Mindes:

Q. These transparencies, did you ever see transparencies similar to C-139 on the window front of the Nassau Street store? A. No, sir, I never seen any like that; the only ones I seen was the black one where it says half price sale; as far as the name Hilton's up there, there was nothing at all, it was just large black sign with half price sale in the middle.

RE-CROSS-EXAMINATION by Mr. Hardin:

Q. Do you get larger pay now than you used to with the Hilton Company? A. Do I get larger pay?

Q. Yes. A. A few dollars, yes.

Q. Didn't you tell Mr. Driscoll that was the reason you changed your employment? A. I didn't tell him the reason I changed; he discharged me, Mr. Driscoll discharged me because I wouldn't open the packages right away.

Q. Didn't you tell him afterwards the reason you didn't come back? A. I didn't see Mr. Driscoll to speak to since I have been away from the firm.

Recess.

EDWARD WARSHAUER, sworn:

Direct-examination by Mr Mindes:

Q. What is your connection with Joseph Hilton? A. Temporary manager of the Fifth Avenue store.

Q. How long have you been such? A. Fifth Avenue, three weeks.

Q. Do you recall Saturday, July 21st? A. Yes.

Q. Did you see this gentleman, Mr. Duffy, in the store? A. Yes.

Q. Do you recall having any conversation with him? A. Yes, sir.

Q. Will you please state what he said to you and what you said to him? A. One of our salesmen had showed Mr. Duffy, as I know his name now, a suit of clothes, and I tried to bind the sale with him, and he said he wouldn't buy the suit of clothes without his wife seeing it; I got talking to him and talking to him and couldn't convince him to buy it, and during the conversation he went down in his pocket and showed me an envelope that he takes home to his wife, his pay, and he wouldn't buy a suit of clothes without his wife, and with that he went out.

Q. What did he say to you; you have told us what happened; what did he say to you? A. Nothing at all, sir, only about the suit of clothes.

By the Court: Q. Did he say he bought a similar suit, or suit similar to that he had on down at Hilton Company's? A. No, sir.

By the Court: Q. Did you tell him your stores were the same at The Hilton Company? A. No, sir; had no conversation with him whatever only on the suit of clothes.

By the Court: Q. Well, the suit that he was looking at? A. Yes.

Q. Did you have any conversation with him with reference to his wife? A. I only asked him does he go to buy a dress with his wife when she buys one; he said certainly, he does.

Q. What did you say to that? A. I said he ought to be ashamed of himself to do anything like that, that is all.

Q. Were you ever in the employ of The Hilton Company? A. Yes.

Q. When? A. 1911.

Q. What period of time? A. For ten weeks.

Q. What store? A. Newark, ten weeks in Newark, and two weeks in New York, that was twelve weeks altogether.

Q. In New York in what store? A. Astor House.

Q. When did you leave The Hilton Company? A. In 1911, and then went back to them again in 1917.

Q. How long were you with them in 1917? A. Nine months.

Q. Where? A. Fourteenth Street and Broadway.

Q. What capacity? A. Salesman.

Q. During that period of time while you were at the Fourteenth Street and Broadway store did you see any signs exhibited with the word "Hilton's" on? A. "The Hilton Company" I always noticed; once in a while you would see in the middle of the sign the name "Hilton," suit of clothes or an overcoat.

Q. How frequently would you see such signs? A. When there would be a sale or something like that.

Q How frequently would you see the signs "The Hilton Company"? A. All the time.

Q. What was the name over the door? A. "The Hilton Company."

The Court: Is there any use going into that?

Mr Mindes: I understand that besides the signs in these stores there was "The Hilton Company" right over the glass

The Court: Well, the photographs show that.

Q. Will you step down here and take from these exhibits, beginning with C-100, such signs as you saw in the Fourteenth Street store in New York City during the period of times you were with The Hilton Company? A. I can't pick out any ordinary one there.

Mr. Hardin: Wait a minute. When was he there? He said it was during 1917.

A. 1916 or 1917, either one, and I was with them in 1911.

Q. When were you there, what period of 1916 and 1917, what part of 1916 and what part of 1917? A. Nine months.

By the Court: Q. From what month to what month? A. I was just thinking, your Honor.

By Mr. Hardin: Q. When did you leave? A. Oh, I didn't leave, I was discharged, I didn't leave.

By Mr. Hardin: Q. When were you discharged? A. I was just thinking, somewheres in March I believe, March of 1918, March of 1917, no, March, 1916, that is when it was I was discharged. I get mixed up on the years.

Q. Calm yourself, and let us see when you were discharged, now when was it, 1916?

The Court: Was it this year or last year?

A. No, no, it was 1915, that is when it was, it is two years ago, it will be two years next March.

By the Court: Q. You did not go back to them again? A. Yes, sir.

By the Court: When did you go back? A. Went back to them last summer.

By the Court: Q. Last summer? A. I went back to them last September.

By the Court: Q. And stayed until when? A. I stayed there about six weeks, and I was discharged again.

By the Court: Q. And then who did you go with? A. Then I went to work for Mr. Joseph Hilton, went to work for Mr. Hilton in December.

Mr. Hardin: I would like to know when this nine months started of employment, which he originally said was in 1917.

A. I made a mistake, it was a year earlier; we are all apt to do that.

Mr. Hardin: I am only trying to get it straightened out.

A. That is as near as my recollection of the dates.

Q. Now you have looked over those signs, have you? A. Some of them, yes.

Q. Look at all of them, will you? A. That is all I can say that I remember.

Q. Which of those signs do you recognize as having been displayed in the Fourteenth Street store during the period of time you were with The Hilton Company? A. Well, I don't know

whether it is the same sign or not, it looks something like them, that is all I know.

Q. I show you C-132; did you see a sign similar to that displayed in the Fourteenth Street store? A. Something similar to it, yes.

Q. I show you C-107, and ask you whether you saw a sign displayed in the Fourteenth Street store similar to that? A. I remember having a sale at $12.50 and $15.00, yes sir.

Q. You are sure about that? A. They had a sale I don't know if that is the sign or not.

Q. You saw a sign similar to that? A. Yes.

Q. How long was that sign displayed in the Fourteenth Street store? A. About two or three weeks.

Q. How often was such a sign displayed? A. That is all I ever seen it, is that one time while I was working there.

Q. How long was this sign similar to C-132 displayed in the Fourteenth Street store? A. About the last two weeks in January.

Q. How often was it? A. That is all.

Q. Just that one time? A. Yes.

Q. Did you ever receive any outside goods, that is, goods that were not manufactured by The Hilton Company, during the period of time you were with The Hilton Company? A. Yes, sir. lots of them.

Q. What proportion? If you don't know, all right. How did you tell them? A. They had a red lot for every outside number that they bought from other concerns, by that we knew that it was not their make, sold them under the red lots.

Q. What do you mean, you sold them under the

red lots? A. Had to have the red lot, and then the lower number, so that they could have it in headquarters and know what suit of clothes was sold.

Q. When did you make this record? A. On the ticket of the sale and on the receipt; instead of our lot number we had an outside lot, such as 510, 511, 512, written in notation.

Q. They all had the label of The Hilton Company on? A. Some of them that didn't have it on our tailor would put them on.

By the Court: Q. When they were sold they were put on? A. Yes, sir.

By the Court: Q. Nothing to distinguish them to the public whether they were made by the Hilton's or not? A. No, sir.

Q. Did you ever see a label with the word "Hilton's" with the Hilton Company? A. No, sir.

Q. During the period of time you have been with Joseph Hilton have you had any occasion at which anybody came in and asked whether that was the store of The Hilton Company? A. No, sir.

CROSS-EXAMINATION by Mr. Hardin:

Q. These two exhibits, C-100 and C-101, I think I observed you did not look at when you were looking at the others. Had you ever seen signs like that? A. Not to my knowledge, no, sir.

Q. In any store? A. I was only in one store; I didn't see them in the others.

RE-DIRECT-EXAMINATION:

Q. You testified with reference to this detective? A. Yes, sir.

CHARLES B. BRADY, sworn:

Direct-examination by Mr. McCarter:

Q. Are you connected with the credit agency or mercantile agency R. G. Dunn & Company, at their Newark office? A. I am.

Q. I show you a letter dated May 17, 1916, addressed to Messrs. R. G. Dunn & Company, attention of Mr. Brady, and an envelope post-marked Newark, May 17, 1916, addressed Messrs. R. G. Dunn & Company, 665 Broad Street, Newark, New Jersey, attention of Mr. Brady, the envelope having on the outside the words "The Hilton Company, 795 Broad Street, Newark, N. J.;" was that letter received by you in due course of mail? A. Yes, sir.

Q. And produced today on our subpoena from your files? A. Yes, sir.

Mr. McCarter: I will offer the letter and envelope in evidence.

Marked Exhibit D-11.

Q. Had you previous to the receipt of this letter written to The Hilton Company or inquired, made any inquiry which led up to the receipt by you of this communication? A. There was some question as to dissolution at that time, or just prior thereto.

Q. Had you brought anything up about that to The Hilton Company? A. Yes, their attention had been drawn as to whether or not the dissolution had occurred, or the terms of dissolution.

Q. And in the course of that inquiry you received this letter? A. Yes.

Q. Which has been marked as Exhibit D-11? A. Yes.

CROSS-EXAMINATION by Mr. Hardin:

Q. You said you brought that letter here under subpoena? A. Yes, sir.

Q. How did Mr. Joseph Hilton know you had it?

Mr. McCarter: Objected to as immaterial.

Mr. Hardin: It is a letter that came from the commercial agency, from Philip Hilton in response to an inquiry, he said, and now I think I am entitled to know just how it came about that that information came into the possession of Mr Joseph Hilton.

The Court: I overrule it.

BENJAMIN F. EDELMAN, re-called:

Direct-examination by Mr Mindes:

Q. I forgot to ask you this morning whether or not during the period of time you have been connected with Joseph Hilton there were any inquiries made of you with reference to the store of Joseph Hilton being the store of The Hilton Company? A. No, sir.

Q. Was there or not such inquiries? A. There was not.

Q. And you were in what stores? A. I was manager of the Fifth Avenue and Thirty-third Street store.

Q. For how long?

The Court: Did he not go into all that this morning?

Mr McCarter: I think only 243 Broadway.

Q. What stores? A. I was manager of the Fifth Avenue store.

Q. For how long? A. From January until March, until we opened the down-town store, 243.

Q. Then you went to 243? A. Yes, sir.

Q. You are the gentleman that Mr. Herbert Briggs spoke to about these signs? A. Yes, sir, last Monday morning.

ABRAHAM COHEN, sworn:

Direct-examination by Mr. Mindes:

Q. You are in the employ of Joseph Hilton, are you? A. Yes, sir.

Q. And you were the manager of the Waterbury store? A. Yes.

Q. Previous to your going to Waterbury as manager of that store did you have any connection with any other store of Joseph Hilton? A. Yes, sir.

Q. What stores? A. I worked in Paterson, and from Paterson I came on to Fifth Avenue and Thirty-third.

Q. How long were you in Paterson? A. About three weeks.

Q. During that period of time did you have any inquiries from any customer, prospective customer, in the Paterson store with regard to the identity of The Hilton Company with Joseph Hilton? A. No, sir.

Q. During that period of time that you were there did you see displayed, or was there displayed in the show windows of Joseph Hilton any price tickets similar to 141 for identification? A. No, sir.

Q. What period of times, what months were you at Paterson? A. Paterson. The month of October, some time in October.

Q. 1916? A. Yes, 1916.

Q. In Thirty-third Street, New York, how long were you there? A. I was transferred from there to the Fifth Avenue store; I believe we opened the store on Fifth Avenue in November.

Q. Were you there from the opening day? A. Yes, sir.

Q. And from that time on how long were you there? A. I was there from November to the first of the year.

Q. First of January, 1917? A. First of January, 1917.

Q. And during that period of time was there ever displayed in the show windows any price tickets such as I have, similar to the one I have just shown you? A. None whatsoever of that kind.

Q. While you were at the Fifth Avenue and Thirty-third Street store were there any inquiries made by anybody with reference to the identity of The Hilton Company with the stores of Joseph Hilton? A. No, sir.

Q. Were you ever in the employ of The Hilton Company? A. Yes, sir.

Q. When was the last time that you were in their employ? A. The last time I was employed

it was in Brooklyn, the Brooklyn store, in 1916.

Q. How long were you in that store of The Hilton Company? A. Well, I have been on and off with them since 1906 up to 1913.

Q. Well now, on and off over what period of time? A. Well, one time I was with them from 1906 to 1913 continuously.

Q. And what store? A. I went to work first for them at 219 Broadway, the old Astor House, I was one of the first employees in the store; then I was in the Astor House for about five years, and then I was transferred to Brooklyn, corner of Smith and Fulton, and I was in that store up to 1913.

Q. Were you in any of the other stores in New York City besides those two? A. Why after 1913 I was away from them about twelve or fourteen months, and then I went back to work with them at the Thirty-seventh Street store.

Q. How long were you at the Thirty-seventh Street store? A. Why possibly about a year.

Q. During what period of time? A. That must have been in 1915 I think.

Q. During the period of time you were at the Thirty-seventh Street store did you see any display signs similar to these signs in the exhibits here? A. Not in my time.

Q. Will you look through them, please, and pick out those that you did see, if you saw any?

Mr Hardin: Which place is this now?

Mr. Mindes: Thirty-seventh Street and Broadway.

A. I don't remember seeing any signs of that kind during my time.

Q. Now in Brooklyn, did you see any signs of similar character to these signs displayed in the Brooklyn store during the period of time you were there? A. I don't remember seeing any signs of that caliber at all when I was with them in Brooklyn.

Q. I show you a transparency, Exhibit C-139, and ask you whether you ever saw displayed on the window of the Thirty-seventh Street store a transparency similar to that? A. From 1906 to 1913 I cannot remember of ever seeing a sign of that kind on any of our windows.

Q. Did you see any transparency with words on other than the words as they are on this? A. Our signs used to read "Quarter off sale" or "Half price sale," nothing else on the transparency.

Q. Ever have the word "Hilton's" on? A. No, sir.

Q. Ever have the word "Hilton"? A. No, sir.

Q. How long were these transparencies on the window at Thirty-seventh Street? A. Well I am speaking of sales, you know; during the sales why they would possibly be up three weeks or four weeks, something about that; they would only go up during the sale.

Q. During the period of time you were with The Hilton Company did you sell any merchandise that was not manufactured by The Hilton Company? A. Oh, yes.

Q. How could you distinguish them from the merchandise that was manufactured by The Hilton Company? A. If the suits were sent to us directly from the wholesale house we would be notified through headquarters to stamp them with

their individual red lot number, as was given from headquarters. If the garments were shipped directly from headquarters to us we would also be notified likewise to red lot them when they were shipped to us, when we would receive them.

Q. Now this proportion of goods that was manufactured by other concerns than The Hilton Company, was it large or small? A. Well, at one time there from 1906 to 1910, that is about four years, I should judge, I know personally that we had received from Strauss & Brothers of Baltimore, we had received every season at least from ten to fifteen thousand dollars a season, from one individual firm, in the store that I was in, and then other shipments came from A. B. Kirchbaum & Company, not so large amounts as I mentioned in the Strauss shipment. Then we received goods from Rosenberg Brothers of Rochester, we received several shipments from them, but not so large in amount.

Q. How large? A. Well, possibly two thousand or twenty-five hundred at a time.

Q. How much from A. B. Kirchbaum? A. Well, A. M. Kirchbaum, mostly overcoats.

Q. Did you ever receive goods from Alfred Decker & Co.? A. Society brand?

Q. Yes? A. Yes.

Q. From Handberger Brothers of Baltimore? A. Yes, sir.

Q. From A. Hoffman, New York? A. Yes; A. Hoffman in one year that I know of, and the books will show, from A. Hoffman, in one year, not one year, one season, that I know of, will show at least ten to twelve thousand dollars worth of merchandise, from A. Hoffman.

Q. H. Goodman of New York? A. Harry Goodman, yes, several shipments from them.

Q. Jacob Pollack, from New York? A. Several shipments from Jacob Pollack.

Q. From Wearfine Company, fur overcoats? A. Yes. All our full dress stuff, evening clothes, full dress suits, tuxedos, were bought from Melsner & Brother, I think was the name; at that time The Hilton Company had not manufactured any, hadn't made their own full dress stuff at all.

Q. How long have you been in the clothing business? A I have been in the clothing business ever since I wore long pants, and I wore long trousers when I was fourteen years old, and I am in the clothing business now twenty-eight years.

Q. Is there anything distinctive about the method of window dressing of The Hilton Company as distinguished from window dressing of other concerns in the clothing business? A. Why no, there isn't so much of a distinction; simply one window trimmer will make it a little more elaborate than the other, and the other window trimmer will display them a little different, but there is no distinction much at all to speak of.

Q. Is there any similarity of window dressing between window dressing of Joseph Hilton and The Hilton Company? A. Why there is quite a similarity, but entirely different.

By the Court: Q. Quite a similarity but entirely different? A. I beg pardon. I meant to say quite different.

Q. Is there anything specially distinctive about the window fronts of The Hilton Company? A. Why no.

Q. Are any two stores alike? A. No, sir.

CROSS-EXAMINATION by Mr. Hardin:

Q. Did they use any signs at all in the windows while you were acting as salesman or manager for The Hilton Company? A. Oh, yes.

Q. What kind of signs did they use? A. Why they used signs 12x14, and some 24x12 and some 18x9.

Q. Inches you mean? A. Inches.

Q. How does such signs as you are talking about now differ from some of these? A. During my time in their employ they never used to write the name on top of the sign, always at the bottom.

Q. The shape of the signs and the body are the same? A. The shape of the signs are about the same.

Q. When you say they didn't use any such signs you refer to the matter that is on the sign? A. I was referring to the top of the sign, during my time they never wrote the name on top of the sign, always at the bottom, they would go on with the reading matter or the name of a sale.

Q. Name of a what? A. Of a sale.

Q. When did you finally leave The Hilton Company? A. Why I left them—

Q. The last time I mean? A. The last time, it was just about three days before I went to Paterson, and that was in 1916, the latter part of 1916.

Q. Do you remember the month? A. I guess it was in either August or September, in August or September.

Q. Where were you employed at that time? A. Brooklyn.

Q. Was the Paterson store of Joseph Hilton then in operation? A. Yes.

Q. You did not help establish the Paterson store, then? A. No, sir.

Q. Wasn't it October that you left The Hilton Company in Brooklyn? A. Well, I won't say about the month; I know we had some wrangle there, it was either in August or September, about my meeting Mr. Joseph Hilton and trying to persuade him to get a location in Brooklyn, we had a little wrangle about it, and they had little ill feelings toward me for it, but I think it was in September, I am not sure, it may be two or three weeks difference either way.

Q. How long was it before the store was opened in New York that you afterwards went to—A. Before the store opened in New York?

Q. Yes, before the Joseph Hilton store; as I understood you, you were in Paterson for three weeks you said; then you went to Fifth Avenue and Thirty-third Street, New York? A. Yes.

Q. At the time that the store was opened? A. Yes.

Q. Now do you remember when that store was opened? A. In New York?

Q. Yes. A. The store opened in November, I think.

Q. Then am I right in the suggestion that it was in October when you left Brooklyn? A. Well, I won't say, it may be a few weeks out of the way, but I am not sure; you may be right and I may be mistaken as to the month.

Q. You left in the middle of the month, did you not? A. I know the day I left, that I have pretty fair memory for the day, it was on Friday morn-

ing; I think Mr. Murray knows that, because I called him up on the 'phone that morning.

Q. Do you know the date? A. I remember the day, it was on a Friday morning; I would not say the date.

Q. You brought suit against the company afterwards, didn't you, for wages? A. I did, I sued them for wages.

Q. Didn't you claim that your employment was by the month? A. That time?

Q. Yes. A. I was employed by the month, yes.

Q. And you left in the middle of the month. Doesn't that bring it back to you? A. I didn't leave; if you want to know, they discharged me, I didn't leave; that is why I sued them for the balance of the money.

Q. I am trying to find out the date? A. Oh, I see.

Q. It was in the middle of the month at any rate, wasn't it? A. It was on a Friday morning.

Q. You afterwards sued them for the balance of the wages for the month? A. I sued them for the balance, I sued them for two weeks, that was it; I must have left the middle of the month I guess.

Q. You sued them for the wages up to the first of November, didn't you, from the time you left? A. I know I sued them for two weeks pay; it may have been September and it may have been October.

Q. And the thing you were trying to recover in that suit was your pay after you left and not before you left; you were paid up to the time you left? A. Why, I didn't quite get you, counsel.

Q. I am not having any dispute with you about

whether you were employed by the month or not. A. Well, I didn't know.

By the Court: Q. Well, you were trying to recover for the balance of the month you had not worked? A. At that time, yes.

Q. Were you successful?

Mr. McCarter: Objected to as immaterial.

Mr. Hardin: This may show the attitude of the witness; his being beaten in a law suit may account for some feeling on his part.

The Court: I will overrule it. The fact that he brought the suit indicates bias; it does not make any difference whether he was successful or not; if he was successful he would be just as biased as if he were not.

RE-DIRECT-EXAMINATION by Mr. Mindes:

Q. How long a time intervened between the time you were discharged by The Hilton Company and you began to work for Joseph Hilton? A. Why it was the following week, I went over there to help them out in fact, I went over the following week.

JOSEPH RIKOWER, sworn:

Direct-examination by Mr. Mindes:

Q. In what capacity are you employed by Joseph Hilton? A. As window dresser, window trimmer.

Q. How long have you been in his employ as window dresser? A. Since the middle of November, last year.

Q. November, 1916? A. 1916, the middle part of November.

Q. Previous to that time by whom were you employed? A. By The Hilton Company.

Q. In what capacity? A. As a window dresser.

Q. When did you enter the employ of The Hilton Company as window dresser? A. Entered the employ on the fifth of July in 1915.

Q. Previous to your employment as window dresser by The Hilton Company had you dressed any windows anywhere? A. Yes, here in New York for two years.

Q. Where? A. In New York City, by the Hauck Clothing Company.

Q. And before that? A. Abroad, on the other side.

Q. What countries? A. I worked in Germany.

Q. As window dresser for The Hilton Company did you have anything to do with the dressings of the windows of the New York stores for The Hilton Company? A. Yes, sir.

Q. What stores did you dress the windows for, in New York City? A. I dressed the stores in Nassau Street, New York City, I dressed, myself, and the rest of the stores I dressed with Mr. Scott, the other window dresser, together.

Q. When you say the rest of the stores what do you mean? A. Fourteenth Street and Broadway, Thirty-seventh and Broadway and the Brooklyn store, and I dressed Newark and Philadelphia.

Q. Who places the display signs in the win-

dows? A. All depends on who dresses it; if I dress it I place it.

Q. How often did you dress the Nassau Street store? A. Once a week.

Q. How often did Mr. Scott dress the Nassau Street store? A. He used to come over about once a month, once in six weeks.

Q. How often did you dress the Thirty-second Street store? A. Once a week also, with Mr. Scott together and sometimes myself.

Q. How often did you dress the Fourteenth and Broadway? A. The same period of time, once a week, or sometime if it wasn't necessary once in fourteen days; mostly—the Fourteenth Street is a big store—together with Mr. Scott.

Q. In those instances where you dressed the window who placed the display signs? A. If I dressed the window myself I placed them.

Q. Will you please examine all these display signs and pick out from the entire lot those display signs that were in any of the New York stores during the period of time that you dressed it for The Hilton Company? A. Three of them are alike here.

Q. Just pick them out? A. There are four alike; that is all the New York stores.

Q. Exhibit C-98, you say, was displayed in what store? A. In New York stores, I can't say in which; this with the picture I remember exactly, that was displayed in the New York stores, all with the same pictures.

Q. And C-99? A. The same picture and the same time, the same kind.

Q. C-102? A. The same thing.

Q. C-105? A. The same thing.

Q. In what stores were they displayed? A. In the New York stores; also in the out-of-town stores.

Q. Which particular stores—all of them? A. Every store had one of those pictures; I remember at the time that this card was in the Hudson Tube, and Mr. Scott had made them up for the stores, he liked the picture of it; and the rest of them what I seen there is from out-of-town stores.

Q. Where did these signs come from? A. I remember this special sign, I ordered it in this special height for Philadelphia, I did that myself, these signs for Philadelphia, and there was another one too.

Q. I show you C-103 and ask you whether you ever saw that sign before? A. In Philadelphia store, in the case; I ordered it the same height, I Wanted a high one for the case.

Q. That was ordered by you for Philadelphia? A. For Philadelphia, on order of Mr. Scott.

Q. Was that sign ever displayed in the New York stores? A. No, I don't remember; and this time they didn't have a half price sale in New York; in Philadelphia, had a different sale in Philadelphia than New York City.

Q. Now C-104? A. The same thing, belongs to the same thing.

Q. Where? A. The Philadelphia store.

Q. Who ordered that? A. The same time.

Q. Who ordered it? A. I did, I ordered it.

Q. C-101, who ordered that? A. These two signs I ordered, picked out; there was a big crest in the middle with an "H," and there is something changed, but I am sure there was a big

crest here in the middle; you can see the space on it.

Q. C-101? A. Yes.

Q. C-100? A. Yes, and there was a big crest in the middle, and there is the sign, there was something on it.

Q. Tell us for what stores? A. In the New York stores we had this reading matter with initial "H" in it.

Q. The same reading matter as on 101? A. Yes, but I don't remember any "Hilton" on it, I don't remember this, never seen it; but there you can see there was a big crest on it.

Q. Did you have anything to do with the window dressing of Brooklyn? A. Yes, sir.

Q. And were any of these signs displayed in Brooklyn? A. No, sir; none except these four, they were in all the stores, one or two, as many as they could get.

Q. 98, 99, 102, and 105? A. Yes.

Q. How long were those displayed in the New York stores of The Hilton Company? A. That was in the summer months.

Q. For how long a period? A. About three weeks in the summer months, in about the month of May or June.

Q. Were there ever any signs displayed in the New York stores with similar reading matter on top, having the word "Hilton's?" A. No, sir.

Q. What was the nature of the signs that were displayed in the stores of The Hilton Company in New York? A. According to the time of business, there was different sales times, where there was a June Clearance Sale, or July Marked Down Sale, or Half Price Sale; they had a Twelve Dollar

Sale, and had a Twenty-one year Anniversary Sale during my time, and there was a $13.75 and $17.75.

The Court: Well, we have had enough of that.

A. All different sales according to the time of business.

Q. What was the display of the firm's name? A. "The Hilton Company" lots of times on the top and lots of times on the bottom; all depends on how the advertising man made them out.

Q. Was the use of the title "Hilton's" frequent or infrequent? A. Pardon me. I don't understand what "frequent" means; I am not perfect in the language.

Q. What did you have to do with the dressing of the Paterson store for Joseph Hilton? A. Dressed the windows.

Q. When did you dress them? A. After I was hired.

Q. When were you hired by Joseph Hilton? A. I was hired three or four days before I entered; on a Monday I started.

Q. Give me the month? A. In the start of November, 1916.

Q. What part of November did you dress the windows for Joseph Hilton in Paterson? A. In the middle part of November.

Q. Did you display any price tickets with any crest on in the windows at the time you dressed the window, such as C-141 for identification? A. Yes, by The Hilton Company.

Q. I say in the windows. Now just listen to my question, please. In the windows of Joseph Hil-

ton did you ever display any price ticket in Paterson? A. No, sir.

Q. Such as that, similar to that? A. No, sir; didn't display it.

Q. During your entire employment with Joseph Hilton, from that time down to date, has any such ticket been displayed? A. No, sir.

Q. Who dressed the windows for Fifth Avenue and Thirty-third Street, of Joseph Hilton? A. I dressed them since I was hired.

Q. During the time that you dressed them did you ever display any price tickets similar to 141 for identification? A. No, sir.

Q. Did Mr. Scott teach you how to dress a window? A. I was his assistant by The Hilton Company.

Q. Did he teach you to dress a window? A. No, I learned this trade in 1902, 3 and 4 in Europe, and over there I was a salesman too, window dresser and salesman, that is the way they handle it over there.

Q. During the period of time that you were with The Hilton Company was there anything distinctive about their style of window dressing? A. The only thing distinctive there is that they displayed lots of velour, certain kind, and it means they go to a bigger expense, but there is nothing else distinctive to any other window dressing, the same clothing line displayed alike all over the windows.

Q. The windows dressed by you for Joseph Hilton, were they dressed by you along similar lines as that of The Hilton Company? A. No,

sir; I couldn't do this, there is different goods and different windows built; the window to be dressed can only be dressed after the shape of the window, the way the window is built, to display to the glass, to display to the man, to advertise the garment in a right way; it has to be done in every window different.

By the Court: Q. If you were going to dress the window in the Paterson store for The Hilton Company instead of for Joseph Hilton, would you have dressed it in any other way than you dressed it for Joseph Hilton A. I would dress it in another way.

By the Court: Q. How, what difference would you make? A. There is different goods and different display and different cards and different signs, and different orders from Mr. Scott, the dresser; I was there as an assistant, and I had to go after his orders, and here I am using my own judgment. As a matter of display in dark colors, and so on, I can use my own judgment and display them different, and the same time I place a card he wants high I put it at the bottom, and the same time I put a high form in the front, and never two men work alike; even if I wanted to imitate I couldn't do it, to finish up a form, or placing down a card like another man does it.

CROSS-EXAMINATION by Mr. Hardin:

Q. I would like to know just what date it was that you left The Hilton Company? A. The date? I left them on a Friday night; that means that I called up the general manager, Mr. Murray; on

Saturday I never work, my work was only five day during the week, and I work so also now, five days during the week, never on Saturday.

Q. And that was in November? A. In November.

Q. Do you remember what part of November? A. Yes, sir; yes, I remember the date; Monday was the thirteenth, and Sunday the twelfth, and Saturday the eleventh, and I left them on the tenth.

Q. Friday, November 10th, 1916? A. Yes, sir; that means I have given order that I am leaving.

Q. And you gave notice you were going to leave? A. Going to leave.

Q. You had secured other employment before you gave that notice, had you not? A. Yes, sir.

Q. You had arranged to go to Mr. Joseph Hilton? A. Yes, sir.

Q. Before you gave notice? A. Before I gave notice.

Q. You of course made yourself better off by the change, got more wages? A. Got more wages?

Q. You got to be window dresser by yourself and not as an assistant? A. I always was before by myself, for a number of years here in New York City, too, for two yars.

Q. Are you still assistant window dresser? A. No, sir; I am by myself; that was the only position where I was an assistant, was with The Hilton Company.

By the Court: Q. Did you go to Joseph Hilton for employment or did he come to you? A. I was going to see Mr. Joseph Hilton, specially the general manager, Mr. Yunkers.

Q. Is Mr. George Lee employed by Joseph Hilton? A. Yes, sir.

Q. Isn't he the window dresser of that concern? A. He is the window dresser, only I was myself in the start and now it is divided in parts, he dresses two stores, Thirty-sixth and Fifth Avenue I mean thirty-sixth and Broadway and Fifth Avenue store, and I dress Paterson, Waterbury, and 243 Broadway.

Q. Neither one of you is assistant to the other? A. Don't come in no way at all.

Q. Mr. Lee, the other window dresser I spoke of, used to be in Chicago with Hilton & Company? A. So I heard; I never had seen him before.

Q. When did you begin to dress the Paterson window for Joseph Hilton? A. Well, I am here on the stand and I have to tell you the truth. Pardon me my language, I mean I have to tell you the truth, that means I done something what you may be think was foolish; I was hired on a Wednesday by Mr. Yunkers to start next Monday, that is why I remember the date, on Monday was the thirteenth of November, and I say to Mr. Yunkers "I don't want to start on the thirteenth on a Monday, if you have something to give me to do I go to work at night time, and I was over at Paterson at night time after finishing my work with The Hilton Company, and there was a couple of changes to make and I made them, being I didn't have a man it means that I done work at night time, didn't get paid for it, of my own free will, that I didn't want to start on Monday the thirteenth, if Mr. Yunkers will remember that.

Q. When did you actually start? A. I started actually Monday morning, only in the night time, I even had to sleep there, and I done a little changes, what was necessary; they didn't have no window dresser during my time.

Q. November 14, 1916? A. November the 13th I started, Monday.

Q. November 13, 1916, Monday? A. Yes.

Q. But you didn't dress any window on the 13th? A. I didn't have nothing to do, only my payroll started on Monday.

Q. From November 13, 1916 afterward you became the window dresser of the Paterson store, of the Joseph Hilton store? A. Paterson store, Fifth Avenue I dressed before the other man came, and Waterbury, and 243.

Q. When did you put the first dressing in the Paterson window? A. I didn't have to dress nothing, only changes.

Q. When did you first make a change? A. That is what I told you, in the night time, either it was on Thursday or Friday night, during my time after finishing the work in The Hilton Company I was down there.

Q. How soon after the thirteenth when you actually went on the payroll of Joseph Hilton did you first dress the window? A. That I cannot recollect, I suppose I done the work on the first week, either on Tuesday or Wednesday.

Q. Once a week did you dress the window? A. Once a week.

Q. Did anybody help you? A. Nobody besides the porter usually for cleaning up and dusting up.

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Q. I think you said the window dresser puts the signs, whatever their character, in the window? A. We call this advertising for display; not all the time, some time they have them in at a sale.

Q. Is it part of the artistic arrangement of the window to place the sign according to the scheme of the window? A. No, the artistic display is in the coloring of the goods and merchandise, it make it worth while to the customer looking.

Q. Who is in charge of covering up some part of the artistic design of these very ugly board? A. This is only in the way of the window.

Q. Who puts it in the way? A. The window dresser.

Q. You locate those signs? A. Yes; that only covers up the merchandise.

Q. You also put the cards on the clothes that are in the window? A. Certainly, got to put a price on it.

Q. I show you Exhibit 141 for identification; do you recognize that as one of the price cards of The Hilton Company? A. Not being used.

Q. I am not asking you that. You were in the employ of The Hilton Company and they used these cards? A. Yes.

Q. You recognize that as one of the cards? A. Yes, and they had the crest, and that crest is for The Hilton Company.

Q. I show you Exhibit C-142, do you recognize that as one of the cards, price cards of the Joseph Hilton? A. No, sir; Joseph Hilton never had these.

Q. You never put that in any window? A. Not in Joseph Hilton's windows.

Q. Who else dressed windows in Paterson besides you, after you were employed by Joseph Hilton? A. After me, nobody. Before me.

Q. I did not intend to mislead you, and I want to give you a chance to correct the error into which I led you, if it is an error. Which card is it of those two, Exhibit C-142 and C-141, which is The Hilton Company and which is Joseph Hilton? A. That is the card of The Hilton Company; there is nothing in Joseph Hilton's, but I always heard talking they are down in the basement, and I found them the first time in Paterson being made up, such big signs with crest on in Paterson, and gave order to me, these signs even they are clean they aren't to be used; they were laying in Paterson before I came in the employ, in the basement.

Q. Which one of these cards represents the kind of card that you say you were told not to use? A. Well, I can't recollect them here only in the way that the window dresser what dressed before me, he had there a certain blue window, in case it should be that he had the blue.

Q. The only way you can distinguish between those two shields, as belonging to The Hilton Company or to Joseph Hilton, is that when you went to Paterson you found a blue window, and you thought maybe the blue window was made up to fit the blue shield? A. That wasn't shown up to the windows, and I have had orders not to show them up; they were laying there in the basement.

Q. You were familiar with the price card of The Hilton Company before you went to Joseph Hilton? A. There was always different price cards, with crest and without crest and half price sale, and so on.

Q. Which one of those crests do you recognize as the crest in use by The Hilton Company before you went to Paterson? A. I cannot say this; only the way I distinguish is the color; the way they are made out I don't know; I couldn't describe them only that I tell you is the color what I seen there in the basement.

Q. Which is which? A. The blue color I seen there in the basement.

Q. That is the only way you can tell? A. The only way I can tell.

Q. Do you remember when you were told not to use those shields? A. Any time I went to Paterson, I asked for them, why they are in the basement, and told that they should not be used.

Q. Given any direction about using them in New York? A. In New York never was, and never did use them.

Q. Did you ever use them in Paterson? A. I used plain cards, and I changed them off every month in Paterson.

Q. Immediately that you went to Paterson, as told that? A. What, told that?

Q. Immediately that you went to Paterson, as soon as you got to Paterson were you told not to use this shield? A. As soon as I got the job I was there to change a couple of cards that I told you I didn't want, and they didn't have no window dresser.

Q. I show you Exhibit C-126; do you recognize that as one of your window dressings; that is the Paterson store window? A. No, sir; I never had a vest form in the front in my windows.

Q. You did not dress that window? A. Not a vest form in the front of my windows.

Q. Exhibit C-129, did you dress that window? A. That is the same thing, with the vest form in front of it.

Q. You did not dress that window? A. I don't put no vest form in front of it, never.

Q. If that is a window of the Paterson store it was dressed by somebody else than you? A. It must be in the window before I did take it.

Q. I say if that is a window of the Paterson store it represents a dressing of the window by somebody else than you? A. I didn't put this vest form; I recognize the store, certainly I do.

By the Court: Q. Do you recognize the dressing, did you dress the window? A. No, sir.

By the Court: Q. Somebody else did it then? A. It is not my dressing.

The Court: What date was that photograph?

Mr. Hardin: November 21, 1916.

A. By dressing means a regular entire different change. If I go there and the window was being dressed once in four weeks, and after this only a couple of garments are being sold and taken out, that is one thing; what I call dressing is an entire different change, take out the windows and have them cleaned, and make a different lay-out, a different display, the way I want it.

Q. I show you Exhibit C-127, is that one of your dressings A. Where is this?

Q. At Paterson? A. No, sir.

Q. Wait a moment, I will tell you. Yes, that is Paterson? A. Yes, sir; that looks more like it.

Mr. McCarter: What number is that?

Mr. Hardin: C-127.

Q. I show you Exhibit C-128 and ask you whether that is one of your window dressings; that is also the Paterson store? A. I can't recognize it really; I recognize the other one better.

Mr. McCarter: Which other one?

Q. You recognize this one better? A. Yes.

Q. He says he recognizes C-127 better. A. I see on the way of displaying, you know, the little points.

Q. Now look at that carefully. A. And this is not such a good picture taken.

Q. I call your attention to C-127; you recognize that as your window? A. Yes.

Q. I call your attention on the right-hand side of the picture to the vest form in the rear part; do you find the same vest form in the other? A. Yes.

Q. Isn't that window substantially in the same shape, C-128 as you find C-127. Just look at the two with care? A. Well, I see here four canes, and here I only see three canes; it looks different; here is one, two, three, four canes, and there is one, two, three canes, and there is a difference, and this I recognize (indicating).

Q. You recognize C-127 positively as your dressing, and that (indicating) might have been

but you are not sure? A. I am not sure.

Q. It might have been? A. That is not my dressing, I can't recognize it at all, it is hard to say.

Q. Would you say there was a change in the dressing of that window between the time those two pictures were taken, 128 and 127? A. Why the way I explained it to you is, here is one, two, three canes, and here is four canes.

Q. I know, but I ask you would you say that there was a difference in the window dressing between the times of those respective pictures, 128 and 127? A. Yes, I would have to say, because here I count one, two, three, four canes, and here I only see one, two, three, as far as I can see.

Q. So that if they were taken on the same day the window must have been dressed in between the two pictures?

Mr. McCarter: Maybe they were not taken on the same day.

A. Maybe they weren't on the same day. I see here four canes and I see here three canes.

The Court: Is not that obvious, Mr. Hardin, according to his testimony.

A. I see one, two, three canes, and here I see four canes; there is a change made maybe, I don't know.

Q. Do you know the printer, Mr. Saulzer? A. Yes, sir.

Q. Do you recall about the time that you first went to Joseph Hilton giving him an order for price cards? A. I gave him orders mostly ac-

cording to days every eight days and every fourteen days, without changes, and he gets an order every week mostly from me.

Q. Did you give him an order for price cards right away after you left Hilton & Company and went to Joseph Hilton? A. Whatever I needed, certainly.

Q. Do you recall having given him an order, a hurry order, for some plain cards without the crest? A. No, sir; I ordered them without the crest, whatever I ordered, I never ordered with the crest, whatever I ordered it was was without the crest.

Q. Do you remember hearing about this lawsuit at some previous time? A. Yes, sir; that is brought when I hear about it, I can't recollect the date, about January.

Q. That is the first time you heard of it, in January? A. Yes, the end part of January.

RE-DIRECT-EXAMINATION by Mr. Mindes:

Q. Will you please state the reason for your leaving the employ of The Hilton Company? A. The reason for me leaving the employ is that I had inquired by Mr. Philip Hilton—I had been intended to get married the end part of November, and I inquired for an increase; I asked Mr. Philip Hilton one day in Nassau Street, it must have been about the end part, no, the start part of October, I mean in the early part of the month of October, I asked Mr. Philip Hilton for an increase of salary and give him the reason why, I intended to be married, and Mr. Philip Hilton

told me I should see Mr. Murray, the general manager, which I did; Mr. Murray told me he cannot give me any definite answer before the first of the year; I begged him for it, and I told him I wanted to get married end part of November, and I couldn't get along with the salary; I had twenty dollars a week there; then I asked him again, and he told me he won't, and I was out to make more money, and after I come to know that there is an opening for window dresser with Joseph Hilton I was up to see Mr. Yunkers, and back and forth, and he did give me some more money.

Q. When did you first learn that Joseph Hilton wanted a window dresser, and who did you talk to about it? A. I first found out, being I looked for a chance to better myself, up there as assistant I didn't make so much money, I figured right at the start of Paterson—

Q. No, listen to my question. I ask you when did you first learn and from whom did you learn it, and who did you speak to about it?

Mr. Hardin: Don't you think that all that is compentent in that respect we have had. He said he wanted more wages, and we declined it, and he sought another place.

Mr. McCarter: In view of the testimony which is given in reference to Mr. Murray, the Mayor of Orange, etc., I would be glad to have your Honor read the affidavits that have been filed in this case.

Q. Do you recall ever talking to Mr. Scott? A. Yes.

Q. About any employment with Joseph Hilton?

A. Yes; I knew he was a friend of Joseph Hilton and he could see him, in case there is an opening for me I should get a position, and Mr. Scott told me he done me the favor, he seen him.

Mr. Hardin: I object. It has not appeared that there has been any agency on Mr. Scott's part to employ men. He says he applied to Philip Hilton for more wages; Mr. Philip Hilton referred him to Mr. Murray, the general manager; Mr. Murray said he couldn't give him any more wages; he then sought Joseph Hilton and got more wages and went to Joseph Hilton. What conversation he may have had with other employes is entirely immaterial. There hasn't been any testimony offered in contradiction.

Mr. McCarter: The witness was interrogated by Mr. Hardin with reference to the time he left the employ of the complainant, and how he happened to go into our employ, and then your Honor asked yourself, a natural question, whether or not he sought the employment with the defendant or the defendant sought him out, and he only gave a little bit on that, and that led up to this re-direct-examination. It now appears from this re-direct-examination that in view of his prospective marriage he went to Mr. Murray, Commissioner Mayor of Orange, and told him of his prospects and that he wanted an increase in salary, after having been to Mr. Philip Hilton, and that

they jollied him along a little bit and finally gave him no definite answer. Now I hope your Honor will read the affidavit of Mr. Scott that is on file in this case and compare it with this testimony, bearing in mind that when Scott was called as a witness, after having seen the affidavit of this gentleman, which is exactly as he told it today, he did not testify at all at the trial upon the subject.

Mr. Hardin: Mr. Scott was open to cross-examination, you could have asked him anything you pleased.

Q. What was the conversation—

Mr. Hardin: I object to that.

The Court: I overrule it.

Q. How did you come to go to Joseph Hilton?

The Court: Overruled as having been answered, he has told that several times, how he came to go to Joseph Hilton; he wanted employment.

Mr. Mindes: I don't think he quite understood your Honor's question, and he hadn't finished it, he simply stated offhand without going into the details.

The Court: The details are not important; he went there seeking employment.

Louis Allen—Direct

LOUIS ALLEN, sworn:

Direct-examination by Mr. Mindes:

Q. What is your business? A. I am manager for Hilton's.

Q. What store? A. Paterson.

Q. What did you do before you became manager of Hilton's? A. Had a store of my own.

Q. Where? A. Providence, Rhode Island.

Q. How long? A. About thirty-three months, close on to three years.

Q. Any Hilton & Company there? A. Yes.

Q. Have you ever seen their windows dressed? A. Every window they ever put in.

Q. Have you had any experience in window dressing? A. Yes, sir.

Q. How long an experience have you had? A. About ten years, just about ten years.

Q. Is there anything distinctive in the style of window dressing of The Hilton Company? A. Nothing only they make their windows a little more attractive than the ordinary window.

Q. In what way? A. Why usually plushes.

Q. Do other concerns do that? A. Several of them.

Q. What other concerns? A. The firm I was with, that I dressed their windows, Georges; I do my own windows, and several firms in New York do it, and in fact they are practically doing it, it is becoming almost universal in up-to-date clothing stores.

Q. How long had Georges been doing it? A. To the best of my knowledge a little over ten years.

Q. Max, do you know Max? A. Yes.

Q. Max Clothes Shops? A. Yes.

Q. Do you know whether they do it? A. They use a little plush, yes, sir.

Q. Do you know whether the Horton Clothing Company does it? A. I don't know them.

Q. I show you a photograph Broadway and Thirty-sixth Street, Georges? A. Yes.

Q. Is that the same style window dressing? A. That is a Georges window, yes.

By the Court: Q. Would you say that is the same kind of window dressing used by The Hilton Company? A. No, sir.

By the Court: Q: How was it distinctive? A. Why it is a little bit different than The Hilton Company. I myself, individually, never like The Hilton Company's windows, I thought they were a little too level, that is, a little too regular. I like a window on that style better (indicating), but every man dresses his own window to his own satisfaction or the way he is directed.

Q. The object being what? A. The object being to attract attention.

The Court: Well now, I think we know what the object is.

Q. I show you a photograph of Horton Clothing Company and ask you whether that is similar to the window dressing of The Hilton Company? A. No, sir.

By the Court: Q. What distinguishes that? A. Why this looks too crowded, two crowded altogether; such firms as The Hilton Company and Georges and Max and Browning and King and

Brill Brothers, they take a little more care with their windows, and a window like that, there is too much stuff in there, it looks too crowded altogether.

Q. Do they use the same style canes? A. Yes, they use the same articles, that is, the forms, canes and stands and pedestals, etc., plush, but they don't drape them in the proper manner.

Q. Do they all use drapery? A. Yes, sir.

Q. They all use canes? A. Yes.

Q. They all use pedestals? A. Yes.

By the Court: Q. What do you call those pedestals? A. What do I call them? I call them pedestals.

Q. There was some French word used a little while ago in this case. A. I don't understand that.

Q. Is there any similarity between the window dressing of Hilton's and The Hilton Company? A. Why as to attractiveness I can say that they are all about the same, all of the windows are about the same and up-to-date windows.

Q. Is the Hilton's copied after The Hilton Company or is it not? A. I don't believe they are, no, sir, positively not.

By the Court: Q. If you should see a window dressed as the Hilton's windows are dressed would you know it to be a Hilton store rather than a Hilton Company store, if the name was not up over the window? A. No, sir.

By the Court: Q. It might be one or the other, or it might be Browning & King Company store? A. Yes, it might be any up-to-date clothing concern.

Q. Did anybody inquire of you on July twentieth for a suit similar to one he had purchased in The Hilton Company? A. July twentieth. That was on Friday.

Q. Friday, last week? A. No, sir.

Q. Did you have any conversation with any gentleman who stated that he had purchased a suit in New York, Fourteenth Street store of The Hilton Company? A. No, sir; not that I can recall, none at all.

Q. Did you make any statement to anyone that the store of Joseph Hilton in Paterson was the same as the store of The Hilton Company at Fourteenth Street and Broadway? A. No, sir; never did.

CROSS-EXAMINATION by Mr. Hardin:

Q. Is there a Mr. Manning in your Paterson store? A. Yes, sir.

CHARLES M. HILTON, sworn:

Direct-examination by Mr. Mindes:

Q. You are the son of Joseph Hilton? A. Yes, sir.

Q. How old are you? A. Eighteen years old.

Q. How old were you in May, 1916? A. Seventeen years old.

Q. Who ran the Paterson store, Main and Ellison Street? A. Who ran it? I contemplated running it, and went up there with the full intention of running it.

Q. Will you state just how that occurred? A. I went up there and Mr. Murray Apfelbaum,—that

is, prior to my leaving school, I left school sometime in March, I went in the shrubbery business, and I wanted to get in the clothing business; I spoke to my mother and told her about it; she said she would speak to my father about it; she spoke to him, and in the meanwhile I was in the shrubbery business; some time in April Mr. Murray Apfelbaum came to me and told me he had a store for me in a very good locality in Paterson, and knowing I was interested—I had spoken to him before that—knowing that I was interested he took me up and showed me the store; I liked the location very much; I spoke to my father about it; he had seen it before and he liked it, he had seen it I guess when Mr. Apfelbaum brought it to my uncle and father; he liked it very much, and some time in May my father and I went up to sign the lease, I having full intention of signing the lease; my father wanted to open business for me myself, to put me in business, but during the course of the conversation it so happened that the lawyers of the Marcus King Estate thought I wouldn't be responsible, being under age, and advised my father, said it would be much better if he would go security for me, he sign the lease, and they turn it over to me at the age of twenty-one, which was agreed on, and the lease was signed under those conditions, that it was to be turned over to me when I became twenty-one years of age, and I was to run the store.

Q. The store was leased in May? A. The second of May, I believe.

Q. Do you recall having any conversation with

your uncle Philip Hilton after that? A. I do.

Q. When was it, and what was the conversation? A. Pursuant to an engagement made by my mother the early part of May my mother and I met my uncle at the corner of Branford Place and Broad Street and took a drive, and during the course of conversation my mother told him I was going into business; he said he knew it; she told him to help me out as much as he could; he said he would; that is, my brother and I were going into business; he said he knew it, and he was gonig to help us out as much as he could, and during the course of conversation I cut in and asked him would he do any manufacturing provided I had the goods sent to him in my name; he said he would provided my father paid for it; that was agreed upon, and I had the goods sent in to the place and he manufactured it for me, and it was paid for by my mother, that is something like eleven hundred dollars was paid for by my mother, and a small balance by my father.

Q. Did you have any conversation with reference to any names? A. I am coming to that. While we were riding I got talking to him about the name, and he said to me, that is, I said to him that Aleck and I were going into business, and we didn't like to use Aleck or Charley Hilton, we wanted it to be both of us; I asked him what he thought of "Hilton's;" he said, "Good, use it." Naturally I went to the sign painter and had him make up signs. Right after that I placed the signs in the Paterson windows, telling the people of Paterson that Hilton's would open here in a

short time, not knowing exactly what time we would open up.

Q. Did you have any other conversation with your uncle Philip after that? A. I did; the latter part of July or early in August my brother and I—

Q. Brother who? A. Aleck and I, we decided we would ask our uncle to loan us the advertising he used so successfully in Providence, and of course it would mean a whole lot less expense to us, we weren't so well financially fixed, my brother and I weren't; we didn't want my father to go to the expense, he wasn't there at the time, went away on a vacation, and only came in where we were operating business, 841 Broad Street, came in occasionally, once or twice a week, sometimes not that; we thought we would ask him for the advertising he was using in Providence, because it was very successfully used and we liked it, and it would save us a lot of money. We met him in front of the store, that is, I had gone to see him previously about different little matters before that, we met him in front of the store and I asked him whether he would let us use it, the advertising that they used in Providence; he said he would providing we wouldn't use "The Hilton Company" but use "Hilton's." We agreed upon that, and he referred us to Sherman & Bryan, because he said he had only one copy, but referred us to Sherman & Bryan and they would give it to us, and we got it and inserted two or three insertions in the Paterson newspapers, and I placed signs in the windows of this advertisement, I myself took the other signs I put in previously out and put these in.

Q. Who conducted the business? A. Conducted what business?

Q. The business that started in Paterson under the name "Hilton's?" A. What do you mean, the business itself in Paterson or the manufacturing of the goods and the fixing of the loft?

Q. The manufacture of goods? A. My brother and I took care of everything.

Q. Did The Hilton Company manufacture any goods? A. They manufactured the goods, something like eleven or twelve hundred dollars worth of merchandise; we paid for that, my father paid for that, my mother paid for that and my father paid a small balance on it, and they manufactured it for us, that is some of the goods to be displayed in the Paterson store.

Q. Now do you recall ever incorporating under the name "Hilton's?" A. That was contemplated when we took our lease first in Paterson, to incorporate, but somehow or other it slipped away, and again in the middle of May we decided to incorporate, because we thought it would be easier to get credit; it was hard for us to get credit; anyway, we found out through creditors it would be much harder for us to get credit, and therefore we abandoned the idea of incorporating.

Q. This conversation you had concerning the use of the name "Hilton's" with your uncle Philip, was that prior to the time or the incorporation under the name of "Hilton's" of subsequently to it, which was it? A. As I said before, we were contemplating that at the beginning, but this was before.

Q. That is, the conversation—A. Was before the incorporation; I first got his permission for using the name.

Q. How did your father come to take over that store? A. We were getting along, brother and I did the best we could with it, but it was a pretty hard matter for us two fellows, I had just gotten out of school a very few months, I didn't know a whole lot about the clothing business, and naturally I wanted my father to go in the business because I knew if he got in it it would be a good business some day or other, and when he came back about September first or fifth, he came back permanently, after being away for a short while, I asked him, and my brother and I persuaded him to take over the Paterson store and run the business under a bigger scale than we could do, and he did it, and took the business over himself, and I am working for him now.

Q. How long was your father away after the dissolved partnership with your uncle Philip? A. He was away until the first of September, but he came in to see us once a week or twice a week, and sometimes not even that, but he came in to see us occasionally.

Q. Was he there when the store opened? A. No, sir, I opened the store, I was there at the opening of the store rather.

Q. Was your father there at the opening of the store? A. No, he wasn't at the opening of the store.

Q. Now you say you bought the woolens and sent them to the Hilton Company to be manufactured? A. Yes.

Q. Who did the shipping from the manufacturing department of The Hilton Company to your store in Paterson? A. Well, I don't just recollect, they were sent up though.

Q. Do you know whether the woolens were shown on the books of the company as being purchased by you? A. Everything was sent under my name, C. M. Hilton, all bills, and I picked out the woolens, and everything was sent under my name; that I know, I know they were sent to our place 841 Broad Street where we were conducting business, but who sent them I couldn't tell.

Q. Do you recall how you came to put a shield over the sign in the Paterson store? A. At the time I met my uncle, latter part of July or early in August, he asked us whether we could use a crest or something, he said use something similar, and we used that, not thinking he would have any objection because he gave us permission.

Q. Did you get any letter from Mr. Hardin? A. Yes, and immediately we abandoned the crest, that is, my father got a letter about the different things and we immediately abandoned the crest.

Q. Up to the time this permission was revoked did you use any price tickets with the shield on in the windows? A. I don't just recollect that, I never paid much attention to that.

Q. Who did? A. The window dresser took care of that, we left that to his best judgment, we didn't tell him to do that or what to do, we told him to make price tickets to his own mind.

Q. Who was the window dresser? A. I think Mr. McGovern dressed the opening window; I

know when Mr. Rikower was there we were using plain windows, but the opening window I didn't pay much attention to it.

Q. How long were these cards in the window? A. Not longer than a week at the most.

CROSS-EXAMINATION by Mr. Hardin:

Q. You said that the eleven hundred dollars worth of goods that were manufactured by The Hilton Company for your enterprise were sent to 841 Broad Street? A. That is as far as I can recollect, I don't remember just where they were sent.

Q. That is in Newark, is it not? A. Yes.

Q. And were you and your brother engaged in business there? A. Yes, we were manufacturing in that place.

Q. What did you have, a loft? A. A loft, exactly, on the second floor.

Q. Is there where you made up stock for your Paterson store? A. Yes.

Q. When did you first get that loft? A. I don't remember, I can't just remember.

Q. Was it before or after you leased the Paterson store? A. Naturally it was after I leased the Paterson store, it wasn't before.

Q. Was it before or after the dissolution of Joseph and Philip Hilton as partners? A. Before.

Q. How long before? A. I don't remember.

Q. Try and remember, please. A. I can't remember, I haven't the least recollection.

Q. Do you know there was some little time between the proposal by your father to sell out to your uncle and the acceptance by your uncle be-

fore the transaction was closed between them? A. I don't quite understand.

Q. (Question read.) A. I know nothing at all about what my father and uncle were doing in that at all.

Q. You do not know they were dissolving? A. I knew they were dissolving when the paper was signed.

Q. Don't you know there was some little time after the agreement to dissolve before the dissolution was actually accomplished? A. After May fifth, after the paper was signed, until January twenty-third I know they were going to dissolve.

Q. June twenty-third? A. Yes.

Q. You got ths loft in the interval between May third and June twenty-third? A. If I remember rightly—I don't know that, I don't remember; you can find that out easily enough; I don't remember whether before or after.

Q. Well, you said you got it after? A. As far as I remember, I told you that, I don't remember, that is over a year ago you know.

Q. Well, the Paterson lease was dated May third? A. May second.

Q. And no doubt about it you got the loft after the lease? A. Yes, I got the loft after the lease, that there is no doubt about.

Q. How long did you keep the loft? A. I don't remember, I think it was several months.

Q. Did you abandon that particular loft when you got the Paterson store going? A. No, not right away, no.

Q. Continued to manufacture there? A. Yes, sir.

Q. You said your father was not at the opening of the Paterson store? A. Precisely.

Q. You and your brother tried to do business alone there for a time without him? A. He had already agreed to come in business with us before the Paterson store was opened, but he wasn't at the opening of the store; I was at the opening of the store; he was never at any opening of the store.

Q. When did he begin to take an active part in the business? A. He began to take active part in the business since he recuperated a little from the little trouble he had, the date I don't remember, but it was sometime in September.

By The Court: Q. When did he first agree to go in it? A. Between May first and the fifth, after returning from a short vacation.

Q. May first you mean? A. September first and fifth I meant to say.

By the Court: Q. When was the opening? A. September ninth.

Q. You were fixing up the place for some time before, were you not? A. Yes.

Q. I show you Exhibit C-147, is the advertising correctly shown there? A. Positively.

Q. That shows the situation prior to when your store was opened? A. Exactly.

Q. The picture was taken on the twenty-sixth of August? A. Exactly.

Q. That was the situation as you call it at that time? A. Yes.

Q. And the picture of Uncle Sam on there? A. Is the very advertisement we had in the window.

Q. What was the date of this conversation that you had, what time in May was this talk you had with your uncle and your mother? A. The first week in May.

Q. The time you went riding? A. The first week in May.

Q. And when was this subsequent conversation that you had with your uncle with reference to the advertising in Providence? A. Some time the latter part of July or early in August, I don't just remember, as near as I can recall.

Q. I show you a sheet which seems to be a sheet of the Passaic Daily Herald, Friday September 8, 1916; is that an advertisement of yours preceding the opening of the store? A. I think it is, I think that is, I am not exactly acquainted with this, my brother took care of the advertisements more than I did, but I think that is one of the advertisements.

Q. Have you any doubt about it? A. None whatsoever, I think that is one of the advertisements.

Mr. Hardin: I would like to have that marked.

Marked Exhibit C-157.

Q. Do you recognize that as another advertisement from the Paterson Morning Call? A. Yes, I suppose it is if it came from the paper.

Mr. Hardin: I offer this in evidence also.

Marked Exhibit C-158.

The Court: I do not suppose you have any objection to the marking of these?

Mr. McCarter: Oh, no.

Q. You were actively associated with the business from that time forward, were you not, in Paterson? A. Not in Paterson altogether, I was for a while, yes.

Q. How long were you? A. I cannot just say, I was there for several months I think after the opening of the store, then I was sent somewhere else.

Adjourned until July 27.

Examination of witnesses in the above stated matter, before HONORABLE MERRITT LANE, Vice Chancellor, on Friday July 27, 1917, at Chancery Chambers, Newark, New Jersey.

Appearances as before.

CHARLES M. HILTON, resumed:

Cross-examination by Mr. Hardin:

Q. Mr. Hilton, you have not been active in the association with the Paterson business lately? A. I won't say that I haven't been, no.

Q. Well, you are not located in Paterson? A. Not altogether, no.

Q. Are you familiar with the Paterson matters? A. I should say so, yes.

Q. Do you know about the advertising that is done at Paterson? A. When?

Q. At any time, from the time the store was opened? A. No, I am not familiar with any advertising done in Paterson.

Q. Are you able to fix the date of the meeting that you have described between your mother and your uncle Philip, at the time you took the automobile ride? A. As near as I can remember it was the first week in May, that is as near as I can remember.

Q. Whose automobile was the ride taken in? A. My mother's car.

Q. Who drove the car? A. A chauffeur.

Q. Do you remember his name? A. No, sir; I do not.

Q. Is he still in your employ? A. No, sir; he is not; I don't know who it was.

Q. You don't know who it was? A. No, I don't remember just now who the chauffeur was; he is not in our employ now though.

Q. What sort of a sized car is that? A. Seven passenger automobile.

Q. And you and your mother and your uncle Philip all sat in the back part of the car? A. Positively.

Q. And talked this matter over? A. Exactly.

Q. The crest or shield with the dates on it was used for a time in the Paterson store I understand? A. Yes, yes.

Q. Do you remember when you ceased to use it? A. I think we ceased to use that—the crests, there was a similar crest I think on the window—

Mr. McCarter: Answer the question. A. I guess when we got the letter from Mr. Hardin.

Q. What do you mean by your reference to a similar crest? A. Something similar to what The Hilton Company used.

Q. You had used that crest also in New York had you not? A. No, sir.

Q. Never? A. No, sir.

Q. Were you located in New York at the time? A. I was in New York.

Q. Did you ever make application after the dissolution of the partnership between your father and your uncle Philip to your uncle Philip for employment? A. Me?

Q. Yes? A. No, sir.

Q. During the summer of 1916 you were not exactly engaged in the clothing business, were you? A. Pretty nearly, yes.

Q. Weren't you doing anything else? A. Yes, sir; I was doing something else for a while.

Q. Selling automobiles, were you not? A. Yes, I was; that was only for a period of two weeks, and I was at the loft most of the time then.

Q. Were you selling safety razors also at any time during that summer? A. No, sir.

Q. Or anything else besides automobiles? A. No, sir; automobiles I sold for two weeks.

RE-DIRECT-EXAMINATION by Mr. Mindes:

Q. What part of September was it you were selling automobiles? A. September.

Mr. Hardin: He did not say September; he said during the summer.

Q. When was that? A. I don't remember exactly when it was; it was before; I can't just re-

member when it was, it was for a period of two weeks.

Q. Was it before or after the opening of the store at Paterson? A. Before the opening of the store, away before the opening of the store.

Q. How many chauffeurs did your mother have since the time that you had this conversation with your uncle? A. It is pretty hard telling, we had quite a few of them.

Q. How many? A. I haven't any idea how many, I don't know how many.

Q. Had a number? A. Quite a number.

Q. Is this the lease that was in discussion at the time in Paterson with Mr. Apfelbaum? A. Yes, sir.

Mr. McCarter: I would like to have the sixteenth clause of that lease read in the record.

Mr. Hardin: Let us see the lease. Is this the Paterson lease?

Mr. McCarter: Yes.

Mr. Hardin: Let us see the lease. Is to the whole lease going in; I do not want one clause to go in.

Mr. McCarter: Of course the whole lease would go in, but I would like the significant clause of the lease, which from our standpoint is the sixteenth clause, read into the record, because that is so much shorter than to have to refer every time to a long document and find that particular clause; it is only a question of practical convenience.

Mr. Hardin: Offer the lease and read any

part of it into the record with the Court's permission.

Mr. McCarter: Yes.

Mr. Mindes: We offer the lease and assignment of the lease, and letter attached to the lease.

Mr. Hardin: I learn now for the first time that the lease has been assigned, this lease has been assigned.

A. What lease is that?

By Mr. Hradin: Q. The Paterson lease? A. When?

By Mr. Hardin: Q. Has the Paterson lease been assigned to somebody else by your father? A. I don't know anything about that at all.

Marked Exhibit D-12.

Mr. Mindes: The sixteenth clause of the lease reads as follows:

"16. It is agreed that the said tenant shall have the privilege of assigning this lease to his son Charles Hilton, upon his attaining the age of twenty-one years, upon the condition that the said Joseph Hilton shall remain liable for the payment of the rent and the performance of all the terms and conditions herein set forth. If the said Hilton shall so desire he may assign this lease to a corporation organized for the purposes of carrying on said business instead of to the said Charles Hilton; the said Joseph Hilton continuing liable for the performance of all of the terms and conditions of this lease during the entire term thereof."

RE-CROSS-EXAMINATION by Mr. Hardin:

Q. That suggests to my mind another question. What did you have to do with the organization of the proposed corporation, you personally? A. I was supposed to be one of the members of it.

Q. A corporation was started, I understand, so far as to file a certificate in the office of the County Clerk, but it did not go any further than that? A. Yes.

Q. You did not sign that certificate that was put in the County Clerk's office, did you? A. No, sir.

Q. Who had charge of that corporation matter? A. I believe my brother.

Q. Do you remember what lawyer had it? A. I don't know anything about it.

Q. You don't know that Mr. Bernhard was the lawyer at that time? A. I don't know anything about that.

Q. You never paid any of the bills in connection with it? A. Everything came in—no, not the lawyer.

Q. In whose name was the lease of the loft at 841 Broad Street in which you were conducting the clothing business during the summer of 1916? A. I don't know, I don't remember.

Q. Did you negotiate the lease? A. I did not, no.

Q. Who was the landlord? A. I don't know—I do know, Schlessinger I think.

Q. Did you have the goods that you had in that loft insured? A. I don't think so, I don't know, I don't know, I don't think so.

HENRY W. SCHYKE, sworn:

Direct-examination by Mr. McCarter:

Q. Are you in business in Newark? A. No, not at the present.

Q. Were you formerly? A. I was.

Q. Where and when? A. Why up to June first corner Market and Broad Streets, Newark.

Q. How long had you been at the corner of Market and Broad previous to June first of this year? A. Eleven months.

Q. And what business were you in there? A. Clothing business.

Q. How long have you been in the clothing business anywhere? A. About thirty years.

Q. Are you still in the same business? A. I am.

Q. Where? A. New York.

Q. Under what name did you transact business at the corner of Market and Broad Streets, second floor, which you say you closed the first of June? A. Woods Clothes Shop. It still exists there.

Q. How long had you known, if you had known at all, the business conducted by The Hilton Company on Broad Street here or on Market Street and in New York? A. Well, my knowledge of the Hilton business was mainly in New York, up to lately, and lately I have been a little bit familiar with it here but not very much.

Q. Were you familiar with the goods that were sold by The Hilton Company in New York? A. As much as with any other retail houses in New York; that is my business.

Q. That doesn't answer anything. Were you in fact familiar? A. I was, yes, surely.

Q. What have you to say as to their being superior in fit, style or other respects to similar products of other houses? A. You know, I must explain it, if your Honor please, in my own way. You know clothing is peculiar; you take a Rogers Peet suit, take his label off and give it to a certain class of wholesale and he wouldn't be able to sell it for twelve dollars. You know what I mean.

Q. No. I want an answer to my question. A. Well, they sell a pretty good class, they always sold in New York a pretty good class of clothing.

Q. Now I ask you if it was superior? A. It was not, not in their class; there are a dozen of them down there sell the same kind of clothing.

Q. Is there anythng distinctive or particular or peculiar about their goods? A. It is what they make it, it is the advertising, the slickness of the dressing of windows, etc., that is about all I can say.

Q. Again I will ask you to answer my question. A. I don't know what you mean.

Q. I am coming to the point about the advertising later, and the slickness, as you call it what I want to know is about the fabric that enters into the goods themselves? A. The fabrics, we buy all alike.

Q. And the general make up and style? A. The style. I create a garment, and two or three months later they all got my styles.

Q. I am not asking you about you. A. I mean they all use the general run of styles.

Q. Please pay attention to my question. You seem to desire to say something else than answer my question. I want you to answer my question. How about the trimmings? A. They are bought from the same kind of houses, and they probably use the same kind of trimmings.

Q. Now take the clothing business generally, with which you say you have been familiar for thirty years. What makes in your judgment to a success of that business. Has location anything to do with it? A. Location is foremost.

Q. What is the point about the location? A. Well, where the traffic is heavy and where the business is, you know. A man selects a location and thinks it is a good one, and they do business there.

Q. The location near Broad and Market is looked upon as a good location, is it? A. Yes, sir.

Q. And that I imagine from what you just said is owing to the fact that a great many people go by there? A. Yes.

Q. What have you to say about the character of the window display having anything to do with the success of a business of this character? A. Surely.

Q. What is that? A. Well, because people display their windows, they put nice stuff in the windows and people buy it.

Q. You have been familiar, I suppose, with the window displays of The Hilton Company in Newark and in New York? A. I have, yes, sir.

Q. Was there anything peculiar or distinctive, except that it was a good window display, about their display? A. Nothing peculiar, but it al-

ways has been a very good window display.

Q. Won't you tell the Vice Chancellor what you mean by a good window display? A. Well, I mean nice stuff put in the window, well trimmed, clean kept, good samples put in the window; that is what I mean by a good window.

Q. Are you able to recall anything distinctive or peculiar about it, over and above other good window displays of other concerns? A. No, sir; I cannot.

Q. Now suppose that you were not told from whom a lot of clothes came that were laid on this table and produced by McGregor, Stoutenburg, The Hilton Company, Marshall & Ball, Boyd, Levy, Whitty Brothers, or any other concern of that type, would you by looking at the goods, expert as you are in the clothing business, be able to say who had manufactured the different pieces that were produced? A. No, sir.

Q. How much importance do you deem the label in the suit of clothes in the trade has; do you attach any significance to the label that is in the goods or not? Each house has a distinctive label, has it? A. No, a label to my way of thinking—every retailer puts it in mainly as an advertisement, so when the man carries the suit out that he still remembers where he got it.

Q. You are a friend of Philip Hilton, are you not? A. No, not a friend of his, no, just an acquaintance, I don't know much about him.

Q. Well, you have nothing against Mr. Philip Hilton? A. Absolutely not.

Q. You are not hostile or inimical to him in any way? A. No, sir.

CROSS-EXAMINATION by Mr. Hardin:

Q. You haven't anything against Joseph Hilton either, have you? A. Surely not.

Q. I understood you to say that Rogers Peet & Company's name was not of any importance in the business? A. Not after the label is out.

Q. You do not want us to understand by that that the name is not of importance in the trade? A. I didn't say that, I didn't want to make you understand that.

Q. The name is of great importance? A. The name is of great importance.

Q. Do you know Mr. Rocha? A. I have met him, yes.

Q. Do you know what his occupation is? A. Yes, he is a designer.

Q. Designer of what? A. Men's clothing.

Q. Employed for that purpose by The Hilton Company? A. I presume so, yes, sir.

Q. You know that? A. I do.

Q. Do you regard location as of great importance? A. Absolutely.

Q. And that is the reason you chose the corner of Broad and Market Street in the City of Newark for your own business? A. Yes.

Q. I mean now the business that was yours up to the first of June, 1917, the present year? A. Yes.

Q. What do you say the name of your place was? A. Woods-Clothes Shop, corner of Market and Broad, over the United Cigar Store Company.

Q. Who occupies those premises now? A. Some other corporation, the people bought it out, you know.

Q. Did they change the name? A. They did not.

Q. Still called the Woods Clothes? A. Yes.

Q. Will you step here, please? A. I will.

Q. You see your former place of business from here, can you not? A. Yes.

Q. It is on the corner of Market and Broad Streets? A. Yes.

Q. South-west corner of Market and Broad Streets? A. Yes.

Q. And on the second floor? A. That is right.

Q. I notice on the sign of that shop, as I see it from here, "Fifteen dollar clothes"; is that the specialty of the Woods shop? A. Correct.

Q. And you were in competition while you were there in business with The Hilton Company on the first floor a couple of doors away? A. Competition? I suppose so. Competition to everybody,

Q. Well, you were located very close to the store of The Hilton Company on Broad Street? A. I was next door to Brill Brothers.

Q. And Brill Brothers were next door to The Hilton Company? A. Yes.

Q. Brill Brothers are on the first floor, and The Hilton Company on the first floor? A. Yes, sir.

Q. Where was the entrance to your store, from Broad Street on Market Street? A. Is this Market or Broad? Market Street.

Q. And do you see more than one door? A. No, just one.

Q. Will you step here a minute please. Do you see the door of the stairway of your shop from here.

Q. Is that it that has the sign "Fifteen Dollar Woods Clothes" over it? A. Yes.

Q. How wide would you think that door was? A. I don't know.

Q. It is not a very big wide door, is it? A. No, a very small door.

Q. And the stairs are pretty narrow stairs? A. Yes.

Mr. Hardin: I would like your Honor to look at that store, if you will.

By Mr. McCarter: Q. Were you a manufacturer as well as a seller of clothes during your experience? A. Yes, I am a manufacturer and a saleman, selling and buying.

CHARLES H. SNYDER, sworn:

Direct-examination by Mr. Mindes:

Q. Where do you reside? A. 451 High Street.

Q. Newark, New Jersey? A. Yes.

Q. You are engaged in what business? A. Chain of men's retail hat stores.

Q. Under what name? A. Snyder's Incorporated.

Q. You have chain stores, have you? A. Yes.

Q. Please name the cities? A. Newark, Paterson, Trenton, New York, Bridgeport, New Haven, Hartford, Worcester, Brockton, Boston, Lowell, Lawrence, Lynn, Salem, Portland, Maine.

Q. Previous to being in the hat business what business were you in? A. Buyer for J. Marshall & Ball.

Q. What department? A. Hat department.

Q. Did you have any other department in connection with the hat department? A. Not particularly, no.

Q. Are you familiar with the sale of clothes duing that period of time? A. Occasionally, I was general utility man, occasionally if they needed a little assistance in the clothing department I used to help them out.

Q. How long have you known The Hilton Company? A. Well, about since, I have been in business, I don't know how long I have been in business.

Q. Ten or fifteen years? A. Yes, easy.

Q. You said you had a store in Paterson? A. Yes, sir.

Q. How long have you had a store in Paterson? A. Approximately eight years.

Q. How frequently have you been in Paterson? A. I visited there about every two weeks.

Q. From your experience in your business in the City of Paterson and in Newark do you find many customers coming from Paterson to Newark to buy hats? A. I do not, sir.

Q. Is there any reason for that, as far as you have been able to learn? A. Yes, a great many reasons.

Q. What are they? A. Well, in the first place Paterson has up-to-date stores of their own, and they sell just as good merchandise in Paterson as is sold in Newark.

Q. Is that all the reasons? A. Yes, there are other reasons, that a person wouldn't waste their

time coming down by trolley and taking an hour and a quarter each way to come down to Newark to patronize Newark industries, when they can buy just as good merchandise, equal in quality and price, in Paterson as sold in Newark.

Q. Transportation, how is that?

The Court: He told about that. What is the use of repeating so many times.

Q. Now do you know the nature of the business of The Hilton Company? A. The nature of the business?

Q. Yes, do you know the character of their business? A. Yes.

Q. What is it? A. Men's clothing.

Q. Do you know the character of the business of Joseph Hilton trading as Hilton's in Paterson? A. Yes, sir.

Q. Do you know whether to the Paterson public the name The Hilton Company was known as selling clothes?

Mr. Hardin: How can he know that? I object.

Q. Before Joseph Hilton came to Paterson? A. I do not, sir.

Q. You say that you were connected with Marshall & Ball who also, I understand, carry clothing? A. Yes.

Q. Upon what does the success of a merchant depend in the city of Newark or in Paterson, for instance, a merchant of that kind?

Mr. Hardin: I object. He has not shown himself to be expert in clothing; he confined himself with great care to hats.

Admitted.

Q. The success of a merchant in the cities of Newark, Paterson and New York depends upon what? A. Well, it depends a good deal on the attraction of the windows to draw the people in to buy.

Q. What about location? A. Well, location has got a whole lot to do with it in different cities.

By the Court: Q. The most important thing is the established reputation for the satisfaction of customers, is it not? A. That is the idea, yes, sir.

CROSS-EXAMINATION by Mr. Hardin:

Q. Do you have any distinctive name for your hats? A. Just Snyder's that's all.

Q. Do you advertise? A. Occasionally.

Q. When you advertise what do you call them, Snyder's Hats or what? A. Mostly, yes.

Q. Do you have any leader, if I can use that term, in referrence to hats? A. No, just Snyder's in other words, I have a phrase: "Snyder says".

Q. Where do you use that phrase? A. Well, I get up little Snyderisms that I give away, what we call throw-away cards.

Q. Where do you distribute them? A. We have boys to give them out, distribute them from house to house, cigar stores, barber shops, boot black stands.

Q. Do you use the same Snyderisms in different cities? A. Yes, sir.

Q. Uniformly, where you have stores? A. Yes.

Q. Do you give them out yourself in your stores? A. Yes, sir, and also have a mail order for them.

Q. Also distribute them by mail? A. Yes, mail.

Q. Do you regard the work that you do in Newark, for instance, in the distribution of Snyderisms, as having some possible benefit to a Snyder store in some other city?

Mr. McCarter: I object. It is not cross examination of this witness. If you make him your witness that is one thing.

Mr. Hardin: I should say it was cross examination.

Mr. McCarter: I do not see how he regards his Snyderisms, Snydersims was not referred to on his direct examination at all; he gave his experience in connection with Marshall & Ball and his experience as store keeper in Paterson with reference to the effect there of local trade between two communities. I do not think what he considers with reference to Snyder sayings is cross examination of that.

Admitted.

A. I do not.

Q. You do not think a person who once buys a Snyder hat in Newark is likely if he happens to be in Paterson or Providence to take another chance on a Snyder hat? A. Oh, very rarely, very rarely.

By Mr. McCarter: Q. May I ask you whether among your Snyder sayings is the phrase "Snyder, don't you want to buy a dog"? A. No, I have never used that as yet, but I have used one similar to that, "Snyder says you lay down with dogs you get up with fleas; you buy a hat of us and we will both be pleased."

LOUIS E. GOLDFOB, sworn.

Direct-examination by Mr. Mindes:

Q. Where do you live? A. 7 Hillside Avenue, Newark.

Q. How long have you been a resident of the city of Newark? A. Twenty-four years.

Q. How familiar are you with the store of The Hilton Company A. Newark or elswhere?

Q. Anywheres? A. I have been in the majority of them.

Q. In what cities and what places? A. Brooklyn and Boston, Pittsburg, Chicago and New York.

Q. What reason did you have for going in all those stores? A. No particular reason, some by invitation, and performing some work for The Hilton Company; others while I was in that particular city, and made it my business to stop in and see the store.

Q. How long have you known Philip Hilton? A. It is a good many years, about fourteen or fifteen years I believe.

Q. How long have you known Joseph Hilton? A. The same length of time.

Q. Have you ever known The Hilton Company under any other name? A. No, sir.

Q. During your familiarity with The Hilton Company during that period of time have you ever heard The Hilton Company called by the name of "Hilton's"? A. No, sir.

CROSS-EXAMINATION by Mr. Hardin:

Q. What is your business? A. Present business wholesale wall paper.

Q. When did you begin the whole sale wall paper business? A. About three years.

Q. Before that what were you? A. Building.

Q. What kind of building? A. Construction of apartments, one family, two families, etc.

Q. Was that as an investor? A. As a builder, speculative building.

Q. Have you a trade? A. Yes.

Q. Or have your pursued any particular line of business? A. Painting and paper hanging is my trade.

Q. The business you transacted with Hilton Company was in the painting line? A. Yes.

By Mr. Mindes: Q. Have you visited the stores of Joseph Hilton? A. Not all of them.

By Mr. Mindes: Q. Which stores have you visited? A. Thirty-third Street and Fifth Avenue, 243 Broadway, and another one near Thirty-sixth Street, I think it is corner of Thirty-sixth and Broadway, Thirty-fifth or Thirty-sixth.

By Mr. Mindes: Q. Is there any similar design in the store fronts between the store fronts of Joseph Hilton and The Hilton Company; is there? A. No, sir.

By Mr. Mindes: Q. In what way are they dissimilar? A. I don't think that I would be able to qualify to tell you in what they are dissimilar; they are dissimilar, that is all, they aren't alike.

By Mr. Mindes: Q. How do you arrive at that? A. Well, they are different color paint, and they are different style of store fronts, etc.

JOSEPH DAVIS, sworn.

Direct-examination by Mr. Mindes:

Q. Where do you reside? A. 276 South Orange Avenue, Newark.

Q. How long have you lived there? A. About eighteen years.

Q. What is your business? A. Window trimmer, window dresser.

Q. How long have you been in that business? A. About eighteen years.

Q. Do you know Joseph Hilton? Yes.

Q. Do you know Philip Hilton? A. Yes, sir.

Q. How long have you known Philip and Joseph Hilton? A. I should judge about fifteen years.

Q. Who did you first become acquainted with? A. Well, I think with both of them about the same time.

Q. What business was Joseph Hilton in at that time? A. When I first became acquainted with them Joseph Hilton was working for his brother at that time.

Q. What was his brother's name? A. Ike Hilton.

Q. Do you know whether Joseph Hilton ever acquired the business of Ike Hilton?

Mr. Hardin: I object to any such methed of proof.

The Court: I overrule the question.

Q. What did you have to do with the business of Ike Hilton?

Mr. Hardin: I object to that as not being involved in this controversy.

The Court: What is the significance of this?

Mr. Mindes: This man was window dresser from the very begining of Joseph Hilton doing business as I. Hilton, and the subsequent acquisition of Philip Hilton into the firm of The Hilton Company, and continued as window dresser for a long period of time, and was familiar with the style of window dressing. I want to show the connection of this man with the concern from its very inception.

The Court: I overrule it.

Q. Did you dress any windows for Joseph Hilton? A. I did, yes.

Q. And what business was he in at that time? A. He was in the clothing business.

Q. Under what name? A. The Hilton Company.

Q. How long did you dress windows for The Hilton Company? A. Well, I guess possibly four or five years.

Q. In what cities? A. New York, Philadelphia and Newark.

Q. During the period of time that you were their window dresser was there anything distinctive about The Hilton Company window dressing? A. I can't say so.

Q. What is that? A. I cannot say so, no.

Q. Do you mean that there was nothing distinctive? A. No.

Q. Do you know when draperies first were used in dressing clothing windows? A. I can't say when they were first used; I know I used them myself a good many years ago.

Q. How long ago? A. Twenty years ago.

Q. Have you ever uesd canes in the dressing of windows? A. Yes.

Q. How long ago did you use those? A. Twenty years ago.

Q. Did you ever use pedestals? A. Yes.

Q. Taboret? A. Yes.

Q. So-called. A. Yes.

Q. I show you a picture of Stoutenburg & Company, and C-117 of the Hilton Company at Fourteenth Street and Broadway, and ask you to compare the window dressings in that window with the window dressing in Stoutenburg's window, and ask you whether they are similar or dissimilar? A. Very similar.

Q. I show you a picture of Horton Clothing Company, Brooklyn, New York; compare that with the picture C-117, and tell us whether the window dressing there is similar or dissimilar? A. It is similar.

Mr. McCarter: Is that the same one, that 114, or whatever you spoke of, in camparison with Stoutenburg?

Mr. Mindes: Yes; C-117.

Mr. Hardin: He is using the same Hilton picture all the time, as I understand.

Q. Now Mr. Davis, how often have you examined the windows of The Hilton Company in recent years? A. Well, very frequently.

Q. How frequently? A. Two or three times a month, more or less.

Q. How often have you examined the windows of Joseph Hilton trading as Hilton's? A. Trad-

ing as Hilton's? Well, about two or three times a week.

Q. Would you say from your examination the windows of Joseph Hilton compared with the windows of The Hilton Company, were similar, imitated rather? A. No, I should not say they were imitated, no.

Q. How do you arrive at that conclusion? A. Well, I should not think that the window would be imitated, because the dressing of the window is,—in fact the dressing of all ready made clothing windows to-day that are up-to-date are naturally a little similar to one another, and I wouldn't say that the dressing of the window was imitated by any other window.

Q. In other words; there is nothing distinctive about any of the windows? A. No.

Q. Were you present at the opening of the Fifth Avenue store of Joseph Hilton, Fifth Avenue and Thirty-third Street? A. I was in that store, yes; I do not recollect whether that was the day of the opening or not.

Q. Do you recall how long the store was in existence when you saw it? A. When I first saw it you mean?

Q. Yes? A. Practically just opened, maybe a few days, might have been a few days.

Q. Did you examine the windows of Joseph Hilton on that occasion? A. Yes.

Q. At Fifth Avenue and Thirty-third Street? A. Yes.

Q. Did you see any cards in there, price tickets, with a crest on? A. No, I did not.

Q. What were the nature of the cards in there?

A. It was a plain white card, if I can remember.

Q. In all your examinations of the stores of Joseph Hilton in the city of New York have you ever seen any price tickets with crests on them in the windows of Joseph Hilton? A. No, I don't think I have.

CROSS-EXAMINATION by Mr. Hardin:

Q. How long since you left the employment of The Hilton Company? A. Some time in 1907 I believe, around that time.

Q. Since that time have you been exclusively employed elsewhere? A. Well, I have for a number of years, and then I was in business for myself.

Q. Your specialty as a window dresser was as a dresser of windows of merchant tailors, was it not? A. Merchant tailoring and ready made clothing.

Q. Wasn't you business chiefly with merchant tailors? A. Not particularly; I was in the merchant tailoring business little longer than ready made, but one is the same as the other to me.

Q. No difference in the dressing of the windows? A. Absolutely.

Q. Weren't you employed later than 1907 by The Hilton Company? A. Later? Not that I can recollect; I think it was about 1907, I am pretty sure.

Q. Weren't you employed a few months ago by The Hilton Company? A. Yes, a very short length of time.

Q. When was that? A. That was I believe some time in January, the end of January.

Q. Of the present year? A. Yes.

Q. And where? A. At Fourteenth Street and Broadway, New York.

Q. How long did you continue in their employ at that time? A. I am not sure, I think it was two days and a half or three days, I am pretty sure it was two and a half days.

Q. Why did you leave so quickly? A. Well, I was taken sick very suddenly, and I was home in my bed for about three days, and when I returned to the store they told me that they had no more use for my services.

By Mr. Mindes: Q. Have you done any work for Joseph Hilton at any time since he has opened up these new stores? A. No, sir.

BENJAMIN F. EDELMAN, recalled.

Direct-examination by Mr. Mindes:

Mr. McCarter: May we offer the book without bringing the photographer here, or the man that painted the signs, or anything of that kind.

Mr. Hardin: I never looked at the book; if you let me look at it I would be glad to tell you.

Mr. McCarter: It was used on the rule to show cause with your consent, and there is nothing in there now that was not there then.

Mr. Hardin: You haven't forgotten you

made us bring the original negatives of the photographs we used.

Mr. McCarter: That was a question about the date, and that is the only one we asked; there was one photograph which we still think he was mistaken about, and we asked him if he would not bring his original negative of that photograph, that is all.

Mr. Hardin: Every photograph we used has got a date on, and none of these has a date on. Some of these photographs may be years old for all I know. I have every desire to be accomodating.

Mr. McCarter: We will supply the date.

Mr. Hardin: I do not want to put you to the trouble of bringing the photographer who took all these various pictures, but I should like to have somebody fasten dates to them and give them place.

Mr. McCarter: We will do that.

Mr. Mindes: We took your dates.

Mr. Hardin: Every picture we have in evidence has been verified and the dates put on by the man who took the photographs. I do not ask you to bring the photographer here, but I want somebody to say what they are.

Mr. McCarter: We offer in evidence this book then.

Mr. Hardin: No, we are talking about photographs now. I don't know about this other stuff.

Mr. McCarter: You saw it all on the rule

to show cause, it was in your office; Mr. Stanley is very familiar with it.

Mr. Hardin: I have been speaking about the pictures. Now I will look at these other things. Perhaps I better look at it at recess.

Mr. McCarter: Well, the photographs in this black book may be considered in evidence subject to the promise on our part to insert upon them by somebody who knows the date, and have that person here for examination if you desire.

The Court: The date and place it represents.

Mr. McCarter: Yes, I think the place is shown, but the date does not happen to appear. Now that being the understanding we will go ahead.

Q. When did you first become connected with the Fifth Avenue and Thirty-third Street store of Joseph Hilton? A. Friday November 23, 1916.

Q. How near the opening date af that store was that? A. One day before the opening.

Q. Did you observe the windows of the store of Joseph Hilton. A. I was helping the window dresser at the time when he was dressing the window that night.

Q. Was there in that store during that period of time or at any period of time subsequent to that any price tickets with any prices on them? A. No, sir, we used a plain white card at the time.

Mr. Hardin: Didn't this witness testify to this once before?

The Court: I think he did.
Mr. Mindes: No, sir, not to that.
Not Cross Examined.

JACOB POLLACK, sworn.

Direct-examination by Mr. Mindes:

Q. I show you lease marked exhibit D-12, and ask you whether you have taken an assignment of that lease? A. Yes.

Q. That is the Paterson store, is it? A. Paterson store, yes.

Q. You are to enter into possession when? A. September first of this year.

By the Court: Q. What business are you going to conduct there? A. Clothing.

By the Court: Q. Similar business to that conducted by Mr. Hilton now? A. Yes.

Q. What are you doing, taking over his business as well as the lease? A. No; I got one store, but I am going to conduct another store; I am in the clothing business now and I am going to conduct this store for myself.

Q. You bought out Hilton, did you not? A. I bought the lease.

Q. And you bought his stock, did you not? A. No stock.

Q. Didn't buy any stock? A. No.

Q. Did you buy the right to use the name Hilton? A. No, sir.

Q. Are you going to use it? A. No, sir.

Q. You are a manufacturer of clothing, are you? A. Yes.

Q. Have you ever sold The Hilton Company any Clothing? A. Yes, sir.

Q. During what years? A. Oh, for a number of years, probably seven or eight years or more.

Q. And can you say what the approximate amount in dollars and cents of that clothing is? A. Maybe fifty or sixty thousand dollars.

CROSS-EXAMINATION by Mr. Hardin:

Q. Over how many years? A. About seven or eight years.

Q. Which is it, seven or eight? A. I can't make it definite, maybe it is ten or twelve.

Q. How long since you sold them any? A. Since maybe three years ago, about.

Q. When did you make the arrangement to take over this Paterson lease? A. Oh, I had it in my mind already about seven or eight months ago, I used to call on Joseph Hilton time and time to negotiate about it.

Q. Do I understand Mr. Joseph Hilton had it in his mind also for seven or eight months?

Mr. McCarter: How does he know about that?

A. Yes, he promised me the store at the time.

Q. When? A. About seven or eight months ago.

Q. Have you got another store in Paterson? A. No, sir.

Q. I understood you to say that Mr. Hilton retained no interest of any kind this lease? A. I didn't get that.

Q. Did I understand you to say to the Court that Mr. Hilton retained no interest of any kind in this lease? A. No, it is turned over to me.

Q. When did you take possession? A. The first of September this year.

Q. You are going to put in your own stock? A. Yes.

Q. Did you buy the fixtures also? A. I am negotiating now about the fixtures, I didn't buy it yet, but it is only a couple of hundred dollars, I guess I will get it.

Q. You are negotiating then for fixtures? A. Well—

Q. Where did you live? A. New York.

Q. You have not been familiar with the conduct of the business in Paterson by Mr. Joseph Hilton? A. If I have what?

Q. You have not been familiar with the course of the business in Paterson by Joseph Hilton? A. I have been several times to see the store, that is all.

Q. How many times? A. Maybe five or six times.

Q. Are you still in the wholesale clothing business? A. Yes, sir.

Q. Do you sell goods to Joseph Hilton? A. Yes, sir.

ALEXANDER HILTON, sworn.

Direct-examination by Mr. Mindes:

Q. You are the son of Joseph Hilton? A. Yes.

Q. And brother of Charles Hilton? A. Yes.

Q. Have you any other relative by the name of Charles Hilton? A. Yes, sir, an uncle of my father's, that is, a nephew of my father's.

Q. Where is he? A. He is at Perth Amboy.

Q. What business? A. In the clothing business.

Q. How long has he been there? A. I can't tell exactly how long he has been there but I suppose about four or five years.

Q. Will you turn to that black book and tell the Court whether the C. Hilton referred to in the ads is the nephew of your uncle? A. Yes, sir, that looks like Mr. Hanser's, the same advertising, yes, sir, that is also, that is Mr. Hanser's work also.

Q. That is 123 and 125 Smith Street, Perth Amboy, overcoat week at Hilton's? A. Yes, sir.

Q. And this one "Hilton's Thanksgiving Specials. C. Hilton" A. That is the same Hilton.

Q. And this January Clearance Sale ad., Hilton's, 123 and 125 Smith Street? A. Yes.

Q. Do you know this concern the Hilton store, at Main Street Yonkers? A. I never saw the store but I heard of it.

Q. You know there was a concern there? A. Yes; we happen to have an employe that comes from Yonkers and that's why I know there was a Hilton store there.

Q. What were you doing in May, 1916? A. I attended Princeton University.

Q. And you are married, are you? A. Yes, sir.

By Mr. Hardin: Q. Which dormitory did you live in? A. I lived in 15 South Dodd.

Q. What did you have to do with the opening of the Paterson Store of Hilton's? A. I mainly took care of the advertising and the placing of signs, etc., and so on, that is, in the windows, preliminary signs.

Q. Do you recall having any conversation with your uncle Philip Hilton in Broad Street in May?

A. I do; not in May though, I never spoke to him in May.

Q. When was it you had the conversation? A. Why my uncle had always manifested a great—

Q. When was it you had the conversation? A. In July and August, in the latter part of July or the first part of August, I don't quite remember, but I was going to tell you further about it.

Q. Who was with you? A. My brother Charles.

Q. What was the conversation? A. Why Charles and I went down to see Mr. Philip Hilton relative to some advertising; my mother was sort of financing us at that time and we didn't have so very much money; we thought we could save money if we went down and got the advertising that Mr. P. H. had used in the opening of the Providence store, we would like that advertising, and Mr. P. H. always manifested a great likeness for Charles and I, and therefore we thought our chances that much the better. We met Mr. Philip Hilton in front of the Newark store, 791 Broad Street, and Charles asked him whether or not we could use that advertising which he had formerly used for the opening of the Providence store. Mr. Philip Hilton said that he would like to give it to us, but as he only had one copy he couldn't see his way clear, and therefore referred us to the advertising agent, Sherman & Bryan on Fifth Avenue, New York; at the same time we asked Mr. Philip Hilton if we could use some sort of crest to make the sign look pretty, to make it more attractive, it is decidedly dead if you don't have some color in it; Mr. Philip Hilton said yes, he didn't care, and I subsequently went to Sherman & Bry-

an, the advertising agents, and produced that advertising, and inserted four ads in the Paterson papers before the opening of the store, and also had some window transparencies made, co-operating with the ads in the Paterson papers.

Q. When did you discontinue using the crest that you had received permission to use? A. As soon as Mr. Yunkers came into our employ he noticed the crest and he said it wasn't business like, it wasn't good clothing business to have a crest on a clothing store, and therefore he immediately gave orders to discontinue using that crest.

Q. When was that? A. Why Mr. Yunkers came into our employ the latter part of September, I should think it was around the latter part of September or the first of October.

Q. Did you subsequently get a notice, do you know whether your father got a notice from Mr. Hardin subsequent to that? A. Yes, that is after that order there was some letter from Mr. Hardin telling him not to use it, or something like that.

Q. What, if anything, did your father have to do with the opening of the Paterson store? A. He had very little to do with the opening of the Paterson store; he wasn't very well, he was quite upset and went away on trips; Charles and I had most to do with the opening of the Paterson store, we took care of the goods, the shipment of the goods, and cutting of the goods, and advertising, and signs, and that sort of thing; my father would only come around perhaps once a week, and then he wouldn't be there long; it was warm, in summer time, and he would go away on trips with my mother I suppose.

Q. What did your father have to do with placing the signs in the windows of the Paterson store after the lease had been gotten by Charley? A. Why I was at college at the time, but I don't think he had anything to do with it, I don't think.

Mr. Hardin: If you don't know, I move to strike it out.

CROSS-EXAMINATION by Mr. Hardin:

Q. You had to do with the advertising for the Paterson store as I understand? A. Yes.

Q. I show you exhibits C-157 and 158, which your brother partially identified, and I suppose you are entirely familiar with them, you recognize those as advertising the time of the opening in the Passaic Daily Herald and the Paterson Morning Call? A. I recognize this one specifically, but I cannot say that I recognize the other, I guess it was in there, but this one I know of.

Q. You did some advertising in the Paterson Morning Call at that time? A. Yes, I say most likely it was in there but I don't recognize it; you asked me specifically if I recognized it.

Q. You put advertising at that time in the Paterson Morning Call, you remember that? A. I believe we did, I know we did.

Q. How long did you continue association with the Paterson store? A. I was never in association with the Paterson store; I did the advertising.

Q. How long did you keep on doing the advertising there? A. Why always, ever since the store was opened I supervised it, and now I do it.

Q. Well, I show you what purports to be adver-

tisement in the Paterson Evening News of November 10, 1916. A. Yes, that was Mr. Nathanson's work; I supervised this stuff.

Q. Who was Mr. Nathanson? A. A man that was employed in the advertising.

Q. Advertising man? A. Yes.

Q. And here seems to be Friday November 7, 1916 in the Paterson Evening News? A. That is also Mr. Nathanson's.

Q. And here is one of November 24, 1916 in the Paterson Evening News? A. Yes, that was also Mr. Nathanson, under my supervision.

Q. And an advertisement Friday, December 8, 1916 in the Paterson Evening News? A. That was the first ad. I ever wrote for Hilton.

Q. You wrote that yourself? A. Yes, sir.

Q. And October 27, 1916, the Paterson Evening News? A. That was Mr. Nathanson, under my supervision.

Q. And was this advertisement prepared by you of Wednesday evening June 27, 1917 in the Paterson Press Guardian? A. Yes.

Q. That is a closing out sale advertisement? A. Yes, to make the ad. strong.

Q. I show you another one in the Paterson Evening News July 20, 1917, that is yours? A. Yes.

Q. Did you write these yourself? A. I didn't write all of them, no, sir; part of them were under my supervision, and part of them were written by me.

Q. You have only specially identified one so far that was written by you? A. Yes, this is the one that was written by me.

Q. July 20, 1917 in the Paterson Press Guardian? A. That is the same one.

Q. Different paper. A. I see. Yes, sir, the same ad.

Mr. Hardin: I offer these in evidence

Mr. McCarter: They are really not cross examination, but we do not object to them.

Marked exhibits C-159, C-160, C-161, C-162, C-163, C-164, C-165, and C-166.

Q. Where did you say your uncle referred your brother yourself to get that advertisement? A. The Advertisement Agency, Sherman & Bryan, Fifth Avenue and Thirteenth Street.

Q. Did you go there and get it? A. I did, sir.

Q. And didn't go to Providence after it? A. I wouldn't very likely, no, sir.

Q. I didn't ask you whether you would likely; I asked you whether you did or not? A. No, sir, I did not.

Q. Your brother did not go to Providence? A. No, sir.

Q. I call your attention to the newspaper containing the advertisement you have identified, Paterson Press Guardian Wednesday Evening, June 27, 1917; that advertisement you had separately struck off and distributed for advertising purposes through the mails, did you not?

Mr. McCarter: I think this ought to be your direct examination. I have no objection to it.

Mr. Hardin: He has told us, or he told Mr. Mindes that he was in charge of the advertising of the Paterson store.

Mr. McCarter: But you are bringing this down to June 17th.

Mr. Hardin: Bringing the case down to date wherever I can.

Mr. McCarter: Well, I do not think it is cross examination of this witness. Might as well try the case according to law. He testified that he attended to the advertising up there for a while.

The Court: I do not think it is cross examination.

Mr. McCarter: I have no objection if he just makes it his testimony. I do not want this offered as cross examination of our testimony, that is all.

Mr. Hardin: I don't care what you call it.

The Court: I do not see what difference it makes, Mr. McCarter.

Q. Isn't it so that you— A. I took care of the advertisments that appeared in the papers, but the Federal Advertising Agency took care of the printed matter.

Q. Who did? A. The Federal Advertising Agency in New York.

Q. Does the Federal Advertising Agency have charge of the mailing of your advertisements to customers and others? A. I believe they did, I don't remember.

Q. Who would have charge of the postal card advertising, if any were done? A. I don't know whether there was any.

Q. I say if any were done who would have charge of them? A. They would be done under my supervision most likely.

Q. Did you ever know of any advertising such as appears on that card?

Mr. McCarter: I object to it as not cross examination. However, go on if you want to make him your own witness.

A. No, sir, I do not recognize it, I never saw it before.

By the Court: Q. Did you ever see a card like it, with the same writing on it? A. No, sir.

By the Court: Q. Or writing similar to it? A. No, sir.

Q. Who else would have charge of advertising of that character in the Paterson store?

Mr. McCarter: I do not think you can make a searching expedition of this witness, who has testified concerning a very important conversation that he had with his uncle and explained that by saying that he was interested at that time in the advertising branch of the business, and that is the reason he had the conversation, and then turn that on cross-examination into a searching expedition to try to find the origin of some postal card that was sent to the very house of Philip Hilton.

The Court: I will permit the evidence as to who else would know, if anybody. If such a card as that went out of that store in Paterson who would know of it, if you know?

A. Well, I don't know anything about it.

By the Court: Q. Well, who would know in your store, who would be likely to know? A. I would know.

Q. Mr. Hilton, did you ever after the breach be-

tween your father and your uncle ask your uncle for employment? A. I don't know whether I did or not.

Recess

MARGARET WALLING, sworn.

Direct-examination by Mr. Stanley:

Q. What was your name before you were married? A. Margaret Lloyd.

Q. Were you ever employed by the Hilton Company? A. Yes.

Q. During what period of time? A. Well, I left two years ago, this last October, it will be two years ago I left, I can't remember the date.

Q. October, 1915? A. Yes, I left, and I was there two years before that.

Q. While you were there was it your practice to check up the advertisements? A. Yes.

Q. In the course of that practice would you clip the advertisements from he papers and paste them in the book? A. Yes.

Q. Did you identify them with your initials as you pasted them? A. Yes.

Q. Have you since this suit was started looked over the scrap books that you kept during that time and checked up the advertisements you clipped with a list of advertisements prepared by us? A. Yes, sir.

Q. And then you verified that list by an affidavit which you took? A. Yes.

Q. Is that the list and affidavit which you checked up? A. Yes.

CROSS-EXAMINATION by Mr. McCarter:

Q. Where did you do this work which is embodied in this affidavit, this checking up, as you call it? A. In their office on the fifth floor.

Q. When was that? A. The time I was there, the two years I was there I did that.

Q. You do not understand me. I understand that while you were in the employ of the company it was your duty to check up the advertisements, and you initialed them and put them in a scrapbook; that is what you did, did you not? A. Yes.

Q. Well, I am not talking about that. It seems you made an affidavit here on the 8th of March, 1917? A. Yes.

Q. You were not working and hadn't worked for nearly two years for the Hilton Company when you did that, had you? A. No.

Q. You had got married and gone away and kept house? A. Yes.

Q What did you do last March in connection with these advertisements? A. Do you mean when I checked it up? I came to their office and they had their books there and I checked them up.

Q. Tell us what you mean? A. I came to the office of Hardin, Pitney & Skinner, I think the name is, and they had the advertising books there and the dates run down on that paper, and I checked them up one after another.

Q. Well, this paper, the second page in this affidavit was already made out? A. Yes, it was all made out.

Q. What did you do? A. I checked the adver-

tisements that are in the book with that paper and they corresponded.

Q.And you were satisfied they corresponded? A. Yes.

Mr. Stanley: With that explanation I offer in evidence this list.

Marked Exhibit C-167.

JENNIE HILTON, sworn:

Direct-examination by Mr. Mindes:

Q. You are the wife of Joseph Hilton, the defendant? A. Yes.

Q. And the mother of Charles Hilton and Alexander Hilton? A. Yes, sir.

Q. Do you recall having any conversation with Philip Hilton in May, 1916? A. Yes, sir.

Q. Will you please state where you had the conversation and what it was? A. My daughter called up Mr. Hilton, and I made appointment with him to meet him at the corner of Bramford Place and Broad Street. While we were riding I told him my sons were going in business; he said it was all right, it was very nice, and we were riding along and I asked him how about if he would help the boys out, and he said yes, he would do all he could for them; so I asked him to make up some merchandise for them; he said yes, if his father would be responsible for the goods, and I told him if his father would not that I would, and after a while Charley said to him "Uncle, well, how about the name", he said to him "I would like to call it 'Hilton's' "; he said "All right, you can call it 'Hilton's' as long as you don't call it 'The Hilton Company' ".

CROSS-EXAMINATION by Mr. Hardin:

Q. Can you fix the date of this conversation? A. Well, it was in the early part of May, about, I don't just exactly remember the day, but I know it was the first week in May.

Q. It was after the Paterson lease was taken, was it not? A. Yes.

Q. Do you know whether this conversation was before or after the offer of your husband to sell his interest in The Hilton Company? A. Well, I don't know anything about that, I was never interested in the business, I never went to the business and didn't know anything about it.

Q. You do not know when that was done? A. No, I don't know anything about that.

Q. This conversation, so far as you know, was initiated at the instance of your boys? A. My one son Charley.

Q. So far as you know Joseph had nothing to do with it? A. No, sir.

Q. By Joseph I mean your husband, Mr. Hilton? A. No, sir.

Q. What time did you meet Philip that day? A. What time? It must have been about two o'clock, between two and three.

Q. And where did you meet him? A. Corner of Bramford Place and Broad Street, it was in Bramford Place but right near Broad.

Q. With your car? A. Yes.

Q. And your son was with you when you came? A. Yes, sir.

Q. Who was driving the car? A. A chauffeur.

Q. Do you remember his name? A. No, sir, I do not; I have had several chauffeurs since.

MAX YUNKER, sworn:

Direct-examination by Mr. McCarter:

Q. Mr. Yunker, what connection have you with the business that is now being conducted under the name of "Hilton's"? A. I am general manager, sir.

Q. And have been such since about when? A. Since I came here September twenty-fifth.

Q. 1916? A. 1916.

Q. Were you formerly connected with The Hilton Company? A. I was.

Q. During what period? A. From about 1904 until 1912, and then again from 1914 to 1916.

Q. Were you with The Hilton Company at the time it dissolved? A. Yes, sir.

Q. What were your duties when you were first connected with The Hilton Company? A. I was general manager, sir.

Q. And as general manager what did they require of you? A. Buying, manufacturing, taking care of stores, and attending to the financial affairs of the company.

Q. As I understand it, neither one of those gentlemen was educated to read or write, so that you had to be what I would call the cultivated educated member of the enterprise; is that right? A. You can call it that way.

Q. Well, I do not mean any disrespect for them, or try to puff you up, but they had to have a man of your caliber? A. Yes, they did.

Q. Now you spoke of buying goods during your connection with the enterprise The Hilton Company, did they manufacture all their goods or did they buy? A. They bought and manufactured.

Q. To what extent did they buy? A. Well, I have to go back from 1904 on to 1912. In 1904, 5 and 6, the average was about fifty per cent. outside goods; after that it got down to about thirty-five per cent. to ouside goods, and then about thirty.

Q. And that continued down to about 1912? A. 1912, yes.

Q. So far as the purchaser, the consumer, the man who bought the suit was concerned, had he any means of distinguishing between the clothes that they bought and the clothes that they manufactured? A. He did not.

Q. They were labeled the same? A. They were.

Q. The evidence that has been given by the other witness is entirely correct? A. Correct.

Q. What have you to say as to the character of the clothes that were sold by The Hilton Company during your connection with them, as to being superfine or particularly good or anything of that kind. I want your frank honest description of the character of goods they sold? A. Of course I was manufacturing; naturally I tried to do as good as I could, and at the same time while I was manufacturing it was my business to look into other peoples manufactures as well; I used to make it my business to go around different shops in the city where they manufactured other peoples goods; in fact some of the contractors, the coat makers, so to speak, manufactured both for us and for other people, you see they manufactured for different people at the same time, and that gave me very good insight to what other people did; it was my business to keep posted, and

everybody tries to make them as good as they can, and there is no particular distinction between ours from anyone else, none whatever.

Q. During your connection with the enterprise won't you describe as well as you can the activities of Mr. Philip Hilton and Mr. Joseph Hilton in the business; they were both members of the firm? A. They were.

Q. What was the firm name while you were with them? A. Hilton Company.

Q. You were not there under I. Hilton? A. I was not, no, sir. Pardon me, I will take that back. They ran the Hilton Company in Philadelphia, and the store next door, which is also part of that same concern, was run under the name of I. Hilton.

Q. That was in Philadelphia? A. No, no, no, in Newark.

Q. Well now, I think you are— A. You see they had two stores. Their Philadelphia store had just about opened perhaps two months before I came with them, something like that, and another store in Newark on Market Street, the Newark store kept on being called The Hilton Company, and that continued until 1905 when they took a store on Broad Street and called it The Hilton Company and gave up the I. Hilton store.

Q. Do you remember when they bought out George Watson? A. I certainly do.

Q. About when was that? A. Why as near as I can remember I think it was 1910.

Q. And where had George Watson done business with reference to The Hilton Company's store on Broad Street? A. I don't quite get you there.

Q. What relation was the store, what position did the former George Watson Company's store have to the store of The Hilton Company on Broad Street? A. Well, we had a store on Broad Street, 791 Broad Street, The Hilton Company, and then we bought out George Watson who was next door.

Q. Next door? A. Correct.

Q. So that George Watson had never occupied 791 Broad Street. A. Indeed not.

Q. After you bought out the business of George Watson Company under what name did you continue to carry on the business at 791 Broad Street? A. Why it still continued The Hilton Company for a little while, and they sub-leased it to a rain-coat concern, and we kept the name George Watson Company going after that.

Q. Did you then discontinue The Hilton Company? A. We did, sir.

Q. For about how long? A. I think, well, I can only say with authority for two years, because I left in 1912, but I know they continued until 1914.

Q. And then for several years, so far as the Broad Street Newark store is concerned the name The Hilton Comany was abandoned and the name of the George Watson Company was continued? A. The name Hilton Company was abandoned for about four years and Watson Company continued.

Q. The resumption of The Hilton Company on Broad Street was while you were away? A. No, I just got back, I was in Providence at the time.

Q. About when did that resumption take place? A. I think in 1914.

Q. And has continued down to the time of the dissolution? A. Yes.

Q. Now Mr. Younker, with the exception of the interregnum of George Watson & Company in Newark, under what name was the business conducted? A. Under the George Watson Company —in Newark you mean?

Q. (Question read.) A. The Hilton Company always.

Q. The complainant in this case claims that the name Hilton or Hilton's was constantly used in connection with the business; I wish you would tell us just what you recall with reference to that fact? A. Well, a great deal, in fact most of the policy of the business was never, we never put through any policy unless I was consulted, unless I had an active part in it; now it was always The Hilton Company, so much so in fact that in Philadelphia on our big signs there we had "Company" written out because we had lots of room for it, and it was always the idea to impress the public that this is a great big concern, and the "Company" was really more than the "Hilton" part of it, at least in my opinion it was always that way, and everybody connected with it at the time.

Q. The idea was to make it appear a great big concern? A. That was the whole idea of the whole company.

Q. How and under what circumstances do you recall the use in any form of he name "Hilton" or "Hilton's"? A. It come about through advertising, that is how we ran sales; we copied sales at that time from a concern named Perry of Phil-

adelphia, who was very successful in running quarter-off sales, half-price, and that kind of stuff, and we wanted to imitate as much as we possibly could "Hilton's Half Price Sale" and "Hilton's Quarter Sale", just more to describe the sale, that was our idea at the time.

Q. Do you recall any use of the word "Hilton's" or "Hilton" in your advertising or otherwise than in connection with a marked off sale of that kind? A. We used "Hilton's Marked Off Sale", whatever it is, and "The Hilton Company" prominent, right with it all the time.

Q. Again you do not answer the question. (Question read.) A. No, never.

Q. Were you familiar with the window signs and tickets that were used by the concern? A. Certainly was.

Q. Describe them? A. Well, we had thousands of these sorts of cards; I saw down there thousands of them used.

Q. You mean like those at the window here? A. Yes, thousands of them in my time; I see only about twenty or thirty of them there and most of them I see marked "Hilton's" on it; I remember hundreds and hundreds of them without "Hilton" on there, with "The Hilton Company" on the bottom or on top, but I don't see any of them there.

Q. What proportion of the window cards, if you are able to estimate, that were in fact used, displayed in the stores, would bear the words in conspicuous manner, such as some of those you have referred to do, the word "Hilton" or "Hilton's"? A. Well, you can judge by this; you see on the sales we ran what we call sales, and also ran what we call regular season stuff; now sales

we marked down perhaps "Hilton" so and so sale; well, the regular sale would be "The Hilton Company", as much as we possibly could, I should judge overwhelmingly with The Hilton Company, I cannot tell you exact proportion.

Q. How often would you have a half-off or a quarter-off clearance sale? A. Twice a year.

Q. I do not want to take time in proving what is considered already proved. I think I have already proved, your Honor, the two labels and the stationery and the two signs, I need not bother with that again. I want to show you this black book and ask you if you directed the taking of the photographs that are contained in this book? A. I did.

Q. Who was the photographer? A. Fifth Avenue Photo Company of New York.

Q. Do you know whether or not they were taken after the filing of the bill of complaint in this case? A. They were.

Q. After the filing of the bill of complaint in this case for use on the return of the application for the injunction? A. Yes.

Mr. McCarter: Is that near enough, Mr. Hardin? Of course we can bring the photographer out here if you want him.

Mr. Hardin: I do not want you to bring the photographer; they are all New York?

Q. No, some Newark and some Paterson, but all taken by the same man at the same time? A. Yes.

Q. After the bill was filed but before the hearing of the order to show cause for an injunction; is that right? A. Yes, right after.

By the Court: Q. About how long after filing

the bill? A. Well, I should judge, as nearly as I can, two or three weeks, something like that.

The Court: Doesn't that fix it near enough?

Mr. Hardin: Yes.

Q. We can get the exact date if you want it. Now I think the location of each photograh appears correctly on the photograph, doesn't it? A. Yes.

Q. So far as you are familiar with it it correctly delineates what it proposes to show? A. I have been through those things so often that I can tell them by heart.

Q. Now these advertisements, do you recall the fact that there was a Charles Hilton in Perth Amboy who carried on business as "Hilton's"? A. Well, he didn't carry on business as "Hilton's", it was "C. Hilton", he advertised the same, "Hilton's", just like you see it here.

Q. Where did these advertisements come from, did you collect these? A. I did, sir; Perth Amboy.

Mr. Hardin: They have already been proved.

Q. You knew of his carrying on that business there? A. Why, yes, the start I was there with him.

Q. What relation is he? A. No relation at all.

Q. Now there is a concern whose advertisement appears here in this book that carried on busness up in Yonkers? A. I got that, sir.

Q. You got that advertisement? A. Yes.

Q. And it is callled in one place "The Hilton Store"? A. Yes.

Q. You knew of that enterprise, did you? A. I did, sir.

Q. This advertisement appears to have been—
A. June 2d, 1916, yes.

Mr. McCarter: Now I am going to offer this whole book with its contents; the black book frequently referred to is offered in evidence,

Marked Exhibit D-13.

Q. What day did you say it was you entered the business resumed the last time? A. The Hilton's?

Q. Yes. A. Why, the end of September.

Q. Was the Paterson store in operation then? A. Yes, it was in full swing.

Q. What did you find the Paterson store was using when you first went out there? A. In what way do you mean?

Q. In the window decorations, in the way of price marks? A. Why they were using tickets with the name "Hilton's" on it, the signs were "Hilton's" and the tickets bore some kind of a little crest at that time, and the sign bore something of a crest too.

Q. Do you recognize Exhibit 141 as being the crest that was being used at that time? A. Yes, that is the one.

Q. The green body, and all that? A. Yes.

Q. Did you ever see that crest 141 used anywhere else than at Paterson? A. I stopped the use of it.

Q. Answer my question, please. A. No, I did not.

Q. When did you stop the use of the crest at Paterson, C 141? A. About a week after I came, sir.

Q. Was that before or after the receipt of the so-called Hardin letter, dated October fourth? A.

I think it is about the same time.

Q. Why did you stop the use of the crest? A. Well, you see originally in my opinion the crest was a very foolish idea; the crest is used mostly by ladies' cloak and suit houses; no reputable clothing concern of any magnitude uses it; take Rogers Peet, Stoutenburg, Marshall & Ball, McGregor, wouldn't be guilty of it, and it looked ridiculous to me when I came back and saw that thing there; I told the boys we would stop using it; we wanted to be looked upon the same as Rogers Peet or any of the big fellows.

Q. After you directed the cessation of the use of that crest at Paterson was it stopped? A. A little while afterwards.

Q. How soon? A. A few days.

Q. That must have been about when? A. Well, it must have been some time in October.

Q. Now I want you to look at the photographs that I left on your table there, the loose photographs of the Paterson store. A. Yes, sir.

Q. In one of those photographs you find price marks with crests on them I think, and that photograph purports to have been taken I think on November twenty-first. I want to ask you what you have to say with reference to the fact that on that day, I mean as late as November twenty-first, the crest was in use at Paterson? A. I can't say where they got the dates; I don't think so.

Q. Is it your view that there is an error about the date? A. That is my opinion, sir.

Q. Why is that your opinion, state why you think so? A. Why it is very natural; here you have two photographs—

Q. What are their numbers? A. C-127 and C-125. Now they are supposed to be taken the same

date; one has the crest on and one hasn't; that seems rather out of place, it seeme rather hard to believe they were taken the same time.

Q. How long does it take to dress a window? A. To dress a window properly it takes eight hours, when you wash it and clean it, etc.

Q. You were familiar with the Paterson store during November, were you not? A. I had charge of it, naturally.

Q. Did the windows during the month of November—November now, twenty-first. A. I understand.

Q. Contain the price cards with the shield on them, as late as November? A. They did not.

Q. Did not? A. No.

Q. So that you conclude that is an error of date, do you? A. It must be; there is the evidence there in front of you on both pictures.

Q. Suppose there wasn't any duplication of pictures at all? A. It couldn't be.

Q. You know as a matter of fact they were not used as late as that? A. Sure; my business brought me there every week, and they wouldn't put anything in the window or anywhere else without my permission.

Q. You saw the windows? A. Yes.

Q. You had forbidden their use and you would have known if it had been used after that time? A. Certainly, and it would have meant discharge after that time if they didn't do what I told them.

Q. Upon what do you think does the success of a business, this ready made clothing business, depend chiefly? A. Well, the first and most essential point of success of a retail business is the location, by all means.

Q. Why is that? A. Well, location means

where there are a great many pedestrains and especially transient; you see our business depends a great deal on transient trade, we haven't what you would call a regular trade that would come in steady.

Q. I was going to ask you about that. A. Yes. Our trade I guess is about, well, seventy per cent transients, without any question of a doubt and for that reason we must have a location where the transients are constantly there; the man that is in an out of the way place, he has to depend on local custom, he don't get transients.

The Court: Is there much use going into that; don't we know all that?

Mr. McCarter: No, your Honor, except I think this transient business is quite important.

Q. Do you remember there ever having been a sign in front of any of The Hilton Company's stores which did not display the full name The Hilton Company? A. Now let me understand you. What sign are you referring to, the overhead sign or what?

Q. The wooden sign? A. The headsign ?

Q. The head sign? A. Always The Hilton Company.

Q. What use, if any other than what you have already described, has been made of the word "Hilton" or "Hilton's" either one of these words alone, not "The Hilton Company" or not in conjunction with "The Hilton Company"? A. None other except what I described.

Q. How much advertising was done by The Hilton Company in Paterson? A. None.

Q. How much advertising was done by The Hilton Company in New York City? A. Almost

none. You are speaking of newspaper advertising, I presume?

Q. Yes. A. Almost none.

Q. Do you think from your experience in the business that advertising in Boston, Philadelphia, Chicago or Pittsburg would have any effect, in the papers in those cities, would have any effect in creating trade in New York City? A. Of course not.

Q. Why not? A. Why you take a newspaper in Chicago, as you were speaking about, now The Hilton Company advertised there a certain line which they did not advertise a whole lot—I am taking Chicago for an example—in New York; in what way does that man in New York care about what this man in Chicago reads.

Q. What have you in mind when you make use of the word "transient"? A. Why the man that just passes by the store, not every day but some times.

Q. You haven't in mind necessarily that he is a stranger in the city? A. Not at all, he can be a city man and yet a transient; when I speak of a transient in a city like New York I do not mean the man only from out of town, he may not come to that neighborhood perhaps once in six months, but he is a transient.

Q. I notice that the bill of complaint in its third section says: "In the course of such business and continuously during the periods above set forth, said partnership used the words 'Hilton' and 'Hilton's' alone and in combination with other words, as Hilton-made, Hilton-sold, Hilton's clothes &c. to describe and designate merchandise manufactured and sold by said partnership and to designate and locate the places where said

clothing was manufactured and the retail stores where said business was conducted. The said words were used variously by said partnership and appeared on its stationery." Did it appear on its stationery? A. Never.

Q. "in correspondence". Did it appear in correspondence? A. Never, not in correspondence.

Q. "Upon labels which were sewn into said clothing and otherwise in the manufacture and merchandising of its goods," did it ever appear on the labels? A. No, sir.

Q. How largely, if you know, during your connection with the old concern was the trade in Newark local, as distinct from out of town trade? A. Well, in Newark it was I should judge mostly local.

Q. Where were your headquarters when you were connected with the business? A. In Newark.

Q. That was the business headquarters? A. Yes, sir.

Q. During your time, before you left in 1912, where besides Newark had the company stores? A. Well, in New York.

Q. Whereabouts in New York? A. On Broadway and Thirty-seventh Street, 219 Broadway, in Brooklyn and Boston and Philadelphia, and I guess that is all.

Q. Where were the headquarters at that time of the Messrs. Hilton, Joseph and Philip? A. Mostly Newark.

Q. So that you had an opportunity to know exactly what part each played in the conduct of the business? A. Why, naturally.

Q. I wish you would tell the Vice Chancellor

what part each did take, so far as your experience went, in the conduct and growth of that business?

Mr. Hardin: I don't see that it makes any difference, but I haven't any objection.

A. When I came there in 1904 I was made general manager; Mr. Joe Hilton had active charge of the business at that time; Mr. Philip Hilton being in Philadelphia taking care of that store there for a couple of years, I think it was, coming home only on Sundays; Mr. Joseph Hilton of course had the active charge of the business at that time.

Q. After the return of Mr. Philip Hilton to Newark in about 1906 or so did they divide their labors, and, if so, in what way? A. They did not. Mr. Joseph Hilton still continued being the most active.

Q. How did that manifest itself? A. Well, from getting orders; I got my orders from Joseph Hilton mainly.

Q. Who gave the larger attention to the manufacturing? A. Mr. Joseph Hilton, certainly.

Q. Is that true down to the time you left? A. Yes.

Q. In 1912? A. 1912, yes.

By Mr. Hardin: Q. Did you leave in 1912? A. I think it was about 1912, yes.

Q. I am not seeking to depreciate or minimize the function of Mr. Philip Hilton, I haven't any such intention, I don't know anything about it, I simply would like you to frankly state what part he did play during these years after his return from Philadelphia in the business, so that his name can be said to be associated with the business? A. Well, you see there really wasn't any

division, exact division between the two partners as to what the duties of each one was. Now I used to get my orders, or at least I used to consult rather, the partners, if anything was to be done in the conduct of the business, as a rule Mr. Philip would tell me to see Joe, and naturally I could say that I took Joe's orders for everything; when it came to go buying why Joe would go along with me; when it came to manufacturing I would have to consult Joe; when it came to take stores Joe Hilton had entire charge of that altogether, when it came to take a new store he did that himself, and the hiring, etc, was also Joe Hilton's business, so naturally in this way he got to have the more active part of the business.

Q. Now do you remember before your return to Hilton's meeting the gentlemen in Chicago and hearing any sort of arrangement made between them as to their division of labor in the business? A. Yes, I do.

Q. About when was that? A. Well, it was in the spring of 1916; there was a Mr. Kestner, who was the landlord of the building that The Hilton Company had a store in, a man of very wide knowledge of the mercantile line.

Mr. Hardin: When was this.

Mr. McCarter: Spring of 1916.

A. And both Messrs. Hilton had a great deal of confidence in the man; they seemed to be not able to get along to a great extent in a great many matters pertaining to the business, and they decided to make Mr. Kestner a referee, in order to decide which of the two should conduct the different parts of the business; which was my suggestion long ago, I wanted them each to take a different part of the business; so they came to

Chicago, and I went up with both those gentlemen to Mr. Kestner's office, and Mr. Kestner questioned the two gentlemen; which would like—no, I will take that back. Mr. Kestner suggested the way to get along a great deal better would be for each to take a different part of the business and be responsible for it, and they both agreed to that, and then Mr. Kestner asked them, Mr. Joe Hilton, what would he like to take, and Mr. Joe Hilton said "Well, let my brother take the part he likes", and Mr. Philip Hilton took the part of running the retail stores, and the part of manufacturing and financing was left to Mr. Joseph Hilton, and they left.

Q. And in taking charge of what you call the retail stores that would require the absence of Mr. Philip Hilton from the headquarters? A. Oh, naturally.

Q. How did you get your customers in the New York stores? You say you had no advertising over there? A. No, sir; we got them through our windows.

Q. Were you familiar with the window displays of The Hilton Company? A. Yes, indeed.

Q. What have you to say as to there having been anything distinctive or peculiar in the window display of The Hilton Company, in the displays? A. We tried to make it as attractive as we possibly knew how.

Q. Was there anything distinctive about it or peculiar or marked, so that it would always characterize The Hilton Company? A. If you were to take the sign off I wouldn't know whether it was The Hilton Company or somebody else.

Q. You mean there was nothing distinctive? A. Nothing whatever.

Q. I think there are some pictures in that book, Stoutenburg, and one or two in New York that you had taken to indicate the fact of similarity; you remember them, do you not? A. Yes.

Q. They are the pictures of Stoutenburg and who else? A. Stoutenburg and Horton, Georges, they are all about the same thing.

Q. Has there been anything that you were aware of, either in the drapery or the method of adapting the drapery to the pedestals, and the use of canes or anything else, in the window dressing of The Hilton Company that marked it as peculiar to that concern? A. No, sir.

Q. What have you to say as to the New York stores of Hilton's imitating the store fronts, apart now from the window dressing, of The Hilton Company stores? A. I will tell you; you couldn't imitate one store from the other if you tried to.

Q. Well, do they in fact? A. They do not.

Q. Do you think in looking at them that one would not be struck with any similarity between them? A. They are all simliar, every clothing man's windows is similar, unless you are told who it is, and look at the sign.

Q. You heard the description of the dissimilarity by one of the witnesses? A. Yes.

Q. Can you, without being technical, give a layman's stand-point in dissimilarity in the store fronts in New York of The Hilton Company and Hilton's? A. Very easily. You take two stores right one block away from the other, now the two stores, Broadway and Thirty-seventh Street. The Hilton Company and Broadway and Thirty-sixth Street of the Hilton's, which I see some of the witnesses were trying to show a similarity or

not—to begin with, they are entirely differently constructed, Thirty-seventh Street of The Hilton Company has got one entrance, and the Hilton's has two entrances, one on the side and one in front, it makes a case out of it, it is quite different; theirs is the light oak, something on the order of this (indicating), and ours is dark mahogany, and a blind man could see the difference, you are struck with it the moment you look at it, there is absolutely no similarity, why you can be the dumbest layman and you have got to see it.

Q. Did The Hilton Company to your knowledge while you were with it ever have two stores on the same street within a block of one another? A. No, of course not, they would be crazy.

Q. Do you know of a single enterprise of that character, clothing enterprise, where the same store, under apparently the same name, has two stores within a block of one another? A. Not in their sound senses, certainly not.

Q. Evidence has been offered here of an assignment to a Mr. Pollack of the Paterson lease. A. Yes, I negotiated that.

Q. When is it your intention of retiring from business in Paterson? A. The first of September.

Q. Why is that? A. Well, I am not doing very well there, that is why, to be plain.

Q. Mr. Rikower has been a witness in this case, and he is now I think one of your window dressers? A. Yes.

Q. Did you take him from The Hilton Company? A. I did not.

Q. Did he apply to you? A. He did, sir.

Q. Before you opened your store in Paterson what have you to say as to there being good

clothing stores in Paterson? A. Why I never was in Paterson until I came back with Joseph Hilton, and my first trip over to Paterson to inspect the store there I was struck with the number of beautiful stores in Paterson, I remarked it at the time.

Q. Now about what would be the average price of a suit of clothes sold, say in Newark, by The Hilton Company? A. Eighteen or nineteen dollars.

Q. With stores such as existed, as you found in Paterson, is it your experience that people would come from Paterson to Newark to buy clothes that cost no more than eighteen dollars? A. I will explain that a little more fully if you want me to.

Q. I wish you would? A. Our prices in Paterson for the same clothing that we have in our Paterson store we had to always make lower than our New York stores, because the competition was much harder there than in New York. In other words, a suit sold in New York for twenty dollars we would just about mark it eighteen dollars in Paterson, on account of the strong competition they have there.

Q. Well now, with the sufficiency of stores such as you found to exist, and which I assume still exists in Paterson, can you imagine from your experience that people would leave that local opportunity and go all the way to Newark to buy an eighteen dollar suit of clothes? A. Of course not.

Q. Now what is the character of the trade, so far as your experience goes, in New York City? A. More transient than in Newark.

Q. What do you mean by the word "transient" there? A. The same, a man that doesn't pass by

New Jersey State Library

the same spot regularly, only occasionally.

Q. What would you say was the proportion of customers in New York that you do not sell to more than once? A. I think over fifty per cent. sir.

Q. What proportion, if you are able to estimate, in New York would you say were regular customers that always came to your stores? A. Also about fifty per cent., perhaps less, no, I will take that back, about sixty and forty, sixty transient and forty regular.

By the Court: Q. Do you sell for cash? A. Only for cash, yes.

Q. I ask you to look at these exhibits from C-125 to 128 again, some of which purport to have been taken on November twenty-first, and others, all but one of which purport to have been taken on November twenty-first—

Mr. Hardin: Which one was not taken then?

Q. C-114 was not apparently taken on November twenty-first. Do you in looking at those pictures see any reason other than applicable to the two you have already referred to, which satisfies you that the statement that they were taken on the same day is an error? A. Mr. McCarter, this one here November twenty-first is correct.

Q. C-127? A. Yes; and all these here are incorrect, sir, they were never taken on the twenty-first.

Q. That is C-126, 129, 128 and 125. Why do you say that? A. Why the windows are dressed different. You see there are no crests on these tickets following my orders, and these are taken long before I gave the order; now here (indicating) it is plain.

Q. You say with the difference in the window dressing it would be impossible to have taken the photograph on the same day? A. Of course.

Q. Mr. Rikower pointed out some differences yesterday that appeared to him; you observe them, do you, three canes in one place? A. I can see the difference in tickets, that is very evident.

Q. You remember the receipt of Mr. Hardin's letter? A. I do, sir.

Q. What change was made in the Paterson store in addition to the cessation of the use of the label? A. We never used the label.

Q. I don't mean label, I mean crest. In addition to the cessation of the use of the crest at Paterson, after the receipt of Mr. Hardin's letter? A. Well, I remember that quite well, because I was the one that received Mr. Hardin's letter, and at that time I gave the order to make the new tickets without the crest, and there was also a crest on the big sign and that was taken off.

Q. The crest on the big sign was taken off? A. Yes, sir, and on the window.

Q. The crest was removed from all sources? A. Yes.

Q. Within a comparatively short time after the receipt of that letter? A. I can't tell the number of days, but shortly after.

Q. Was it before the bill was filed, do you know? A. Oh, yes, certainly.

Q. Long before the bill was filed? A. The bill was filed sometime in the middle of November if I am not mistaken.

Q. Now have you watched the conduct of the business of The Hilton Company since the dissolution, and about the time that this suit was threatened or commenced? A. Just the same as

I would watch any other store, competitors.

Q. What have you to say as to any featuring in their advertising or in their windows for a while, at that time now, after the dissolution and about the time the suit was threatened, of the word "Hilton's", over and above what had been before? A. I noticed a few signs marked "Hilton's" for a few days, and otherwise it was "The Hilton Company" right along.

Q. And have you noticed any such signs for the last six months, "Hilton's"? A. No, I have not, sir.

Q. Are you able to give the names of the manufacturers from whom The Hilton Company bought their goods?

The Court: Is it worth while to go into that?

Mr. McCarter: Perhaps not. I withdraw the question.

Q. Speaking of location; do you remember anything that occurred in Philadelphia in connection with the Mint Arcade. Do you remember, as illustrating the effect of location in Philadelphia, when a store was removed from one location to another? A. Mint and Juniper.

Q. What was that? A. We had the store there, for a number of years there, sir.

Q. Where? A. In the Mint Arcade, corner of Chestnut and Juniper; it was a very large business; when they moved away from there their business dropped down to about a third; and the same thing pertains to Boston, also had a good location in Boston, a large business, and moved away to another location and it dropped down to I guess also about a third to what it was.

Q. How far a removal was this in Philadelphia?

A. Well, they went up to near Fifteenth street and Chestnut; and Boston from Washington to Temple Place and Summer street.

Q. Since the establishment of the present business Hilton's you have been constantly associated with it? A. Yes.

Q. Been in the different stores? A. Continuously.

Q. Have you ever heard of anyone that was confused or mistook the new concern for any of the old concerns? A. No, sir.

Q. What is there about New York, if anything, Mr. Younker, that justifies the same enterprise in having in different localities several stores doing the same trade? A. Well, New York is so big, and it is really a number of localities; in other cities—Broad and Market is the whole thing in Newark; in New York I should judge there is about twenty different cities all incorporated in the one.

CROSS-EXAMINATION by Mr. Hardin:

Q. Were you with The Hilton Company when this Mint Juniper change took place down in Philadelphia? A. No, sir.

Q. When did that happen? A. Why around 1913, I think.

Q. During the time of your absence from the employment of the company? A. Yes.

Q. I understand you to say that you think that the customers of the stores of The Hilton Company who are old customers are about half of the total number of customers? A. Why I don't think quite as much even as half.

Q. Do you think the proportion is forty to sixty? A. I do, sir.

Q. So that forty per cent. of the customers that came into these Hilton stores you think came there because they had been satisfactorily served by those stores on previous occasions? A. Either that or they were not satisfied somewhere else.

Q. Or they have been elsewhere and been dissatisfied and come back again? A. Possibly, or possibly they didn't like the man that waited on them; a great many customers I lose that way.

Q. They are not compelled to come back? A. Some times they can't do any better.

Q. Is it not true in your experience as a business man that the customer that comes back ordinarily comes back because he was satisfied? A. In a great measure, sir, it is true.

Q. How many stores has Joseph Hilton in New York City? A. Three.

Q. And where are they located? A. 243 Broadway, Broadway and 36th street, Fifth avenue and 33rd street.

Q. Broadway and what? A. 36th street, and Fifth avenue and 33rd.

Q. How far is it from 243 Broadway to Broadway and Thirty-sixth street? A. Well now, I have to count the blocks, fourteen from thirty six is twenty-two, I should judge about forty blocks, something like that, I am not exactly right on that.

Q. Several miles? A. Well, I really don't know, I wouldn't like to walk it.

Q. How many blocks from Broadway and Thirty-sixth street to Fifth avenue and Thirty-

third street? A. Well, about six city blocks, but it is an entirely different location.

Q. What do you mean by that? A. Why the locality at Fifth avenue is just the same as a different city from the locality at Thirty-sixth and Broadway.

Q. Unrelated localities then in every way? A. Almost.

Q. How far is it from Broadway and Thirty-seventh street to Broadway and Thirty-sixth street? A. Well now, I have got to think that over, I think one block.

By the Court: Q. Where is the Fifth avenue store of Hilton's with respect to the Fifth avenue store of The Hilton Company? A. Hilton Company has no Fifth avenue store.

Q. Is it not true in your experience as a busi- in Nassau street right opposite The Hilton Company, store you are about to open? A. It is, sir.

Mr. McCarter: I want to ask you about Waterbury and Brooklyn.

Mr. Hardin: I will ask him.

Mr. McCarter: I wish you would.

Q. You haven't any store in Brooklyn at the present time, have you? A. Not just now.

Q. Do you contemplate having one? A. We are negotiating for quite some time now.

Q. For what site are you negotiating? A. Hanover and Fulton.

Q. How far away is that site from the site occupied by The Hilton Company store? A. I think about seven or eight blocks; don't pin me down to that because I am not quite certain.

Q. Only two or three blocks as a matter of fact, is it not? A. Oh, no, no, it is not.

Q. Have you a store in Waterbury? A. We have, sir.

Q. Have you a store in Bridgeport? A. We have, sir; that is not open yet, but we will have the store open this fall.

Q. You propose to open this fall? A. Yes.

Q. Where is the site of your Bridgeport store? A. On Fairfield avenue corner of Middle street.

Q. Is that anywhere near the Hilton Company store in Bridgeport? A. They have none.

Q. Location you regard as of great importance, I understand? A. Well, most importance.

Q. A location very close to a store of The Hilton Company is important location when you are looking for a store, is it not? A. No, I don't think so.

Q. How does it happen that your selections have come so close to the places of The Hilton Company? A. The Hilton Company usually get good location, we are looking for good location too, not because The Hilton Company has got them, because we want the best we can get.

Q. The best location on Nassau street is exactly opposite TheHilton Company? A. The best location on Nassau street is corner of Nassau and Fulton, there is no better I think in New York City.

Q. Is that where The Hilton Company is? A. No, sir, they are on Nassau street, and it is quite a difference, the people on Fulton street, I should judge there are thousands pass Fulton Street and never come on Nassau street at all.

Q. Where do those thousands of people come from? A. Why they come from everywhere, I can't tell you where they all come from.

Q. Largely from New Jersey, don't they? A. I don't know.

Q. Isn't that one of the arteries of travel from the water side up? A. Not necessarily; Cortlandt street is quite a common street, and Park Place is just as prominent when it comes to Jersey people.

Q. A good many Jersey people do as a matter of fact travel that way? A. But a good many Jersey people travel in New York City.

Q. Yes, I agree with you. When was the Thirty-sixth street and Fifth avenue store of The Hilton Company opened? A. We have no store there.

Q. Broadway and Thirty-sixth street? A. In the first of March or February.

Q. That was a couple of months after the bill in this case was filled? A. Yes.

Q. And the store at 243 Broadway was opened after the bill was filed in this case, was it not? A. Yes, certainly.

Q. At the time you left the Hilton people in 1912 Joseph was the dominating man in the partnership, was he? A. He was, sir.

Q. He selected the new stores? A. He did.

Q. And he ran the manufacturing business? A. When I was there you are referring to?

Q. Yes. A. He ran it with me.

Q. And he was so much the dominating feature in the partnership that you didn't bother to go to Philip at all, you took your orders from him? A. As a matter of courtesy I did, sir.

Q. Did that continue to be the case until after your return? A. Well, I was away from there for two years, I can't tell you anything about that, I had nothing to do with the headquarters at that time.

Q. Oh, I see, you did not come back as general manager? A. No, sir; I was in Boston, Providence and Chicage.

Q. Who was the general manager when you returned? A. They had four or five of them at the same time.

Q. Where were you? A. I was in Providence, Boston and Chicago.

Q. And in all three? A. No, different times in one, one at a time.

Q. What I meant was did your duties cover the three cities at the same time, or were you limited in your occupation after your return to the city in which you were located? A. My duties were limited at first to Boston and Providence at the same time, sir, and then at the suggestion of Messrs. Hilton I went to Chicago.

Q. Leaving Boston and Providence out of it? A. Yes.

Q. Whe ndid you go to Chicago? A. Well, I think it was 1915, in the fall.

Q. Who did you succeed there? A. A gentleman named Aarons.

Q. The gentleman who was on the stand here the other day? A. He was, sir.

Q. And how long did you stay there in Chicago? A. Not quite a year.

Q. Did you stay there until you went with Joseph Hilton? A. Yes.

Q. You told us about some arrangement made between Philip and Joseph about the conduct of the business or management of their partnership business through the intervention of Mr. Kestner; do you know whether that agreement was carried out or not? A. Why, I wasn't here at the time.

Q. You don't know anything about it? A. I was in Chicago.

Q. You don't know anything about it? A. From what Mr. Hilton tells me it was.

Q. Which Mr. Hilton? A. Joseph Hilton.

Q. Don't you know as a matter of fact that he drew up the agreement that was signed in Chicago; did he ever tell you that? A. He did not.

Q. You don't know from observation anything about it, you have no personal information about it? A. I was in Chicago that time when you say he was supposed to draw it up so I didn't see it.

Q. But the division of the business that was to take place between them, the headquarters of the business continued to be in Newark? A. Yes.

Q. You didn't have anything to do with Newark? A. No, sir.

Q. You don't know what they did or whether they carried out that agreement, made another, or what they did? A. I don't know, except what I have been told.

Mr. McCarter: All he spoke of was the agreement.

Q. Yes. I am speaking about the sequel to the agreement, which sometimes is quite as important as the agreement. Please look at Exhibit C-127 and Exhibit C-128 that you were discussing a few minutes ago in examination by Mr. McCarter. Taking the window shown on the right of the door in each one of those exhibits, what is the difference between the window dressing in C-127 and in C-128; you said there was a difference? A. To begin with, you can see that is not the same window; here are the tickets standing as plain as day light, whereas the ticket there, can you see

this ticket there, a great big sign, do you see it there; no, it is not there.

Q. Well, proceed. A. And that alone shows right away it is not the same thing.

Q. That is a moveable piece of paper, is it not? A. Well, it is all moveable, everything is moveable there, sir.

Q. Proceed. A. Here you find it is very plain, four canes, and here are only three, and right away I notice a difference in the window.

Q. Let me ask you about a few things specifically. Is not the coat shown to the left of the window in C-127 identical with the coat shown to the left of the window in C-128? A. It can be shown identical but different color, this seems to be a light coat and this is dark coat (indicating).

Q. Is there any difference in the drapery, in the appearance? A. They dress them all alike, but this is light coat, and that is a dark coat.

Q. Well, you think it is a different coat? A. Yes.

Q. Do you think there is any more difference than the mere tone of the photograph? A. Why the canes aren't there the same, the sign isn't the same.

Q. Different shadow. I will ask you about somethink else now. Take this high form, which is the form that Mr. Rikower found so much criticism for, it is in the front of the window; it has got its mate in this picture. A. Yes; and here you will find something plain, that cane here is entirely different angle from that cane there, which shows the window is not the same.

Q. You can find something else if you look at

it; that is a corner window, is it not? A. No, sir, it is not.

Q. What is it, a section of a window? A. This is a window proper; there is a corner right there (indicating).

Q. What do you mean, a window proper? A. This is just a window, and this is the corner, the corner is right here (indicating) that you don't see.

Q. You mean there is a store along side? A. There is another store.

Q. And contains somebody else's— A. Cloak and suit store right next door.

Q. Whose is it? A. Used to be Stewarts.

Q. This is the extreme right-hand window of the Hilton store? A. Yes.

Q. In the side of it there is a mirror? A. I think so.

Q. And that cane that is shown there is in the mirror? A. I am not sure, I can't tell you.

Q. Look and see. A. It looks like a partition there.

Q. Three canes in the window only, are there not? A. So I see here.

Q. Three canes in C-127 is all you see in the right-hand window? A. That is all I see here; I see four there.

Q. You still see four when you think about the mirror? A. If the mirror is there there is three, and it only shows three here too, but there is a difference in the signs altogether, and the coat, and the sign doesn't show in the other window at all.

Q. Now I ask you to look at another thing. I show you a vest. I don't know what you call

that, is that a standard drape or what is it? A. It is some kind of a stand.

Q. On C-127; it is duplicated, is it not, in the picture C-128? A. Why certainly not; here you have got a cane going across.

Q. I am not asking about the cane, I am talking about this vest. A. This is not a stand, this is a cane going that way, and there is the cane going this way (indicating). Now this you can see very very plain.

Q. Where is the cane? A. Right here (indicating). Now see that cane going this way, flat?

Q. I am talking about the vest, isn't it a standard drape? A. Yes, all the time we have that in all the windows.

Q. Look at that and the other picture, and don't try to talk about canes. A. Yes.

Q. Isn't that vest in the same standard in both pictures? A. Why it is not, there is the cane going the other way, and this (indicating) is the other way.

Q. All right, you say it is not. Is there any difference except the mere different shade, different tone of the photograph? A. No, sir.

Q. Except for the moveable paste-board? A. No, sir; have the cane right there, there is a cane on that stand, and another cane on this stand; there is a cane on the stand going like this, laying there just as plain as anything on the poor picture, and on the fine picture there is no cane there at all; anybody can see that.

Q. You had a little consultation with counsel while the Court was out telephoning a few minutes ago, in which you called attention to these pictures; were you calling attention to the matters

about which they questioned you after the Court returned? A. No, sir, something entirely different.

Q. What were you talking about? A. Something of a private nature.

Q. They took the pictures away with them from the stand? A. That is not my business what they did with them.

Q. You were surprised when Mr. McCarter began to talk to you about these pictures again? A. Oh, indeed no, I expected something like it.

Q. Your real reason for fixing the date of the pictures other than some other date than twenty-first of November, so far as they show the shields, is because when you came as general manager to Joseph Hilton you said to the boys "This shield of his is bunk, out with it," and you gave directions to use the shield no longer on the cards or on the displays? A. I will tell you frankly; when I got your letter it gave me a good excuse to do it; I didn't like it.

Q. You had done it before you got my letter? A. I said about the same time, if you remember.

Q. What is the date of my letter?

Mr. McCarter: October fourth.

Q. That was about a week after you came with them? A. Well, about a week or two, something like that.

Q. And it was after you had taken up the idea of getting rid of the shield? A. Well, about the same time, I can't tell you the day before or the day after.

Q. That letter didn't plant the idea in your head that the shield was a bunk kind of advertising thing to you, not appropriate to your busi-

ness? A. When I saw that letter I asked Mr. Hilton, or rather the boys, I said "What is the idea of this letter;" "Well" they told me "we don't have to give up the shield if we don't want to, we got permission of our uncle." I said "I am glad Mr. Hilton wants it eliminated because I don't like it in any event.

Q. Wasn't that the first time you discussed it? A. With whom?

Q. With the Hiltons or with your subordinates? A. I don't remember exactly.

Q. You hadn't given any orders before you got that letter to get rid of the shield, had you? A. I can't remember one way or the other, it is around the same time, I don't remember either way.

Q. You hadn't given any orders before you got that letter? A. I do not remember exactly.

Q. That letter led to the change? A. I can't say it did because I had it in my mind that I didn't like any crest in any shape or form.

Q. Neither can you say it didn't lead to a change? A. I can't say that either; you see I didn't make any crest signs then of any kind.

Q. Do you recall when The Hilton Company first began to use this crest? A. That is pretty hard.

Q. About 1909, wasn't it? A. I don't know, but I had something to do with it, in fact all to do with it.

Q. How did you come to put such a bunk thing over on The Hilton Company while you were general manager? A. I was a little more green then than I am now. I copied it from a cloak and suit house there, took exact label and put it on.

Q. Being general manager of the business from the time of its adoption until 1912 you continued to authorize and encourage its use, notwithstanding the fact— A. We had a bunch of labels made up so we had to use them up.

Q. You just did it because you were green? A. That is about the size of it, I didn't know any better.

Q. When you came back to the Joseph Hilton business, after the experience as salesman in Providence, Boston and Chicago, and manager of those stores, you had your eye teeth cut, and you said the shield should no longer be used? A. I used to see clothes from Roger Peet and all these big concerns and I never saw a label on any of those, and I thought we might as well copy them and do what they did.

Q. You were no longer green? A. No, thank God.

Q. I understood you to say that there wasn't and special distinction in clothing as between different makes? A. No, there isn't much.

Q. No concern can have a distinctive style of its own, as distinguished from some other? A. There is no distinctive style.

Q. Do you agree with the proposition that clothes made by Roger Peet & Company, that to take a label off nobody can tell anything about, even a person accustomed to buying Roger Peet goods wouldn't know that it was a Roger Peet garment or Rogers Peet style? A. I have been in this business twenty-four years, and you take a Roger Peet suit at, say, twenty-five dollars and take the label off, and take someone else's suit, and give me the same cloth, same pattern, and put

them together, and I pledge you my word of honor I couldn't tell them apart.

Q. You do not think the name is of any advantage at all in the sale of a garment? A. It is an advantage when you get it on the label and the label is in.

Q. No advantage unless somebody looks at the label? A. That is the idea.

Q. When you pass by a store and look in the window and see a garment and cannot see the label— A. There is a sign above.

Q. The name over the door is of some importance then? A. Naturally.

Q. You agree to the proposition that good will is associated with the names attached to store sites, clothing store sites? A. Some.

Q. And people come back there to some extent because they know the location? A. Absolutely, it is the location where people are used to going to that they go.

Q. Some times when stores move and have to establish the knowledge in their customers minds of the new location some of the trade they lose is due to the fact that the old customers don't know for the time being where they have gone? A. If they give good clothes they will follow them.

Q. They have to book them up first? A. Yes.

Q. That perhaps means temporary accomodation elsewhere some times? A. Certainly.

Q. Now do not most big clothing concerns have a designer? A. I guess so, some of them have and some of them haven't.

Q. And pay large salaries to designers of clothes? A. They needlessly pay large salaries at all times.

Q. Do you know Mr. Rocha? A. I do.

Q. He was with The Hilton Company when you were there? A. No, sir.

Q. When did he come with them? A. Right after I left, sir.

Q. You mean last September? A. No, no, I am speaking always when I was general manager of the concern; when I wasn't, I was in Boston, Providence and Chicago and had nothing to do here.

Q. When you were selling clothes for The Hilton Company in Providence, Boston and Chicago, you were selling clothes designed by Mr. Rocha? A. Yes, sir, I suppose so.

Q. You knew him as the designer of The Hilton Company? A. I did, yes.

Q. And you knew they employed him for that purpose? A. Oh, yes.

Q. And other clothing concerns do the same thing? A. Some do and some do not; some get their patterns from regular designing concerns.

Q. Now these designers make patterns from which the clothes are manufactured? A. They do, sir.

Q. Are the patterns preserved? A. Why some of them are preserved, and the style changes and they throw them away.

Q. They use them until the style changes? A. They use them as long as they want to use that particular coat.

By the Court: Q. When the goods are brought from manufacturers are they made to order by the manufacturers or are they stock goods? A. They are cut all on the same patterns.

By the Court: Q. Do you furnish the patterns

made to order? A. Sometimes stock goods, and if you place the order here why they make them up.

By the Court: Q. Do you furnish the patterns or do the manufacturers produce their own patterns? A. Their own patterns, your Honor. I have to explain that in buying ready made goods you buy them two different ways, in one way you buy them and the man has the goods on hand, and another way you buy them when you want the goods delivered three or four months later and they show you samples, and that is what I want to bring out, that they are all made on the manufacturers own patterns exactly and his own designing, own patterns by his own tailors.

Q. Is it not very frequently the case that the goods are ordered in advance and made from the designs of the purchaser? A. Why, no.

Q. That never is done? A. It may be done, I am speaking of the average.

By the Court: Q. Goods are never bought blind, are they? A. No.

By the Court: Q. You see the goods or a sample? A. You see the sample coat as a rule, always a coat or a pants, something of that sort.

Adjourned until Monday July 30, 1917.

Continuation of examination pursuant to adjournment at the place and in the presence of the Court and counsel as before.

Mr. McCarter: I want to recall Mr. Younker; there is one matter I omitted to prove by him.

MAX YOUNKER, re-called by the defendant:

Direct-examination by Mr. McCarter:

Q. I forgot to ask you if you know to what extent, if at all, the Hilton Company dealt in men's furnishing goods? A. They took over the furnishing department when they bought the George Watson Company of Newark, and they also had a furnishing department when they bought the Mose Levy store in Brooklyn.

Q. When did they give up the men's furnishing goods in Brooklyn, about? A. Pardon me, I also left out, they had a small furnishing department in a Boston store years ago.

Q. Are they doing a men's furnishing goods business in Boston, Brooklyn or Newark at the present time, and were they at the time of this suit? A. No, sir.

Q. How long since to your knowledge have they done any men's furnishing goods? A. In Newark here they gave up the George Watson Company, they ceased doing business in the furnishing, that is approximately in 1914. In Brooklyn, oh, for about two or three years, that is, until they moved their new store at the corner of Fulton street and Gordon place, they moved in their new store and they didn't do any more furnishings.

Q. Couple of years ago? A. Yes, over two or three years ago.

By Mr. Hardin: Q. Fix the date? A. Two or three years ago is the best I can tell.

Q. In Boston? A. In Boston I guess about four years ago, perhaps more than that.

Q. Your store, that is, the defendant's store,

243 Broadway, was opened when? A. 243 in March of 1917.

Q. Do they and had they from the inception done a men's furnishing goods business there? A. Yes.

Q. And had them in the window? A. Yes.

Q. Have you done a men's furnishing goods business at Thirty-third street and Fifth Avenue? A. We have and we did.

Q. Since when? A. Sometime in March.

Q. Any windows showing these goods? A. Yes.

Q. Have you any pictures here that have been taken recently to illustrate the character of the window dressing in showing the men's furnishing goods at any of your stores? A. Yes; we also had furnishing goods in our Broadway and Thirty-sixth street store, too, since March, and on account of lack of room we had to take it out.

Q. Just produce any photographs now that show any of your windows with the men's furnishings in them? A. Here they are, sir; this is Fifth Avenue and Thirty-third street.

Q. Are they marked correctly on the back, Fifth avenue and Thirty-third street? A. Yes, sir.

Q. Taken June, 1917? A. Yes.

Mr. McCarter: I offer them in evidence.

Picture marked Exhibit D-115.

Photograph 243 Broadway marked Exhibit D 16.

Photograph, Fifth Avenue and Thirty-third street store marked Exhibit D-17.

Photograph of 243 Broadway, June, 19, marked Exhibit D-18.

Another one of the same date marked Exhibit D-19.

Another one of the same marked Exhibit D-20.

Photograph Fifth Avenue and Thirty-third street marked Exhibit D-121.

A. We are also putting in a large gent's furnishing department in Nassau and Fulton streets.

Q. Now, I show you two photographs of signs of the complaint and ask you to look at the one which I hand you dated June 20, 1917, title on the back, "Hilton Company, outdoor sign, Newark, New Jersey," where was that taken? Where is that located? A. New York.

Q. Where? A. I think it is Central Avenue, if I am not mistaken.

Offered in evidence and marked Exhibit D-22.

Q. I show you another one entitled, "On the rear of Hilton Company, outdoor sign, Branford place and Springfield avenue, Newark, June 20, 1917," that is correct, is it? A. Yes, sir.

Offered in evidence and marked Exhibit D-23.

Q. Now, have you had a very recent photograph taken of the Newark store of the Hilton Company? A. Yes.

Q. I that it? A. Yes.

Q. June 20? A. Yes.

Offered in evidence and marked Exhibit D-24.

Q. Now, I think we put in, I know we did, two Horton windows; have you had photographs taken of Horton's as late as July 28th? A. I did, sir.

Q. Are these they? A. They are.

Q. Where is the Horton store? A. Brooklyn?

Q. And they are designed to show the same character of window dressing, is that right? A. Yes.

Offered in evidence and marked Exhibits D-25 and D-26.

Q. About how long does it take to dress a window? A. Depends a great deal upon the size of it, the average windows, set of windows to dress take anywhere from six to ten hours.

Q. And with business going on in the store when are the windows dressed? A. Always dressed at night after the close of business.

Q. Now, how would you testify, if you can testify, the type of the average purchaser at your stores or at the complainant's stores, what walk in life as a rule would you say they are? A. Usually artisans or clerks, that is, the big majority I am speaking of.

CROSS-EXAMINATION by Mr. Hardin:

Q. Do I understand you began the sale of gent's furnishings, in these various stores that you have mentioned in March, 1917? A. Yes.

Q. That is since this bill was filed, isn't it? A. Yes.

The Court: It is, Mr. Hardin.

Q. Have you any stores in which you do not sell gent's furnishings? A. We have two, sir.

Q. Where are they? A. Broadway and Thirty-sixth street, also Paterson.

Q. You do not want us to understand that gent's furnishings are the main feature of the business conducted by Mr. Hilton? A. I do not, sir.

Q. The clothing business is the chief thing? A. It is, sir.

By Mr. McCarter: Q. Have you noticed the character of the display cards in the windows of the Newark store of the complainant lately? A. Not very closely, sir.

JOSEPH HILTON, sworn:

Direct-examination by Mr. McCarter:

Q. You are the defendant in this suit? A. Yes.

Q. When did you first start in any way the clothing business in Newark? A. I started to work for my brother, Issac Hilton, in 1896.

Q. And where was that? A. 148 Market street.

Q. How far from Broad is that? A. That is about a block and a half.

Q. At that time was your brother Philip associated with you? A. No.

Mr. Hardin: That is objected to as entirely immaterial. It is well enough for him to say how long he has been in the business. This controversy don't relate at all to what happened after the dissolution of this business which confessedly had been conducted by these two brothers for a considerable time before this bill was filed.

The Court: I will admit it.

Q. The business was then conducted under the name I. Hilton? A. I. Hilton, yes.

Q. Now, what was the next step in the progress of the business? A. I worked for my brother Issac Hilton in 1896 and I worked for him until 1900. In 1900 he took sick and my brother come over to me and told me he can't take care of the business.

Mr. Hardin: I object.

The Court: I will overrule that. I am not interested whether his brother was sick or not, what happened.

Q. What was the next step? A. He give me the business, Isaac give me the business.

Q. When did Philip become connected with the business? A. In 1901, at the time he had a merchant tailoring establishment next door to my brother, and he was unable to get along and he lost his money and come to me and asked me—

Mr. Hardin: I move to strike it all out.

The Court: It may also be stricken out.

Mr. McCarter: I object to its being stricken out.

The Court: Strike it out.

Q. When did Philip become connected with the business? A. 1901.

Q. Under what name was the business then conducted? A. I. Hilton.

Q. Until when? A. 1904.

Q. Where was the business then carried on from 1901 to 1904? A. In Newark, and then in Philadelphia, in 1903, I took a store in Philadelphia and named it the Hilton Company.

Q. Between 1901 and 1903 where in Newark was the business carried on? A. In the same place, 148 Market Street.

Q. And in 1903 a store was taken in Philadelphia? A. Philadelphia, under the name The Hilton Company.

Q. After the name the Hilton Company which was applied to the store in Philadelphia in what name did the business continue in Newark? A. I. Hilton.

Q. Until when? A. Until 1904.

Q. Was Philip with you when your store was taken and the name the Hilton Company taken? A. Yes, sir.

Q. Do you know what reason induced you and Philip to adopt the name of The Hilton Company?

Mr. Hardin: That is objected to as immaterial.

The Court: I admit that.

A. To make it look like a large company, large concern.

Q. After the adoption in Newark of the name The Hilton Company how long was it before you moved on Broad Street? A. After the adoption of the name in the Philadelphia store of the Hilton Company in 1905 I took a store near the corner of Market and Broad.

Q. 1905? A. 1905, a whole building near the corner of Market and Broad, the old Bond building, and put up a five-story building there and moved from Market and Broad Streets, took everything there and named it the Hilton Company.

Q. And from that time the Newark store has been known as The Hilton Company? A. As the Hilton Company.

Q. That was 1905? A. 1905.

Q. Now, what extent from that time down to the present, and what instances to your knowledge has the word Hilton or Hilton's been used in the conduct of the business? A. We were trying to make the Hilton Company as large as we could and we never used anything else but the Hilton Company.

Q. Why did you move to the store on Broad Street just below Market? A. Because it is better located, and next to George Watson & Company, and clothing row is down there.

Q. That is distinctly a clothing locality, isn't it, recognized as such? A. Yes.

Q. Now, how soon in the history of this business did you commence doing your own manufactur-

ing? A. Well, in the beginning we did not manufacture at all; in 1904, in 1902 we started to manufacture about five or ten per cent.; the rest we bought ready-made, and little by little we started to increase our manufacture.

Q. Down to the time that you sold out, in June, 1916, are you able to estimate the proportion of goods that you sold of your own manufacture and the proportion that you sold of other people's manufacture A. Well, I can state that we manufactured about between sixty-five and seventy per cent. in the year of 1916.

Q. Before that how was it? A. Before we manufactured maybe forty-five per cent.

Q. So that in 1916 you increased the quantity of your own manufacture? A. Yes.

Q. About the proportion that you have named? A. Yes.

Q. Who was associated with your brother and you as general manager in the business, Mr. Younker? A. Mr. Younker.

Q. What in your experience is the most effective bait to get custom in a store of the character such as you have? A. First comes the location, next comes the goods, next it is up to the salesman to sell it.

By the Court: Q. First comes the location, that gives you the opportunity? A. Yes, the location, then the goods and the price, and it is up to the salesman to sell.

Q. How about the window dressing? A. Well, window dressing is pretty near all alike.

Q. Is that of importance? A. Not much.

Q. So far as you were familiar with your own window dressing were you? A. Yes.

Q. Was there anything so far as you could see in that that was distinctive or peculiar over other windows? A. No.

Q. Did you ever dress windows yourself? A. Yes.

Q. For whom? A. For myself and for other people.

Q. What other windows do you recall, other concerns, whose windows were dressed in a manner similar to the Hilton Company's windows? A. Pretty near all alike, pretty near similar, everyone's clothing windows are pretty near alike.

Q. How long did you continue to dress the windows for the Hilton Company? A. Up until 1905.

Q. Of what importance in the business do you deem the label in the clothes? A. That is the main thing in our business, the label, the label in the coat.

Q. Why is that? A. Because the man buying a coat, suit of clothes, and he wants to find out where he bought it, he always looks at the label, the first thing he looks at his label.

Q. From your experience in the business in Newark, or New York, or elsewhere, particularly Newark and New York, what would you say if you were able to estimate would be the proportion of old customers that you have, that is, customers who return and those who come and only come once? A. Oh, about thirty-five per cent.

Q. Thirty-five per cent. what? A. Of the old customers.

Q. Thirty-five per cent would be old customers? A. Yes.

Q. And the rest are? A. Pass byers.

Q. Now, I take it from the signs that have been produced here and advertisements and what

not that the Hilton Company made great stress upon mark-off sales half-price sales, and things of that kind? A. Yes.

Q. How often would you have clearance or half-price or quarter price sales? A. Ten days, two weeks.

Q. How often? A. Twice a year summer and winter.

Q. Did you know of your nephew Charles Hilton carrying on his clothing business in Perth Amboy? A. Yes.

Q. And how long a time had he transacted business there? A. About five years.

Q. With the knowledge of your brother as well as yourself? A. Yes.

Q. He is a nephew of you both, is he? A. Yes.

Q. Under what name did he carry on the business? A. C. Hilton.

Q. And we have his advertisements, they appear in the book here? A. Yes, sir.

Q. Did you ever know or realize or appreciate the fact that this word Hilton or Hilton's had acquired any significance in connection with your business? A. No, sir, never.

Q. The emblem, you remember the emblem that the old concern had? A. Yes.

Q. That appeared on the label as shown in the black book, did it? A. Yes.

Q. And on the signs? A. Yes.

Q. How much advertising did you do in New York City? A. Nothing, I think, I believe once or twice.

Q. How many years do you speak now of the whole history? A. The whole history, yes.

Q. I believe after dissolution there was some

advertising by your successor? A. Yes, after my going out of there they advertised once or twice, I don't remember.

Q. Now, what was the character of the trade in the several cities where you finally conducted your business, stores in Chicago, Pittsburg, Newark, New York, Boston and Providence, as to its being local or foreign? A. Local only.

Q. How do you know that? A. Well, every store we opened, every town we go into is only local, can't be anything else.

Q. Do you keep the addresses of your customers? A. Yes.

Q. How about Paterson, were you familiar with the clothing store situation in Paterson previous to your dissolution? A. Yes.

Q. Were there good stores up there? A. Oh, yes.

Q. Did you in Newark have, if you can reply, any substantial trade from Paterson in your store? A. No.

Q. When did you acquire the business of George Watson & Company in Newark? A. 1910.

Q. That was right next door to your store, your place? A. Next door to our store.

Q. And it came around in an L on Market Street where we see the sign now the Hilton Company? A. Yes.

Q. Did you acquire the Watson lease as well as the Watson stock? A. Yes.

Q. After having acquired the Watson lease and the Watson store, both on Broad Street and on Market Street, under what name did you thereafter conduct the business in Newark? A. George Watson & Company.

Q. For a period, I think, of about four years?

A. I think we give up in the beginning of 1915.

Q. Give up? Give up the George Watson and Company.

Q. Now, did you continue to use the name George Watson & Company in any way after you resumed the name The Hilton Company? A. Always used "Successors to George Watson & Company."

Q. Now, having bought the George Watson lease and their business and changed the name from The Hilton Company in Newark to the George Watson Company did that apply to both of your Newark stores? A. Yes.

Q. So that on the first store that you had, the building one door below the corner, you changed the name there as well as continued the name? A. We gave up that, only kept with the George Watson & Company, we rented it out.

Q. And that George Watson sign is still up there isn't it? A. Yes, still up there.

Q. As the photograph shows? A. Yes.

Q. When, do you recall that, first was it suggested that your son Charles should go in the clothing business? A. Sometime in March, 1916.

Q. You were familiar with the fact that Mr. Apfelbaum had negotiated a lease for the Paterson store? A. Yes, Apfelbaum came to me and told me he has got a wonderful store in Paterson; my son told him he likes to get in the clothing business; I told Mr. Apfelbaum I don't want to take it without my brother knowing; he went down and come back and told me that Mr. Philip Hilton told him that he wouldn't take it for himself, but he would allow the boy to take it if they want it.

Q. You remember the fact that they required you to sign that lease? A. Yes.

Q. Now, from, say 1905, for the next ten years in Newark where was the headquarters of the business? A. 791 Broad Street, that is the same place, corner of Broad and Market.

Q. And was there any division of labor between you and your brother or how did you divide your respective interests? A. Up to 1912 he and Mr. Younkers used to do the work, do the manufacturing and take care of the retail business. Mr. Younkers left in 1912.

Q. Left what? A. Left the Hilton Company in 1912, and I started in myself, 1912 and 1913 I was myself, and then I took care of myself, that business, and after 1913, the beginning of 1914 my brother stepped in, he said he like to go out, he like to take hold of that business himself; I thought to myself, no use, I told him, "All right, if you want to work yourself and you think you will make a success go ahead and do it," and he stepped in and was trying to do it himself, but he fell down; it was terrible time in 1915; he near went to pieces, and I would start in every once in a while; I told him it was not right thing for him to do; he said he don't care, he is going to do as he pleases, if I don't like it, I should do whatever I want; it does not make any difference to him, he is going to do the way he thinks he likes; that is when he starts in. We got along like this until 1916; in 1916, January 1, I took sick and went to the hospital and laid in the hospital about five weeks; meantime every once in a while he sent up to me I should give him money; I told him, I say I had no money, I was in the hospital, he should take care of himself. After I went out of the hospital and came down there to the office he antagon-

ized me again; I say, "Very well, didn't want to bother with business, wanted him to let me alone, and then started to bother me, and all of a sudden on May 5,1916, Mr. Murray called me up on the telephone, he told me that my brother was there and he told me that he is going to go to work and put receiver in the place, he wants to get through with that business. Well, I told him, I says, "I can't help it, if a man wants to do things like this it is up to him, he can do anything he wants, he can put the business on the bum." Mr. Murray comes around and told me the best thing was I should sold him that business because he would not go out himself, he wants that business, I I should sell that business; I told Mr. Murray to suggest something what to do.

The Court: Is this important?

Mr. McCarter: I don't suppose it is.

Q. This was what date you speak of now? A. 1916, May 5.

Q. Now, you don't read, I believe? A. No.

Mr. McCarter: Mr. Hardin, have you found that original paper you were looking for?

Mr. Hardin: Have not been able to find it; able to prove a copy taken before the paper was lost. Of course there is no doubt you know about it just as well as we do, the authenticity of the copy, it is just as much in your knowledge as ours.

Q. Who conducted the negotiations for the purchase and sale of your interests in the business of the Hilton Company by and for Mr. Philip Hilton? A. Mr. Murray did.

Q. What relation or position had Mr. Murray

occupied with reference to the firm up to that time? A. Mr. Murray used to be with us since 1902, 1901, he was with us, The Hilton Company.

Q. In what capacity? A. At that time he used to do clerical work, and in 1910 I believe that he went to college and he figured for a lawyer, he come back and he took position, he had an office in the place, in our own place he had an office there for a couple of years.

Q. Was he counsel for the company? A. Yes.

Q. Now, who prepared the paper, the offer and acceptance? A. Mr. Murray did.

Q. At the time that agreement was reached was any appraisal made of the value of the assets that you were selling? A. Mr. Murray told me the value of the assets.

Q. What was said about that?

Mr. Hardin: I object.

The Court: How is it important, Mr. McCarter?

Mr. McCarter: I suppose it would be important to show what was said to Mr. Murray at that time with reference to the value of the articles for which this man was to receive compensation, indicating whether or not there was any such thing as value in this trade name they are trying to protect in this case, anything said about it.

Mr. Hardin: I haven't the slightest objection if the Court wants to go into the details of this negotiation to spread it all before you, but it is immaterial.

The Court: I am not going to permit it; it is a collateral issue; I don't see where we get anywhere; there is no application here

to set aside the sale; no attack was made on the bill of sale; undoubtedly there was a trade name sold, whatever that was; I don't think it is important to go into the negotiations between the parties that led up to that sale.

Q. I notice on the sign itself and on the photograph of the sign, some of the other signs of the complainant, the word "Style-built" appears; do you know how long the complainant, that is, the Hilton Company, had used that word "Style-built?" A. Since last July, I believe, or last August.

Q. Now, you had personally signed the leases that the Hilton Company had taken on the different stores throughout the country? A. Yes.

Q. And your brother succeeded to all those leases? A. Yes.

Q. Have you endeavored to estimate the expense of your liability on those leases? A. $1,000,000.

Q. And have you ever been yet released by the lessors from that liability? A. No, sir.

Q. Have you ever been released yet from the liability assumed by your personal signature from the subway advertising contracts? A. No.

Q. Now, about what is the average price of a suit of clothes sold by the old concern? A. Eighteen dollars.

Q. What would you say as to there being anything peculiar or different in the stock carried by the old concern over the stock carried by other concerns? A. Nothing peculiar, nothing distinctive.

Q. Was there anything distinctive as to fit or

style or make-up or cloth or anything else? A. No, sir.

Q. Could you tell the difference between them and any other of your pattern goods provided there were no labels on them? and they were all laid out on the table together? A. Can't tell the difference.

Q. I think you have testified that you were told by your son of a conversation that he had with your brother Philip with reference to the Paterson business? A. Yes, sir.

Q. And what name he might use? A. Yes.

Q. Do you remember when your attention was called to that? A. Sometime in May.

Q. Now, the deed I think is dated June 24, for the summer of 1916, following that occurrence, that deed, what were you busying yourself with, what were you doing? A. I was out, I was away for a few months.

Q. That is, you were not here at all, you were away? A. No, I used to come back and forth once in a while.

Q. When did you first connect yourself actively with the Paterson store? A. Later, in September, I believe, the boys came to me and told me they can not continue the business because they can not get any credit started, to ask me I should take it over and I took it over.

Q. Had you up to that time had anything whatever to do with the Paterson store beyond the fact of signing the lease, as has been proven by Mr. Apfelbaum? A. Well, my boy was there all the time.

Q. I am asking you whether you yourself had anything to do prior to September beyond signing the lease? A. No.

Q. Have anything to do with getting the signs out, stationery out? A. No.

Q. Or anything? A. No.

Q. After the receipt of the letter from Mr. Hardin, which I think is dated October 4, was a change made in the signs at Paterson? A. Yes, it was.

Q. And Mr. Younker in the meantime? A. Mr. Younker had charge of it.

Q. He commenced what time about? A. I believe October 1, latter part of September.

Q. I notice on your sign on the black book the words, "style-built clothes," how soon did you commence to adopt that phrase, "art-craft clothes" A. I adopted it when I opened that store in Fifth Avenue, Mr. Younker adopted it at Fifth Avenue and Thirty-third Street.

Q. That was opened when? A. I believe sometime in November, 5th of November, I can't tell.

Q. So at the time the Fifth Avenue store had been opened in November your sign has had on it the word, "art craft clothing?" A. Yes.

Q. Did you have anything to do or were you consulted, and if so, what part, if any, did you play with the boys in the adoption of the name "Hilton's" for the Paterson store? A. I was going to incorporate that business for them, limit them to a certain amount of capital, see, but I found out that the incorporation wouldn't do any good and I abolished the incorporation.

Q. Do you know how the name Hilton's came to be adopted? A. Well, the boys told me that their uncle Philip told them it is a pretty good name to use, and name stand for both of them, they didn't want to call it C. Hilton or M. Hilton, or, they wanted to make one name and they adopted the name of Hilton's.

Q. How many children have you? A. Nine.

Q. Is your brother married? A. Single.

Q. After the receipt of the Hardin letter of October 4, has Hilton's ever used the emblem that has been spoken of, the emblem? A. Never used it in New York.

Q. And how late was it used in Paterson? A. Oh, I don't remember exactly; Mr. Younker took charge of this letter, you know.

Q. Did your concern ever advertise in magazines or periodicals like the Ladies Home Journal or Saturday Evening Post or those so-called National magazines? A. Never advertised in any national advertisements.

Q. How often was it the practice of the Hilton Company to advertise in Newark? A. Once a week, sometimes twice a week.

Q. Ho often in Philadelphia? A. Once, sometimes twice.

Q. New York. You have spoken of Boston and Chicago and Pittsburg? A. Used to advertise a little more there than we did here.

Q. When was the Waterbury store opened? A. I believe in December.

Q. And how early were you preparing your stock for the Waterbury store? A. Oh, as soon as Mr. Younker came down from Chicago.

Q. Have you from the inception of the Waterbury store carried men's furnishing goods? A. Yes.

Q. So that you were preparing the stock and actually had the stock in operation there at the time the suit was commenced? A. Yes.

Q. That is the men's furnishing stock at Waterbury? A. Yes.

CROSS-EXAMINATION by Mr. Hardin:

Q. Anybody else beside you interested in the men's furnishing department of your Waterbury store? A. Yes.

Q. In partnership with you or independently?

Mr. McCarter: I object as immaterial?

The Court: How is it immaterial?

Mr. Hardin: I understand the furnishing goods department belongs to somebody else.

The Court: I overrule the testimony.

Q. When you were talking about advertising in New York you were referring to newspaper advertising, were you not? A. Yes.

Q. You don't mean you did not do any kind of advertising in New York? A. No, sir.

Q. You did advertise in the tube cars? A. That is for Jersey.

Q. You did advertise in the tube cars? A. When? Any advertising we did in the tube—

Q. Before the dissolution you signed a contract did you not with the tunnel company for advertising in the tunnel cars as well as the cars operated on the New York end of the line as well as the New Jersey end of the line? A. Yes.

Q. You also signed up contracts for the stations in New York? A. That come in the same contract.

Q. You said it was your custom in all your stores to keep a list of customers? A. We do, yes.

Q. Isn't it your custom by mail to advise the customers of sales and other matters you thought would be in the interest of the business? A. We are not alone in the business to do those things.

Q. I am asking you whether you do not keep lists of the customers and from time to time circularize your customers.

Mr. McCarter: You mean the old concern?

Q. The old concern? A. The old concern, yes.

Q. That applied to New York as well as other places? A. Yes.

Q. Don't you regard the name as an important part of the business? A. The name? Well, everything is important.

Q. Well, you mentioned location and the quality of the goods and the price and good salesmanship and moderate degree of window dressing; you did not happen to mention the name; don't you regard the name as a good deal of importance? A. No, if a man does not advertise continuously every day the name don't make any difference.

Q. You don't think it makes any difference what the name is over the door of a store? A. No.

Q. You think the business you are conducting now under the name Hilton's over your door would be just as profitably conducted if it had Jones over the door? A. Yes.

By the Court: Q. Or Maxim's? A. Yes.

Q. What is on the label that is of so much importance? A. The address, address of the store where bought.

Q. Not the name? A. Well, the name, too, why, sure, the name.

Q. You used the expression "The label was the whole thing?" A. Yes.

Q. Then the name is of importance on the label? A. On the label; if a man bought a suit of clothes and wants to know where he could get another one he looks at the label, Broadway and Thirty-third Street or Broadway and Fifth Avenue he sees it and comes there and buys another one if he wants to.

Q. If he is satisfied he comes back again? A. Oh, yes.

Q. And your estimate is that the old concern thirty-five per cent of the people were sufficiently well satisfied to come back again? A. I suppose so.

Q. Well, isn't that what your estimate was? A. Yes.

Q. You spoke about your brother bothering you for money while you were in the hospital? A. Yes.

Q. Were you accustomed to furnishing the money for the Hilton company firm? A. No, he was accustomed to bother me, but I didn't have no money to give him, he knew I didn't have no money to give him.

Q. You had no money outside of your investment in the business? A. That is all.

Q. He didn't have any money outside of his investment in the business? A. Yes, sir.

Q. He had some beside that? A. Yes, oh, yes.

Q. As a firm you were heavy borrowers all the time, weren't you? A. Well, not much, no.

Q. Didn't borrow much money from the banks, eh? A. Yes, we did borrow; some people we paid in time, some we held off a couple of months; we had our troubles.

Q. You used your credit largely all the time? A. Why, certainly, we had to use it.

Q. You spoke about the large liabilities that you were under at the time that this firm was dissolved and that you say you were still obligated for on leases and contracts, things of that kind? A. Yes.

Q. You do not mean to suggest you don't know you got your brothers to take care of those things? A. Well, a million one hundred thous-

and dollars is a whole lot for him to take care of, and I am responsible for it, because I didn't want to go for him, and I gave him the liability, because I know he will be in business, I will be in business, we will get along nicely; I say this, that the agreement was between me and Mr. Murray that I got a right to go in business.

Q. I am asking you about the agreement you signed when you sold out to your brother? A. Yes.

Q. Didn't your brother agree to take care of all these obligations? A. It is up to me to give him —I allow him to do this.

Q. Didn't your brother agree with you to do it? A. Yes, that is all right.

Mr. McCarter: Ther is no question about that.

Q. When you are talking about a million liability on these leases you mean the total rent those leases call for? A. Yes, sir.

Q. Your nephew, C. Hilton, began his business in Perth Amboy, did he not? While the Newark business of the Hilton Company was being conducted under the name of Watson? A. I don't remember, I can't tell.

Q. You said it was about five years ago? A. Yes, five years ago we started in, the Watson Company, late in July.

Q. 1910? A. 1910, yes,

Q. I understand you to say that there is absolutely nothing distinctive about the Hilton Garments in design and the garments sold by any other clothier? A. I said, yes.

Q. You employ a designer, don't you, the Hilton Company? A. Yes.

Q. At a large salary? A. Yes.

Q. What is his name? A. Roshay.

Q. Did Mr. Roshay create patterns that were used in the manufacture of clothing for the business? A. Yes, he does.

Q. In accordance with styles that are prevalent at the time? A. Everybody got the same styles.

Q. Most of the clothing houses have designers? A. Yes; I have designer now, I consider him as good as anybody, he makes the same thing as any of the rest of the designers.

Q. Mr. Roshay was a good designer? A. They are all good; we have not got a bad designer in this country, they are all good.

Q. And every concern of any consequence has a designer? A. Yes, if they want to, I know one man does $700,000 business without designer, in the retail clothing business.

Q. The Hilton Company don't try to get along without one? A. We did for ten years.

Q. For several years before your partnership? A. When I had Mr. Roshay, it was 1912 and 1913.

Q. From 1913 on The Hilton Company thought it was a good thing to have a designer? A. Yes.

Q. After that time you kept increasing the quantity of goods you manufactured yourself, didn't you? A. It comes natural when a man gets money for certain things you have got to increase to make that certain salary up.

Q. After you had your own designer you increased the proportion of your own manufacture? A. Yes.

Q. Are the patterns preserved that are used that these designers get up? A. I don't know that they do, they keep patterns from year to year and only change lapels and backs and sleeves, that is all they do; I don't see them do any hard work;

all they do is to change lapels; all the bluffers, they are all alike.

Q. Your own designer, Mr. Roshay, is the same? A. My own designer will tell you the same thing, they are a lot of bluffers, nothing to it.

Q. You were away during all the summer of 1916? A. No, I was not away all the summer.

Q. Where were you? A. I was on trips.

Q. How long were you away on trips? A. Week, ten days.

Q. Then would you be home a week or two? A. No, a day.

Q. What part of the time were you home and what part of the time were you away? A. I couldn't tell now.

Q. You knew the boys had a loft down Broad Street? A. Yes.

Q. The lease was in your name, wasn't it? A. No, sir.

Q. Wasn't the insurance of the goods in your name down there? A. It may be, I don't know, I don't remember.

Q. Just try and think about that a little bit; didn't you put the insurance on those goods in that loft in your name? A. I don't remember, I say I don't know.

Q. You think perhaps you had the insurance in your name on them? A. I don't know, Mr. Hardin, I don't remember.

Q. Do you know Mr. Wolf? A. Yes.

Q. Was he employed by you? A. What Wolf is it?

Q. Mr. Wolf is all I know. You have a Mr. Wolf in your employment? A. There is a lot of Wolfs there; I want to know the first name.

Q. Was there a Mr. Wolf or did you know Mr. Wolf at any time worked in the loft? A. I know a half a dozen Wolfs.

Q. Do you know a cutter named Wolf? A. Yes, got five cutters, different kind of Wolfs.

Q. Do you recall Mr. Wolf who was a cutter down on Broad Street? A. I don't know; I didn't engage any cutter.

Q. You don't remember anybody named Wolf employed down there? A. I don't know, maybe his name is Wolf and maybe is something else.

Q. You don't remember about giving Mr. Wolf any instructions with reference to insurance on that property? A. No, I don't remember.

Q. The Mr. Wolf I mean was Mr. Wolf who was cutter and worked for the Hilton Company prior to the dissolution? A. I don't know he was working for me or anybody else; at that time I wasn't in business, my boys were in business and I can't tell.

Q. Do you remember getting any letters in August 1916, from Mr. Murray about a policy in the Firemen's Insurance Company on the property in that loft? A. I don't remember.

Q. Would you be willing to say you did not get any letters from him about it? A. I can't say.

Mr. McCarter: We have not had any notice to produce any such letters; we don't know anything about any such letters.

Mr. Hardin: The letter I am looking for July 13, 1916, addressed to him at his house. If you find the letter we will be glad to have it.

Mr. McCarter: All right. You should have told us before.

Q. Do you recall a conversation in April, 1916, with Miss Young? A. I had a lot of conversations; I don't know that conversation what you refer to.

Q. About your intention to lease a clothing store in Paterson? A. I don't remember saying anything to her at all about the Paterson store.

Q. Who was Miss Young? A. She took charge of entering bills in the store.

Q. And was she in the office of the Hilton Company? A. She was always in the office, yes.

Q. You saw her daily? A. Saw her, when I visited the place I saw her.

Q. Do you remember telling her in the early part of April, 1916, that you intended leasing a clothing store in Paterson and requesting her not to tell anybody about it? A. What benefit have I got to not tell everybody?

Mr. McCartrer: Answer the question.

The Court: Strike out that answer. Yes or no.

A. I did not.

Q. Did you tell her if Philip found out you were taking a store in Paterson he would stop it and for that reason you did not want your brother to know about it? A. I guess Philip knew it before I took it.

Q. Did you tell her that? A. No.

Q. Did you tell Miss Young the morning after you had signed the lease for the Paterson store that you were going to try and get out of it? A. No, I didn't tell her this.

Q. Did you tell her you felt very badly about having signed a lease in Paterson? A. I didn't tell her anything.

Q. Did you say to her, "You know how it is,

Philip and I are always fighting, and you never can tell when we might lose the business when it continues this way, and if anything else happens then I will have this other store because it will be incorporated in Charles' name." Did you say that to her? A. No, I did not.

Q. You spoke about having intended to incorporate in Paterson? A. Yes.

Q. Did you actually start an incorporation? A. I started and abolished it.

Q. What lawyer did you employ for that purpose? A. I forget his name.

Q. John A. Bernard? A. Yes.

Q. You told Mr. Bernard to stop the incorporation of that company after Mr. Brady, of R. G. Dun & Company, had called upon you, did you not? A. Somebody called on me, yes, and told me—

Q. Somebody from the Commercial agency of R. G. Dun & Company?

Mr. McCarter: You didn't finish your answer; Mr. Hardin interrupted you. A. I say somebody come to me and said to incorporate that for the boys is no good because they couldn't get no credit at all if it is incorporated.

Q. Mr. Brady? By Mr. Brady I mean the gentleman that was on the stand a few days ago? A. I don't remember it was him or somebody else.

Q. Somebody from R. G. Dun? A. Yes.

Q. And after that somebody talked with you you called Mr. Turner up on the telephone and told him to stop the incorporation? A. I suppose so; I don't remember exactly what I done.

Q. Didn't you direct him to stop it? A. At that time, yes, I suppose I did.

Q. And was that incorporation, the matter of that incorporation the subject of a letter written by the Hilton Company to R. G. Dun & Company later? A. Yes.

Mr. McCarter: I suppose the letter will speak for itself.

Mr. Hardin: The letter is in evidence.

The Court: Why go over it with this man then?

Mr. Hardin: Because I want to show why it is written; it is signed Hilton & Company.

Q. After the interview between you and this Mr. somebody from R. G. Dun & Company about the incorporation you asked Mr. Murray to have a letter written, did you not, to the Commercial agency of R. G. Dun & Company? A. I don't remember.

Q. You say you did not ask Mr. Murray? A. I say I don't remember.

Q. And wasn't it your suggestion— A. I don't remember, Mr. Hardin.

Q. Didn't you ask somebody you wanted a letter written to the commercial agency about the abandonment of this incorporation? A. No, sir, I don't remember.

Q. Never talked with Mr. Murray on the subject? A. No, I don't remember.

Mr. McCarter: I suggest whether he did or did not is utterly immaterial.

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. Mr. Hilton, with reference to this alleged talk between Miss Young and yourself the day after the lease was signed, as a matter of fact, did

you have any offer to be released of that lease in advance? A. My boys had an offer, they come to me and told me.

Q. Who did, the boys or somebody else? A. Mr. Apfelbaum.

Q. When did they tell you that? A. I believe about four or five days after I signed the lease; I believe it was the second day, if I am not mistaken.

CHARLES R. McGOVERN, sworn:

Direct-examination by Mr. McCarter:

Q. Where do you live? A. 162 Garfield place, Brooklyn, is my residence.

Q. What is your business? A. I am a window dresser?

Q. How long have you been a window dresser? A. About thirty years, twenty-five years anyway.

Q. Did you have anything to do with the preparation of the window at the Paterson store of Hilton's? A. Yes.

Q. On behalf of the business conducted in the name of Hilton's and opened at Paterson did you order any emblems? A. I went over to Solzer & Company and told them I wanted some nice classy signs for that store.

Q. Who did you say? A. Solzer & Company; I saw Solzer himself; I have known him a long while, I told him I wanted some classy signs, to get up something good.

Q. Nothing more or nothing less than that? A. I told him I wanted some nice signs, something that would stick out and make people look.

Q. I show you Exhibit marked 141 for identification; did he produce that as a result of that order? A. I think he did, yes.

Q. How often, if you can recall, did you dress tions with reference to that? A. Yes; I went over there and said, "Solzer, I want to open that store, I am going to make it look as nice as I know how; get up something good." He said, "What do you want?" I said, "I will leave that to you." That is what I always tell them.

Q. How often, if you can recall, did you dress the window at Paterson, on how many different occasions, do you remember? A. I couldn't remember exactly, but I think I was out there two or three times.

Q. And were the emblems, of which you hold a sample in your hand, used that you got from Mr. Solzer in Paterson? A. I know there was at the opening, that I am sure of, but outside of that I don't remember any more.

Q. At Paterson? A. Yes.

Q. Did you dress the window in New York at Thirty-third street and Fifth avenue? A. Yes, I did, I opened that store there.

Q. Did you use the emblem in the New York store? A. I hardly think so, I don't remember just at the present moment; you see I am an independent operator and I work for a good many concerns and it is hard to remember what happened a year ago offhand; I just come from a clothing house now.

Q. Whose clothing house? A. Marshall & Ball.

Q. You don't work for any particular firm? A. I am kind of particular about the firms I work for, but I work for anybody that will engage me if I think they are all right.

Q. You don't work for any particular enterprise? A. No, sir. I want to know where I am at when I go to work for them.

Q. Your best recollection about this Thirty-third street and Fifth avenue store is you did not use the emblem? A. I don't think so, I can't say positively; it would be hard to remember that a year ago.

Q. Now, in dressing the Paterson window and in dressing the New York window, Thirty-third street and Fifth avenue, did you copy the window of the Hilton Company in Newark or New York? A. No, sir.

Q. Were you familiar at that time, I don't know whether you are or not, with the windows of the Hilton Company in Newark and in New York where their stores were then located? A. Why, I am familiar with all clothing stores as far as that goes.

Q. Was there anything distinctive or peculiar to your knowledge which you imitated or copied in dressing the windows at the Hilton store? A. I never gave them a thought because the day before we opened that store a man threw a piece of wood and tore my nose open and I worked all bound up, I had two clamps in my nose in place of two stitches; the doctor advised me not to work; I wanted to get the store opened on account that Joe Hilton wanted to open that store.

Q. You did not in fact imitate or have in mind the windows of the Hilton Company at all? A. No.

Q. Whom besides Hilton's have you dressed windows for? A. I don't think that has got any bearing on this case.

The Court: Strike that out and answer the question. Now answer the question.

A. I work for lots of people.

By the Court: Q. Give some of the names? A. Martin Clothing Company, Fifth Avenue, Brooklyn; Arnold Clothing Company, Jersey City; Marshall & Ball of Newark, previous to that I was with Stoutenburgh & Company in Newark; Glass & Lehman, Fifth Avenue and Fifty-third street; H. E. Spencer, Fifty-fifth street and Fifth avenue.

Q. Is there anything distinctive about each of those stores for whom you dressed windows or are they all more or less alike? A. They are all alike as far as I can see.

CROSS-EXAMINATION by Mr. Hardin:

Q. You also worked for the Hilton Company, didn't you? A. Yes.

Q. And when? A. I have no recollection now; no doubt they know better, they must have a record of it; before I started for myself.

Q. When was that? A. I think it was two years this June.

Q. And after you started for yourself did you continue to dress windows for them at all? A. Not for the Hilton Company.

Q. You began to dress windows for Joseph Hilton before the Paterson store was opened; is that the window you dressed for Joseph Hilton? A. Yes.

Q. How long before that had you dressed windows for the Hilton Company? A. I guess it must have been a year, I am not sure; if I had my books here I could tell.

GEORGE F. BARIGHT, sworn:

Direct-examination by Mr. McCarter:

Q. Where do you live? A. At 564 West 160th street, New York.

Q. What business are you engaged in? A. Advertising.

Q. How long have you been in the advertising business? A. About twenty-four years.

Q. In what way? A. For twenty-four years I was the advertising manager for the Prudential Insurance Company here in Newark, and in the last two years in business for myself.

Q. When you were in the Prudential of Newark, advertising manager of their business, where did you live? A. I lived part of the time in New Jersey; I lived in Orange, East Orange, in Newark and in New York and at Interlaken, New Jersey

Q. Were your business headquarters in Newark when you were with the Prudential? A. In Newark, in this building.

Q. You were then familiar with this locality? A. Thoroughly.

Q. As making a specialty of advertising and being engaged in the advertising business did you watch the course of advertising of your tradespeople as well as the advertising of the Prudential itself? A. Constantly.

Q. Were you familiar with the business conducted near Broad and Market streets under the name of the Hilton company? A. I knew there was such a business conducted here.

Q. Did you know whether or not the same concern was conducting business in New York? A. At the time that I was with the Prudential I did not know that.

Q. How was that concern, so far as you did know it, known to you under what name? A. The Hilton Company.

Q. Did you ever acquire in your business, your familiarity with the concern located right here near, any familiarity with or attach any significance to the word Hilton or Hilton's? A. Not at all.

The Court: I am inclined to overrule that. How has he any more knowledge than the ordinary citizen of this town? Why because he happens to be engaged in the advertising business does that give him any peculiar right to testify? If I should permit this you could call every one of the inhabitants of the city of Newark, put them on the stand and have them say they didn't know the difference between Hilton & Company or Hilton. Why is this man any more fitted to testify than anybody else?

Mr. McCarter: I offer to show by this man he was familiar with that business; he knew they advertised a great deal here in Newark; he was familiar with their signs and never knew anything else but the Hilton Company.

The Court: I overrule it.

Q. Now, when did you first become aware of that that the Hilton Company had some New York stores? A. That is a pretty hard question to answer as to dates. I can say this, Mr. McCarter, I have been in business for the last two years for myself in 141 Broadway and my business makes me cover that section of the city more or less, and I have seen their store at Nassau street, and it was during that period, during the last two years.

Q. Now, have you examined by the courtesy of counsel for the complainant at Mr. Hardin's office a book of advertisements that have been offered in this case? A. Yes, I saw it.

Q. And did you go through those advertisements? A. I did.

Q. From those advertisements with reference to the use of the word Hilton as Hilton or Hilton's appears thereon what would you say as an experienced advertising man as to whether or not the use of that word or words in those advertisements in the manner they have been used would give rise to what is known as a secondary meaning indicating as the bill of complaint in this case complains and states, that the products and merchandise of the said partnership were superior in style and fit of similar products of other manufacturers sold for about the same price and had reputation among the public generally in or near the localities where the goods were sold and advertisements made as being superior to the reputation attached to and connected with the word Hilton or Hilton's and said emblem?

Mr. Hardin: I suppose that question is asked this witness as an expert and counsel has asked him to say whether certain matters he has seen—

The Court: Counsel has asked him to cite a case.

Mr. Hardin: Yes; I object to that method of producing that kind of testimony. I don't think it follows because this man is an expert on advertising he can define secondary meaning; that is what he tries to do.

The Court: I am inclined to overrule it.

Q. Have you found anything in those advertisements tending to indicate a superiority either in texture, style, quality or otherwise in the character of the goods said to have been manufactured and sold by the Hilton Company?

Mr. Hardin: That is also objected to.

The Court: I overrule that. That is for me to say.

Q. You recognize as an experienced advertising man that there are certain words in general mercantile use that are recognized as having a trade value? A. Undoubtedly.

Q. Can you give us examples of such words? A. Uneeda, as applied to the Uneeda biscuit; "Let the Gold Dust twins do the work" as applied to Gold Dust cleansing powder; "It Floats" as applied to Ivory soap. I could give plenty of those.

By Mr. Hardin: Q. As common as the Rock of Gibraltar? A. Yes, has the strength of Gibraltar."

Q. Have the words which you have spoken of, from your knowledge and experience, acquired what is known as secondary or trade value?

Mr. Hardin: That is objected to as an attempt again to get this witness to define secondary.

The Court: I will overrule it. I will hold as a matter of law that they have.

Q. Did you ever hear or have it suggested prior to your induction into this suit that the word Hilton or the word Hilton's had any such significance as you said these other words that you have referred to had?

Mr. Hardin: I object.

The Court: I will let him answer.

A. I have never so heard.

By the Court: Q. You knew that Hiltons advertised rather extensively, didn't you? A. I have seen their advertisement in Newark.

By the Court: Q. When did you first see their advertisement? A. During the time I was here.

By the Court: Q. You knew they were in the clothing business? A. Yes.

EXAMINED by the Court:

Q. So when you saw the words Hilton Company you recognized it was a clothing store run by the Hilton Company? A. Yes, sir.

Q. If you had seen the word Hilton's you would have thought it was that store also, wouldn't you? A. No, I would not; my experience points to the fact that people as a rule, merchants as a rule are so jealous of maintaining the integrity of their name they adhere to it very carefully, and a man with common sense that saw two names somewhat similar but not identical would not believe it was run by the same people.

Further DIRECT-EXAMINATION:

Q. Have you ever from your knowledge of the advertisements in the Newark papers—I ask you again if you ever knew or heard that they used or claimed that the word Hilton or Hilton's had any significance whatever in connection with that business?

The Court: I overrule it.

Q. Is there any distinction in your mind between what has been mentioned in this case or described in this case as local or national adver-

tising? A. Very great distinction, sir.

Q. Will you tell what you mean about each? A. Local advertising is advertising which has its basis in a purely local circulation, that is to say, a circulation restricted to the locality in which the results of the advertising are expected. National advertising is advertising for the purpose of establishing a fundamental subject and to have that article in the public mind general in extent and has no reference whatever to the recognized character of the purchase that is going to come as a result of it.

Q. What would you say with reference to the advertisements in the Philadelphia North American or Evening Bulletin or Boston Post or Boston Globe or Pittsburg Dispatch as to being national or local advertising? A. Purely local to those cities and their vicinities, their immediate vicinities.

Q. You are generally familiar with those papers? A. I am, sir.

Q. Their circulation is of what general character as to being national or local? A. Local.

Q. Have they any general circulation throughout the country such as the Metropolitan papers like the Times and World and New York papers are supposed to have? A. The New York Times is a distinct paper; it has more of a national circulation than any other newspaper in the country. Other papers are distinctly local, and the papers you mention have no national circulation whatever except among a few individuals who may be residents of those cities where they are published.

Q. The same thing I suppose is true of the Newark News, it is largely local. A. Yes.

Q. What have you to say as to the advertising in the tube? A. Advertising in the tube is designed to reach New Jersey people who travel to New York mostly. The largest percentage of that, if I may be permitted to state my reasons in coming to that conclusion, I was solicited to place business in the tubes in the early days, and the arguments advanced by the tube people were that it would reach the Newark population that we were anxious to reach, the New Jersey population, what we were making a special effort for; and, furthermore, when M. Bamberger put an advertisement in the tube they themselves advocated in that advertising—

Mr. Hardin: I object to what other firms are advocating.

Q. Are you familiar with the advertisements of Bamberger's in the tubes? A. Yes, I saw them every day.

Q. And what was there, if anything, about them that you think conduces to the conclusion you reach? A. They reach the readers today that are purchasing at home in Newark.

Q. Were you ever connected with the Rogers-Peet & Company? A. I was.

Q. In what capacity? A. Why, I had a variety of positions, Mr. McCarter; I was sort of an assistant to everybody, at the time of my early business career, seven years I spent with them.

Q. For that reason since you went in the advertising business have you had occasion to watch the advertisements of Rogers-Peet & Company? A. I have read them with a great deal of interest all of that period and up to the present.

Q. Any other clothing establishment? A. I conducted the advertising for Smith Gray & Com-

pany for two years and a half, they were in New York and Brooklyn.

Q. Now, from the advertising you were familiar with with a firm like Rogers-Peet and Smith Gray and the Hilton Company, do you derive any different impression of the Hilton Company from that say of Rogers-Peet or Smith Gray & Company? A. Yes, very different.

Q. What was that difference? A. The advertising of Rogers-Peet & Company is intended or has what I would term character; it is intended not only to obtain customers at the store at that present day, but to generally develop the prestige of the house; I should say that that is true to the largest extent of Rogers-Peet & Company; it was true to a lesser extent of Smith Gray, but Smith Gray's advertising recognized the fact that most of the business was transient and was mainly for producing customers on that particular day at a bargain. With the Hilton Company I should say that that was least true of all and that the advertising there was intended purely and simply to secure customers on that day for the purpose of attracting them by cheapness and had very little if any intention to maintain prestige.

Q. I understand you then that the impression that the Hilton Company advertising made upon you was that it was directed towards cheapness of sale, of price, rather than quality of goods? A. At thoroughly cut rate.

Q. How constant and continuous or isolated or single is it your experience has a word or collation of words got to be in order to acquire a trade value or significance?

Mr. Hardin: I object.

The Court: I overrule the question.

CROSS-EXAMINATION by Mr. Hardin:

Q. Is a matter of prices the thing that localizes an advertisement, the emphasis on prices? A. I don't quite get your point, your language in the word localizes. I understand you, yes; that is to say, whether if an advertisement may have been, if the dominating fact of an advertisement is price whether that advertisement thereby becomes more localized; not necessarily.

Q. Then what did you mean when you said in analyzing the difference between Rogers-Peet Company advertising and Smith Gray Company advertising you first mentioned the subject of prices as the predominant feature when you got down to the Hilton Company advertisement, and I judged from that there was something in your mind that led you to the conclusion as an expert when there was more talk about cheap prices than anything else that meant localization of the character of the advertisement? A. In making that distinction that analysis had no reference to the question of localization; it has reference to the effect on the public mind as I understand it.

Q. Then as an expert— A. Localization, pardon me, is a matter of circulation and distribution.

Q. As an expert your view is if the effect of advertising on the public mind appeals to prices the effect is purely local? A. I didn't say so.

Q. What did you mean by the fact that the character of the advertising as local as distinct from other than local is to some extent indicated by emphasis put on cut prices or on cheap prices. A. I did n't say that.

Q. What did you say? A. You will have to

read the testimony over if you want to know exactly what I said.

Q. What did you mean to say? A. I said what I meant at the time.

By the Court: Q. As to the effect of cut rates, etc., what did you say? A. I said with respect to the effect of advertising and the establishment of a name of value that the prestige and the tradition of the house was the important thing, and that was established in the case of Rogers-Peet & Company by the character of its advertisements, among other things, and that it was not established in the case of the Hilton Company by the character of its advertising. That is as close as I can get to it.

Q. Did you not undertake to explain why it was not established by the Hilton Company? A. Did I not undertake to?

Q. Yes. A. I will undertake to do so again if you wish me to.

Q. Go ahead. A. Because they have not used the methods that are necessary to employ to do that, the methods that they employ in their advertising being to the largest extent of which I have no connection and as verified by these advertisements that have been shown me, being entirely devoted almost exclusively devoted to the securing of customers on marked down sales, showing that the question of the prestige of their house was of secondary importance to them, the getting of the customer at a marked down price was the main importance; so from that I deduced the fact that their name to them meant less than it did in the case, for instance, of Rogers-Peet & Company and Brokaw Brothers.

Q. You did not have the distinction of other

kinds of advertising in mind when you were talking about that particular feature of advertising? A. Not partcularly.

Q. That fact that advertising was of that character would not localize it? A. Not necessarily, but it does follow that advertising of that character is generally local because it calls for people to come in during the day to secure these bargains naturally it would be useless to advertise anywhere but locally those facts.

Q. Suppose the bargain were extended over a season and not over a day, suppose it were season advertising and not daily advertising? A. Well, that would get, of course, some, perhaps some people who might be led to purchase from advertisements they had seen the previous week, for example, but that would be rare; people read their advertising in the daily paper and destroy the paper.

MORRIS SCHECK, sworn:

Direct-examination by Mr. McCarter:

Q. What is your business? A. Advertising.

Q. Where? A. In this city.

Q. How long have you done it? A. In this city about five years and prior to that for about six or seven years in Philadelphia and Chicago.

Q. Since you have been in this city conducting the advertising business have you had occasion to become familiar with the character of the advertisements displayed or used by the Hilton Company? A. Yes.

Q. Has the advertising of the Hilton Company as you have ben familiar with it in Newark made any peculiar impression on your mind? A. None whatever.

Q. Have you gained from that advertising any particular knowledge or familiarity, knowledge of or familiarity with the use by them of the word Hilton or Hilton's?

The Court: I overrule it.

Q. Has the type of advertising as you are familiar with it as conducted by the Hilton Company for the past half dozen years or since you became familiar with it in the City of Newark been such as to leave on your mind any impression with reference to or connection with the use of the word Hilton or Hilton's?

The Court: I overrule it.

Q. Do you know or have you heard of that concern under the name of Hilton or Hilton's? A. I knew that as Hilton.

Q. I asked you if you knew it as Hilton or Hilton's? A. No.

Q. Have you as an advertiser any distinction and in advertising is there any distinction made between local ad national or nation wide advertising? A. There is quite a distinction.

Q. In what publications would you find what are known as national advertisements? A. In mediums of national circulation.

Q. Such as? A. Colliers, Literary Digest, Saturday Evening Post, monthly magazines like McClures, Metropolitan, papers which have distinctly and exclusive national circulation.

Q. Is frequency of advertising an important element in acquiring public good will?

The Court: I will overrule that: I know that; that is not a matter of expert information.

Q. Would you say that advertisements inserted in such papers as the Newark Evening News or Newark Star-Eagle, the Philadelphia Eveneing Bulletin, the Philadelphia Chronicle, Boston Post or Boston Globe was national adverftising? A. No.

Q. Has the advertising of the Hilton Company, so far as it has impressed you, been of a character to claim excellence or prestige in the character of the goods that were sold by them?

Objected to.

The Court: I overrule that.

CROSS-EXAMINATION by Mr. Hardin:

Q. Take McClures' magazine, for instance, which you referred to as a matter of national advertising, do you call that national advertising because McClures circulates all over the country, don't you? A. Well, if an advertiser just used McClures alone we would hardly classify him as a national advertiser, but taken as one of a group of magazines we would call an advertiser in a paper of that kind national, with the exception of mail order houses.

Q. Single or in groups, the effect of the advertising which gives it its national character is the circulation of the medium of advertising in the different communities throughout the country? A. And the distribution of the product.

Q. That results from the advertising; what do you mean by the distribution of the product, the product of the advertiser? A. The product of the advertiser.

Q. Suppose he is starting a new business and he has not any previous distribution of the product, McClures circulates in many cities, that is the reaso McClures is a national advertisement? A. National medium.

Q. Suppose instead of advertising in McClures he advertised extensively in the Philadelphia papers where he had establishments, in the Boston papers where he had establishments, in the Providence papers where he had establishments, in the Pittsburg papers where he had an establishment, and in the Chicago papers where he had establishments, would advertising for the purpose of disposing of his product in those cities be limited entirely locally to each city? A. Decidedly.

Q. Wouldn't get any advantage or benefits out of it except in those cities? A. Very little.

Q. Would get some? A. Possibly, but nothing to speak of.

Q. Do you do any advertising for Joseph Hilton? A. No.

Q. Have you done advertising for him? A. Yes.

Q. Of his New York stores and other stores? A. Not his New York stores; his Paterson and Waterbury stores.

Q. Did you place that advertising for him in the local papers in those cities? A. Yes, in those two cities.

Q. Was that advertising what you call local advertising? A. Decidedly local advertising.

Q. Mr. Alec Hilton was employed by you at one time, wasn't he? A. Yes.

Q. When was that? A. From December 1st to about the 1st of March, I believe.

Q. What year, 1916 to 1917? A. Yes.

By Mr. McCarter: Q. Is it your idea from your experience that the market for suits for articles like clothes, ready-made, $18, of no particular type, the ordinary customer's suit, has any vogue outside of the locality in which it is sold?

Objected to.

The Court: Let him answer.

A. None whatever.

Recess.

EDWARD STANLEY, JR., sworn:

Direct-examination by Mr. McCarter.

Q. You are one of the complainant's counsel? A. Yes.

Q. You produced here and had marked a transparency? A. Yes.

Q. Is that in Court? A. I think it is.

Q. How many others of them like that have you up in your office? A. I haven't counted them; there is a bundle of them.

Q. Who gave them to you? A. Mr. Murray brought them.

Q. There is quite a number, isn't there? A. Yes.

Q. And they are all unused like this one? A. I belive so; I haven't examined them all.

FRANK J. MURRAY recalled.

Direct-examination by Mr. McCarter.

Q. You took a package of transparencies like Exhibit C-139 to the office of Pitney, Hardin & Skinner, did you not? A. Yes, sir?

Q. They were all like Exhibit C-139, that is, they never had been used? A. No, sir, they never had been used.

Q. And you procured them from the office of Mr. Kipping, the painter? A. Yes.

Q. For that purpose? A. No.

Q. Kipping had painted them, hadn't he? A. Yes, they were sent to Pittsburg.

Q. Kipping had painted them and they had been ordered for the Pittsburg store? A. Yes.

Q. And the Pittsburg store burned down so they were shipped back to Kipping? A. Yes.

Q. And remained with Kipping ever since until you went with Mr. Scott and got them and took them to Mr. Stanley's office for use in this case, is that correct? A. Yes.

Q. So that none of these had ever been used, had they? A. No, sir.

Q. And the package now that is produced by Mr. Stanley very courteously is the package that you got from Kipping's store under the circumstances I have related? A. Yes.

Q. When was the Pittsburg fire? A. January 26th or January 27th.

Q. What year? A. 1917.

Q. And how long before that had they been ordered? A. Why, I suppose a week or two weeks.

Nine in the package of transparencies produced.

Mr. McCarter: With the following exception we rest; I think it is in evidence the circulation of the News in Paterson is about one hundred. With one exception we are all through, and I don't want to delay the case for that, but I think it is fair to the

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defendant that I make this statement. Your Honor will recall the fact that Mr. White for the defendant testified to a conversation with Mr. Manning, our salesman in the Paterson store, in which he claimed that Manning said that the Fourteenth street store was there, or words to that effect. We sent for Mr. Manning on that same day, he got here just before the court adjourned, too late to testify. I would only have to say that Mr. Manning, if here, would contradict that statement. The next day Mr. Manning went on a spree, disappeared, his wife don't know where he is—the landlady, not his wife, don't know where he is, and we haven't seen him since. I understand he is subject to these periodical sprees. He hasn't taken his salary, just off he went. If you had stayed five minutes longer that day we could have proven it by him. I am telling you what the fact is with reference to Mr. Manning. I would like that on the record. I am sure the Court and counsel will believe the fact I have stated is accurate; he has just gone off on one of his periodical sprees. With that explanation of our failure to call Mr. Manning, he was here, I saw him myself, with that exception we rest.

LEWIS P. NEWTON sworn in rebuttal.

Direct-examination by Mr. Hardin.

Q. What is your business? A. A designer of men's clothing.

Q. Where do you live? A. 676 Riverside Drive.

Q. How long have you been a designer of men's clothing? A. Twenty years.

Q. With what establishment? A. I am at present with B. Stern & Son of New York; have been with other concerns in Rochester and Chicago.

Q. Are you familiar with the various leading retail clothing stores in New York, leading manufacturers such as Guggenheim's and Steinbloch? A. I am.

Q. And are you familiar with the goods manufactured by the Hilton Company? A. Yes.

Q. What opportunity have you had for knowing about the goods that are manufactured by these various concerns, various manufacturers? A. From observation and visits to the factories.

Q. Visits to what factories? A. The Steinbloch and the Hilton Company.

Q. And are you able to tell us how the reputation of the Hilton clothes, goods manufactured by The Hilton Company, compares with the goods that are sold for a similar price of other manufacturers?

Mr. McCarter: I object. It seems to me that was the complainant's case. They can not rebut by proving what they alleged in their bill as their allegation. I was struck at the time they closed their case that they proved almost nothing about that. This is not rebuttal. Their whole case, if your Honor will read the first six paragraphs of the bill, is based on the idea that these words had acquired a special sig-

nification and they had acquired a prestige which these words gave, and we were seeking by the use of these words their thunder and to palm off our goods on them.

The Court: I will permit this answer and deal with it afterwards.

Q. (Question read.) A. I think they compare favorably.

Q. Do you know Mr. Roshay? A. Yes.

Q. He is the designer of the Hilton Company? A. Yes.

Q. How long have you known him? A. Five or six years.

Q. And is he known to you as a designer of reputation in the trade? A. I consider him so.

CROSS-EXAMINATION by Mr. McCarter.

Q. Mr. Newton, when were you in the factory of the Hilton Company? A. About six months ago at one time.

Q. Six months ago? A. Yes, sir.

Q. Go with Mr. Murray here? A. No.

Q. And where was that factory? A. In Newark.

Q. Do you remember whereabouts in Newark? A. Why, I know about the location; I can't give you the street and number.

Q. Just describe the location as well as you can? A. It was in this direction, south.

Q. That was the first time you had ever been there? A. Yes.

Q. Whom did you see, Mr. Murray, Mr. Philip Hilton, or both? A. I saw Mr. Roshay and the foreman of the shop.

Q. He is a freind of yours? A. Mr. Roshay, he is.

Q. How long have you known him? A. Five years, five or six.

Q. What do you mean by designer? A. A designer of men's clothing you refer to?

Q. I haven't spoken of anything else? A. I consider a designer a man who designs and carries into execution and manufactures clothing.

Q. Is a designer in the wholesale trade or regular trade the same thing as a cutter in tailoring establishments? A. He is not.

Q. Well, styles vary from year to year, don't they? A. Yes.

Q. And designers adapt themselves to those styles? A. Yes.

Q. One year you have a three button straight front sack suit, next year in order to promote business your sack coat will hang from the top button, or things of that kind, to vary the style, is that right? A. I don't think you are just techically correct in that, but I will admit there is a difference from season to season, yes.

Q. Sometimes the coat in front will be low and sometimes high? A. It will.

Q. Now, a designer adapts his design of any given season to the prevalent fashion for that season, doesn't he? A. Yes.

Q. Who sets those fashions? A. I would like to know; I don't know.

Q. Some house gets out the first lot and the rest all follow, is that it? A. No, I can not accept that.

Q. There must be some origin to it somewhere? A. We have not been able in our study of the situation to exactly comprehend that subject ourselves.

Q. We are indulging in hot weather amenities. I notice a great many of the best drdessed men in the room, including my associate on my left, have

coats with little belts; unfortunately you see I am not in the style; all designers are availing themselves of that custom now, aren't they? A. They have been for a couple of seasons; I don't think they will very much longer.

Q. I suppose you and Mr. Roshay like all other designers have designated patterns last year and this year that way? A. Not always.

Q. That illustrates, does it, that is an illustration of these differences, temporary eccentricities that these designers avail themselves of? A. Yes.

Q. Whense they come whither they go no man knows, is that right? A. Quite correct, yes.

Q. Now, Stern & Son were a mail order house which Hilton & Company were? A. That is true.

Q. Now in your business as a designer for B. Stern & Son an order comes in that Mr. John Jones of Kansas City wants a suit of a certain type with such and such measurements and you then cut a suit for that specific order, don't you? A. Yes.

SAMUEL LANDAU sworn:

Direct-examination by Mr. Hardin:

Q. Where do you reside? A. 112 Cathedral Parkway, New York.

Q. What is your business? A. Manufacturer of clothing.

Q. Wholesale? A. Wholesale.

Q. Where? A. 853 Broadway.

Q. How long have you been engaged in that business? A. In the manufacturing about fifteen years.

Q. Are you familiar with the clothes that are manufactured by the Hilton Company? A. Yes.

Mr. McCarter: Apparently that is going to be the same question again. It is too late for the complainant to make his main case.

The Court: I will permit it for the time being.

Q. How long have you known the clothes made by The Hilton Company? A. Well, perhaps four years, ever since Mr. Roshay has been there.

Q. How does the reputation of the Hilton clothes manufactured by the Hilton Company, compare with the clothing manufactured by other manufacturers of like quality and price?

Mr. McCarter: I object for the reason stated, that your Honor is holding, and also because this case if it has any foundation at all I take it is on the reputation to the consumer, not the manufacturer. The whole gist of this action, as I understand it, is that we are stealing the consumer from the complainant, and how another manufacturer who has nothing to do with the case can testify what the reputation is to him it does not seem to me to have any concern at all.

The Court: I will admit it.

Q. (Question read.) A. I believe from the construction of their clothing they stand out far above all others their manufacturer, with very, very few exceptions.

Q. Do you know Mr. Roshay? A. Yes.

Q. How long have you known him? A. About twenty years.

Q. Do you know his reputation in the trade as a designer of men's clothes? A. Yes.

Mr. McCarter: I object.

Q. What is it?

Mr. McCarter: I object.

A. It is second to none.

CROSS-EXAMINATION by Mr. McCarter.

Q. You have known Mr. Roshay for twenty years? A. Yes, sir.

Q. Intimately or only—A. Intimately.

Q. You don't mean by that that you are friends? A. Yes; I have met him and gone out with him twenty years ago.

Q. And been going out with him ever since? A. No, I wouldn't say that.

Q. Off and on? A. Yes, off and on, yes.

Q. After twenty years we don't go out quite as often as we used to? A. Not so much.

Q. You say he has a reputation second to none. When did he come to the Hilton Company? A. I should judge about four or five years ago.

Q. Who did he work for before then? A. Cohen & Lang Company.

Q. They make men's clothing? A. They make young men's and boy's.

Q. Principally boy's, isn't it? A. No, it is principally young men's.

Q. And children as well? A. Yes.

Q. Make a specialty of that particular branch of clothing, don't they? A. Young men's and children, yes.

Q. How long had he been with them? A. Well, to my belief he may have been eight or nine years, the actual time I don't know.

Q. Now, is the clothing of Cohen & Lang of the very highest type of clothing? A. No, sir.

Q. So it was not Cohen & Lang when you referred, when you said that the clothing of the Hilton Company was far ahead of any except a very few? A. No, it was not to Cohen & Lang I referred.

Q. Whom did you have in mind? A. Such firms as Guggenheim's, Hart, Schaffner & Marx, Steinbloch.

Q. Anybody else? A. Well, there are a lot of clothiers.

Q. Was Mr. Roshay ever with any of those people? A. Not to my knowledge, not within the twenty years I know him.

Q. Who was he with previous to Cohen, Lang & Company? A. I believe it was Stein Delnheimer & Company.

Q. They are not in the class you have been referring to, are they? A. They were a children's concern.

Q. So, so far as you know Mr. Roshay had been a cutter or designer of children's clothing and young men's clothing for the last twenty years, hadn't he? A. It has been young men's mainly for the last thirteen or fourteen years.

Q. When he was with Cohen & Lang he made children's and young men's? A. Yes.

Q. Before that he was with the other concern and they were children purely, weren't they? A. Yes.

Q. Can you point to a single men's clothing house in which Mr. Roshay was concerned previous to The Hilton Company? A. No, sir.

Q. Now, I didn't quite catch whether your idea

is that Hilton Company's clothes are ahead of Guggenheim and Hart, Schaffner & Marx or whether he is ahead of them? A. I believe their construction is better than theirs.

Q. Have you ever worn a suit of The Hilton Company? A. No, I have worn an overcoat of the Hilton Company.

Q. Have you ever bought a suit of The Hilton Company? A. No, sir.

Q. Ever been in their factory? A. Yes, sir.

Q. When? A. Been in their factory a dozen different times, perhaps more than that.

Q. Been in the factories of these other concerns you mention? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Hardin.

Q. What did you say was the name of the concern Mr. Roshay was with? A. Cohen, Lang & Company.

Q. I mean the ones before he came to Hilton & Company? A. Cohen Lang & Company.

Q. And they made young men's and children's A. Young men's and children's.

Q. Chiefly young men's I think you said? A. Yes.

By Mr. McCarter: Chiefly? A. Yes; I think their biggest line was young men's.

Q. So when you were answering Mr. McCarter's question whether Mr. Roshay had ever been a designer of men's clothes you had in mind the distinction between old men and younger men? A. Young men's; youg men's clothes are used by the younger men.

HENRY R. SPANG sworn:

Direct-examination by Mr. Hardin:

Q. Where do you live? A. I live in Hoboken.

Q. And what is your business? A. I am a designer.

Q. Designer of what? A. Clothing.

Q. How long have you been such? A. About twenty-five years.

Q. And have you actively practiced the art of designing during the whole period? A. Yes.

Q. By what house are you now employed? A. Currick, Leiken & Bandler.

Q. What is their business? Manufacturers of clothing? A. Yes, manufacturers of men's clothing.

Q. Whereabouts? A. 740 Broadway, New York.

Q. How long have you been with them? A. I was with them about a year now.

Q. What firm were you employed by before that? A. I was with Sloss Brothers in Baltimore.

Q. Manufacturers of clothing? A. Men's clothing, yes.

Q. Are you familiar with the reputation in the trade of the clothes made by The Hilton Company? A. Yes.

Q. How long have you been so familiar? A. Well, I have known the Hilton Company the past seven or eight years.

Q. What is the reputation in the trade of the clothes manufactured by The Hilton Company?

Mr. McCarter: The same objection.

The Court: The same ruling.

A. I don't think there is any superior to it.

Q. Do you know Mr. Roshay? A. Yes.

Q. Designer of The Hilton Company? A. Yes.

Q. How long have you known him? A. About twenty years.

Q. Known him as a designer that length of time? A. Yes.

Q. What is his reputation as a designer of men's clothing?

Mr. McCarter: The same objection.

The Court: The same ruling.

A. I don't think he has any superior.

CROSS-EXAMINATION by Mr. McCarter:

Q. How long have you known him? A. About twenty years.

Q. Known him well? A. Yes, known him well.

Q. Intimately? A. Yes.

Q. Was it he that asked you to come out here? A. Yes, sir.

Q. Now, you say you have known the reputation of the clothes manufactured by The Hilton Company for seven or eight years? A. Yes.

Q. Does it go back as long as that? A. Yes. No, I don't mean about the manufacture of them; I mean the Hilton clothing, the stores selling clothes; I mean I know the Hilton Company; I did not mean to say I knew they manufactured that long.

Q. What you said was you knew the reputation of the clothes manufactured by The Hilton Company for seven or eight years? A. That is a mistake; I mean to say I know of The Hilton Company.

Q. When did your acquaintance with the character of the clothes manufactured by The Hilton

Company commence, when Mr. Roshay went into their employ? A. Yes.

Q. From that time down you judge from, the fact that he has been in charge? A. Yes.

Q. Have you seen his goods from time to time? A. Yes.

Q. Do you think he has a reputation second to none? A. I certainly do.

Q. Would you be surprised to learn shortly after he was employed by The Hilton Company he spoiled seven thousand suits? A. I don't think that would be possible.

Q. I understand then, that you think that The Hilton Company's goods, particularly since your friend Mr. Roshay went with them, are quite up to Brooks Brothers? A. Yes, as a matter of fact I think the manufacture is better than Brooks Brothers.

Q. Better than Brooks Brothers? A. Yes, difference in manufacture.

Q. How about Brokaw? A. I think they are better than Brokaw.

By the Court: Q. Do you know of any establishment that has better clothes than Hilton, any manufacturer that makes better clothes? A. No, I do not.

Q. Then Rogers-Peet you include in that? A. Yes, I include Rogers-Peet.

Q. So that if Rogers-Peet charged twice as much for a suit of clothes in their New York stores than The Hilton Company the public that pays twice as much is getting fooled just that much extra, are they? A. No, I don't say they are getting fooled.

Q. They are getting no better goods? A. They are getting good goods.

Q. They are paying twice as much? A. No, they are not paying twice.

Q. Do you mean to say you can get as cheap at Brokaw Brothers and Rogers-Peet as you can at Hilton's? A. At times you can; it depends on what grade of goods you are talking about; it depends on what grade; there are different grades; Rogers-Peet probably carry higher grade of goods; that does not signify they are made better; I am talking about fabric in the goods which make them higher; I am talking about the workmanship; you said higher priced goods.

Q. I am asking you what you are talking about when you say you consider the Hilton Company goods are best of all? A. I don't say they are the best; I say they are as good.

Q. As good as Brokaw, Brooks, Rogers-Peet, do you? A. Yes, I do.

Q. As the goods they sell? A. Yes.

Q. For double the price? A. I don't say double the price; goods and everything counts in making price on goods, on suit of clothes, it isn't all in the make.

Q. Didn't you say there was no superior to goods of The Hilton Company? A. The manufacture of them, yes.

Q. The what? A. The manufacture of the goods.

Q. What do you mean by that? A. There is a difference, for instance, you take a suit of clothes, you can manufacture a suit of clothes for eighteen dollars, you can manufacture a suit of clothes for forty dollars or fifty dollars, it depends on the price of goods you sell.

Q. I frequently have occasion to go into the

store of Brooks Brothers, Fortieth Street and Madison Avenue? A. Yes.

Q. Do you think I can get a suit of clothes in there for eighteen dollars? A. I don't think so.

Q. No. Why not? A. Because they use a higher price goods to start with, and they don't sell goods as close a margin as The Hilton people do.

Q. But you think there is no superiority in their goods? A. No, sir, I can tell you where they are not as good.

SAMUEL GOLDBERG sworn:

Direct-examination by Mr. Hardin:

Q. Where do you live? A. Passaic and Bloomfield Avenue, West Caldwell, New Jersey.

Q. And where are you employed? A. The Hilton Company.

Q. How long have you been employed by The Hilton Company? A. About eleven years.

Q. Where have you been employed by The Hilton Company? A. 791 Broad Street, Newark, New Jersey.

Q. Were you employed by The Hilton Company at the Broad Street place that you have named in the first half of 1916? A. Yes.

Q. You know Joseph Hilton I assume? A. Yes.

Q. You know Philip Hilton? A. Yes.

Q. Did you meet them in the conduct of the business of the Hilton Company? A. Very often.

Q. What was your position? A. I am in charge of the manufacturing department.

Q. How long had you had charge of the manufacturing department going backwards from the time in June, 1916, when Joseph sold out to Philip? A. You mean prior to that?

Q. Yes, prior to that. A. About five or six years, about that.

Q. Did you have any conversation with Joseph about the manufacture in the Hilton Company shop of some goods for Paterson? A. Yes.

Q. When? A. It was—I guess it was the first week in May, 1916, I believe it was on Friday, Mr. Joseph Hilton asked me to go up on the third floor in the designer's office and select some woolens for the Paterson store for Charles Hilton he took for his son; he also told me for his brother, Mr. Philip Hilton, that he should manufacture the goods for him, I should try to get him and ask him if he would allow him to manufacture the goods for the Paterson store.

Q. Did you afterwards speak to Philip Hilton about it? A. I did.

Q. Did he consent? A. No, Mr. Philip Hilton told me he positively objects to manufacture any of the goods for the Paterson store, even don't want the goods to be received by our receiving department.

Q. Did you tell Joseph Philip objected? A. I did so.

Q. Do you know whether the goods were in fact manufactured? A. At the time I told to Mr. Joseph Hilton he told me he don't care whether he objects or not, he will do it anyhow, but the goods were started to manufacture without me knowing; Mr. Philip Hilton was not inside, anyhow.

Q. And where were they sent after they were

manufactured? A. Part of the goods I know were manufactured, but the balance of it, Mr. Joseph Hilton discharged me because I told him he was going to take patterns, I told him Mr. Philip Hilton objected to him taking patterns out of the place, so he discharged me out of the place.

Q. When was that? A. It was latter part of May, I believe it was 17th, it was 250th anniversary in Newark, it began the week after.

Q. What patterns are you referring to? A. Patterns for manufacturing clothes, the manufacturer's designs.

Q. Roshay's patterns? A. Yes.

Q. Where were those patterns? A. Right in the department I was in charge of.

Q. Were they the patterns you were accustomed to make clothes from?

Mr. McCarter: I object to this, that certainly if we undertook to take their patterns that was part of their case, don't disprove anything that has been proven here. I object now to any evidence of an effort on our part to take their patterns; if we did try to do any such thing it should have been proven in their direct case.

The Court: Why is not that so? I will permit the evidence with respect to what conversations took place between this man and Joseph Hilton. I do not think I will permit evidence as to the patterns. I think the object we are after is achieved. If you go any further you will get another issue in here.

Q. What did Joseph say to you about the pattern? A. When I told him that Mr. Philip—

Mr. McCarter: I object.

The Court: I will permit it.

A. I told him Mr. Philip Hilton objected to him to take patterns. He said, "I will throw you out with Mr. Philip Hilton through the window; you can't stop me." It was on Saturday, I remember it, he even made an attempt—

The Court: Never mind.

Q. And was that the day you were discharged? A. Yes; on Monday morning I was discharged; he threw me out of the room; he said, "I don't you ever to get a minute's talk, you should not be here in the place."

Q. How long did you stay away? A. I didn't stay away; I reported to Mr. Philip Hilton. My duty was to be in the manufacturing department, going to see his stores, what they sell, what kind of designing, what kind of linings they like; I used to go around to the different stores different times.

CROSS-EXAMINATION by Mr. McCarter:

Q. How old are you? A. Thirty-two.

Q. And the address you gave some place in West Caldwell is the house of Mr. Philip Hilton? A. It is the house of the West Caldwell Realty Company.

Q. Does Mr. Philip Hilton live there? A. He comes over to see Mr. Philip Hilton's mother, that is my grandmother, so did Mr. Joseph Hilton used to come there.

Q. And when he does come over to see his mother where does he live? A. I don't know where he lives; he stops in New York; he stops most of the time down in West Caldwell.

Q. At your place? A. Yes, sir.

Q. Most of the time he stops at this West Caldwell Realty Company house? A. Yes.

Q. Where his mother lives? A. Yes.

Q. And where you live? A. Yes.

Q. Who else lives there? A. My brother.

Q. What is his name? A. Goldberg.

Q. What is his first name? A. Joseph.

Q. And you are a nephew of Philip, are you? A. Yes.

Q. You worked for the Hilton Company eleven years? A. About eleven, nearly to eleven.

Q. What did you first do when you went there when you were nineteen years old? A. I was more than nineteen when I started to work for the Hilton Company.

Q. Thirty-two now, are you? A. Yes.

Q. What did you start in by doing? A. I was new in the business, was in the manufacturing department a year or two, after that went down with Mr. Younker in the manufacturing department, and when Mr. Younker was discharged I took his place; first Mr. Joseph Hilton and Mr. Philip Hilton got another man to take care of the manufacturing department; he was there about six months and couldn't succeed and I took his place after.

Q. From that time you have had full charge of the manufacturing department? A. Full charge buying trimmings and linings.

Q. Nobody else paid any attention to the manufacturing? A. Yes, Mr. Philip Hilton and sometimes Mr. Joseph Hilton; I used to consult the boss, Mr. Philip Hilton was the main one.

Q. Mr. Philip Hilton said to you that they had some goods they wanted manufactured for the Paterson store? A. Mr. Joseph Hilton asked me,

it was at the time he selected the goods.

Q. Tell us when that was. A. It was on Friday, I believe, the first week in May, if I am not mistaken.

Q. Are you sure about that? A. Positive.

Q. Had the goods arrived yet? A. The goods did not arrive for quite a few weeks, goods first sent to the sponger.

Q. When did the goods arrive? A. They didn't arrive until late, part of the goods arrived unsponged, it was a few weeks later, and the others were sponged in New York.

Q. How long does it take goods to come from New York to Newark? A. It isn't how long they take.

Q. How long did it take? A. It takes over night, but they were not ordered for a few weeks.

Q. You remember some goods were purchased by somebody from Herring Brothers and sent to your place for manufacture? A. They were not sent until Mr. Joseph Hilton gave the orders.

Q. Answer my question. (Question read.) A. They were sent first to the Manhattan Sponging Company to be sponged.

Q. Didn't some come direct? A. Part of it, I don't remember whether it was from Herring or Brin.

Q. And they were the goods that were to go to the Paterson store?

Q. And they were manufactured, weren't they? A. In my presence some of them were manufactured.

Q. Several hundred dollars worth? A. I don't know what the bill amounted to.

Q. $1,100 worth, weren't they? A. I don't remember; not all the goods were manufactured in

my presence; I didn't interfere with it; they didn't allow me.

Q. I show you a bill—

Mr. Hardin: He said he was discharged.

A. Yes.

Q. Never left, came right back? A. Not in the manufacturing; I was in the store four weeks until the dissolution.

Q. Don't talk so much. I show you bill from Herring Brothers dated "May 16, C. N. Hilton, care Hilton Company, four months, June 1, Manhattan Sponge Works, City." Do you remember those goods arriving? A. I don't exactly remember whether these goods arrived; there was another bill; I couldn't remember; if I see the goods I will remember.

Q. I show you another bill, "Herring Brothers, Charles N. Hilton, 841 Broad Street, Newark, New Jersey, via express, dated June 23, 1916." A. I don't remember; I think I was in there June 23, because I was outside.

Q. You don't remember? A. I can't remember, because he fired me out of there.

Q. Don't you know that Mrs. Hilton drew a check for about $1,100 to the order of Hilton Company for the manufacture of these goods? A. I wasn't in the manufacturing department at that time.

The Court: Strike that out. Do you know or don't you?

A. No.

Q. Never heard of it? A. I don't know anything about it.

Q. Never heard of it? A. No.

Samuel Jacobstein

~~JACOB STEIN~~ re-called:

Direct-examination by Mr. Hardin:

Q. You have already been on the stand? A. Yes.

Q. You gave us some figures as to the Hilton Company business. Have you prepared some other figures at my request showing the proportion of merchandise manufactured by The Hilton Company for several years past? A. Yes.

Mr. McCarter: Your Honor, I wish to draw the Court's attention specifically to the fact that the bill of complaint is based on the whole and absolute ascertion that they manufactured.

The Court: I will permit you to show they did not; I will permit them to show just what proportion they did.

Mr. McCarter: As rebuttal?

The Court: Yes.

Mr. McCarter: I must respectfully protest against the complainant making his main case on their rebuttal. The case is based on the theory that they manufactured and sold goods and acquired that reputation and we showed they did not. Now, can they come back and show they did so much anyway?

The Court: I will permit it.

Q. Have you got those figures with you? A. Yes.

Q. Produce them, please.

Mr. McCarter: We object to any testimony unless the books are produced so we can cross-examine on the books.

Q. Have you extracted from the books of the

company information as to the value of the goods manufactured by The Hilton Company from January 4, 1914, to December 11, 1914?

Mr. McCarter: I don't object to that specific question. I object to any figures being given unless we have a chance to examine the books.

The Court: Yes, or no.

A. Yes, I took these out of the books.

Mr. Hardin: I am perfectly willing to bring the books; we will bring them all here; it is perfectly easy; if counsel wants to prolong the case in that way he has my consent, he is within his rights.

Q. Now, were you in Newark in attendance on the business of The Hilton Company during July and August, 1916? A. Yes, sir.

Q. That was a period following the dissolution? A. I think so.

Q. You recall that period immediately following the dissolution? A. I was with them steady all along.

Q. Did you see Joseph Hilton frequently during July and August of that year? A. Was that right at the time he left the firm?

Q. Yes. A. Yes, sir.

Q. July and August, 1916? A. Yes.

Q. How often did you see him during July and August, 1916? A. Quite a few times during the week.

Q. There were a number of weeks during that time. Do you mean during each week, or how frequently? A. I would say three or four or five days each week.

Q. Where were you accustomed to seeing him during that period? A. Why, sometimes in Bam-

berger's restaurant or on the street, in Thompson's hat store I used to frequent quite often.

Q. Did you ever see him in 841 Broad Street? A. Only a couple of times.

Q. What was 841 Broad Street? A. There was a loft there, their manufacturer.

Q. Did Mr. Joseph Hilton at any time speak to you about the letter he had received from Mr. Hardin? A. He spoke to me about receiving one in reference to the emblem.

Q. About when was that? A. I can't say just.

Q. Was it before or after the Thirty-third Street and Fifth Avenue store was opened by Joseph Hilton? That was opened on the 4th of November as I remember. A. I am not positive whether it was before or after.

Q. Was it about that time? A. Around about that time.

Q. What did he say to you at that time if anything with reference to the use of the crest?

Mr. McCarter: I object. I don't see how that rebuts; Mr. Joseph Hilton was not interrogated with reference to it and I can't see what it rebutes.

The Court: I will admit it.

A. Mr. Younker was with me at the time and he told me they received the letter and they were going to cut out using the crest, but was going to continue using the name.

Q. Anything said about Uncle Sam advertising in the same conversation? A. I don't think that was brought up at the time.

Q. Where was the scrap book containing the advertisements of the Providence store, opening the Providence store of The Hilton Company kept? A. With the rest of the advertising books in my office.

Q. Was that a book containing the Providence advertising? A. There was a book, yes.

Q. Is it at the store now? A. No, sir.

Q. Do you know what has become of it?

Mr. McCarter: I object to it as immaterial.

By the Court: Q. Do you know? A. I do know, yes.

Q. Did that contain the newspaper advertisements used at the opening of the Providence store? A. Yes.

Q. The Uncle Sam advertisements so-called? A. Yes.

Q. When did you last see that book?

Mr. McCarter: I object to it as immaterial.

The Court: Admitted.

A. Shortly before Mr. Hilton left the Hilton Company.

Q. Which Mr. Hilton? A. Joseph Hilton.

Q. And where was it when you last saw it? A. Mr. Joseph Hilton taking it away with him.

Q. Has he ever brought it back? A. Not to my knowledge, I haven't seen it.

Q. Has your investigation as auditor and your acquaintance with the stores enabled you to ascertain the proportion of sales in the stores as between old customers and new customers? A. With my records and getting around to the stores, yes.

Q. Have you made a study for that purpose? A. Orally.

Q. And what is your estimate of the customers who have come back as compared with the customers who are new? A. (No answer.)

CROSS-EXAMINATION by Mr. McCarter:

Q. What examination have you made? A. By the addresses kept of the sales made and by personal observation in the stores, got in touch with the managers and salesmen.

Q. Your office is where? A. In Newark.

Q. I know, but what part of the store? A. Upstairs, second floor.

Q. The purchases are made on the ground floor, aren't they? A. Yes.

Q. So that when you are in your office you can not tell who is on the ground floor, can you? A. No, sir.

Q. Now, you kept the address of all customers you say? A. As many as we possibly can, yes.

Q. Did you keep them all? A. Not all, no, sir.

Q. And in whose possession is that record of so many purchasers as you did retain the names of, in whose possession is that record? A. The names of the customers in my possession.

Q. When did you examine these records? A. I am examining them all the time; I handle every check that comes through the office.

Q. The office takes cash from its customers and sends you a check up, does it? A. No, sir, not to me; I get the sales checks.

Q. When did you make any investigation to ascertain how many represented old and how many represented new customers? A. For nine years or eight years, as long as we have been keeping up customers' files.

Q. Particularly with the object of ascertaining— A. Not any more so than any other parts of my work.

Q. Was that one of your objects, to ascertain

how many came back? A. Not particularly so.

Q. I want to find out if you have made any investigation of the records in your office for the purpose of ascertaining? A. Not lately.

Q. Have you ever done it? A. Yes.

Q. When, different times? A. Several times.

Q. For what purpose, how did you happen to do that? A. I would get requests from Mr. Hilton wanting to know the percentage, how they are keeping up "come backs" as we call it, on the old trade.

Q. When was the last time you did that? A. Last time I should judge was some months ago.

Q. Since the dissolution? A. I don't think so.

Q. Then it is over a year ago? A. That he has asked me for it, yes.

Q. I am asking when you did it last? A. That is over a year ago.

Q. In what form do you keep the record that was made that you did examine and look into the question? A. In card system, card files.

Q. That is you keep the name of every customer according to the card index plan, is that right? A. Yes.

Q. Is that what you examine? A. I examine that.

Q. I am trying to find out what you examined for the purpose of learning the proportion? A. That is one of the parts that I have to know about "come backs"; I have other ways.

Q. What other ways? A. Being in different stores; I go around to all the stores different times, some more than others, different days, different times and question the salesmen and managers, and they have kept records themselves on the "come backs" of the old customers.

Q. Then is your estimate based on what the different managers and different salesmen have told you? A. In conjunction with the card system, yes.

Q. All you have in the card system is what, the name and address? A. Name and address and sales to customers.

Q. Now, we will take a New York store. If Robert H. McCarter buys a suit of clothes for $18 at Thirty-seventh Street and Broadway, does that fact come to headquarters? A. Yes.

Q. You put it down? A. Card is made out in your name.

Q. What else do you have in the headquarters with reference to Robert H. McCarter? A. Have your sales check where I have your card.

Q. If you sell him a second suit what happens then? A. The same transaction.

Q. They have got another card? A. No, sir; might possibly be made another card when that is filed.

Q. I am trying to find out what records you keep; I don't know anything about it; I want to know what there is in the headquarters that enables you to tell how many come back and how many don't come back. A. I say a card will be made out, separate card is made out; when that is ready to be filed the card is entered on the original.

Q. Robert H. McCarter on the first of July bought a suit of clothes at Broadway and Thirty-seventh Street? A. Yes.

Q. What report gets to your headquarters? You make out a card Robert H. McCarter and put it in its proper place; in the index? A. Yes.

Q. On the 2d of July of this year I buy an-

other suit; what do you say? A. Another card is made out.

Q. Where do you put that? A. That is ready to be filed.

Q. What do you do with the old one, the new one is entered? A. No, old one, and new one destroyed.

Q. So that your card index bears the record of every suit I buy? A. Each card; I won't say every suit; it might be possible the record is misspelled.

By the Court: Q. It is intended to record on the original subsequent purchases no matter when they are made? A. Yes.

Q. That is the idea? A. Yes.

Q. When you make out a card for Robert H. McCarter, for instance, who bought a suit last July, and that name is reported to you later, if you do your duty you would have somebody in your office write some memorandum on that card, would you? A. Yes.

Q. What would he write? A. Write the date of the purchase.

Q. Date of the second purchase? A. Yes.

Q. If that system is correctly maintained what other inquiries do you need to make? A. There is a possibility of mistake on these cards and names and addresses are not absolutely correct, lots of names we can't make out, addresses are wrong; I pay more attention to the store reports, what I see myself than what I do with the card.

Q. You don't rely on the cards then? A. Not as infallible, liable to make mistake.

Q. Do you rely on them? A. Not wholly, if that is the question you are asking.

Q. Then you have to rely on the reports of the

store? A. And what I see myself, yes.

Q. Do you recognize customers in the New York stores? A. I do at times; I get around quite often.

Q. Some of your estimate is based on what you recognize in the way of customers, having seen them before? A. A small part of it is.

Q. Did you keep any record of your investigation when from time to time you have looked up this matter and from it reached the conclusion in your mind as to the proportion? A. No, sir.

Q. So you were just drawing upon your memory, eh? A. Partly.

Q. What else? A. Different times looking through the files, get an idea there.

Q. Have you looked through the files preparatory to testifying here? A. No.

RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. What is your estimate of the proportion of the "come back" customers to the total? A. I judge about seventy-five per cent.

Q. What is the average sale price of suits and overcoats during the year past?

Objected to.

Admitted.

A. I judge about twenty-one dollars.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. How do you reach that figure? A. What figure?

Q. $21. A. We keep records of the daily averages of the sales in each store; I won't say $21

is exactly correct, but I judge around that figure.

Q. Overcoats the same as the suits? A. Full dress is classified as not counting pants and vest sales?

Q. Again I ask you if your overcoat is the same price as suit of clothes? A. Yes.

Q. Winter and summer? A. No overcoats sold in the summer; as a garment we count it the same, yes.

Q. Does that extend over a period of ten years? A. No, sir.

Q. How long? A. That was after the last year.

Q. Last year? A. Yes.

Q. Did you ever tell Mr. Joseph Hilton that the average of come back was seventy-five per cent? A. Mr. Joseph Hilton never asked me.

Q. Have you ever had curiosity to inquire what the come back is in Rogers-Peet or Brokaws? A. That never interested me, no.

Q. Will you be at all sure that that represents a fair average for the last ten years of come backs? A. I won't say for ten years.

Q. How many years? A. I will say for the last five or six years, seven years; about the time I took an active interest in keeping track of the customers; before that I didn't take an active interest; it is only about seven years I have been doing that kind of work.

Q. You kept no record, though, of your investigation? A. No, only what I have seen.

Q. What have you seen in other stores besides the faces of the customers? A. In our store?

Q. Yes. A. I have seen from the customers coming in and learning from the salesmen, and managers have got back records they used to keep.

Q. What kind of records did the managers of the other stores keep? A. Lots of times they have kept separate cards; marked memorandum of old customers, memorandum of new; if there were fifty customers they would be the same way; at times we had different systems of keeping track of them.

Q. Did you ever go to the Providence store? A. Yes.

Q. Chicago? A. I have been to Chicago, yes, not lately.

Q. Has the thing run about even for the past five or six years? A. Averaging up I would say about that.

Q. Has there been any increase or decrease? A. I am just giving approximate figure, I am not giving exact figure, seventy-five per cent.

Q. Now, you remember the fact that there was a dissolution on the 26th of last June? A. I do, sir.

Q. When in July or when in August did you see Mr. Joseph Hilton in Bamberger's? A. I don't remember just the date; I saw Mr. Hilton in Bamberger's different times after he left the Hilton Company.

Q. Do you say you saw him in July? A. If that is the time he left Hilton Company, yes.

Q. He left The Hilton Company 26th of June when the deed was signed? A. Up to a certain date he left the place and had not shown up any more, he was through.

Q. You have stated in July and August, 1916, you saw him in Thompson's hat store and Bamberger's; I want to know what time in July you saw him in either one of those places? A. If that is the time right after the deed I saw Mr. Hilton at the time.

Q. You don't recall do you, when you saw him in Bamberger's or Thompson's hat store? A. I am positive I saw him.

Q. Are you positive when you saw him? A. The day after he left the Hilton Company.

Q. The day after he left? A. Two days and probably the third day.

Q. When did you see him in the loft in 841 Broad street? A. After he opened it, but I don't remember what date.

Q. When, about? A. I can't recall the date; I was up and called on him and saw him in there.

Q. That was before the dissolution? A. That was after the dissolution.

Q. Now, on one of these occasions when you saw him do you remember telling him that Mr. Philip Hilton wanted you to inquire of Mr. Joseph Hilton if he would manufacture those goods for the boys whether he, Joseph, would guarantee the bill? A. Something said, I don't remember the exact facts of it.

Q. You remember being requested by Mr. Philip Hilton to make some such inquiry as that of Joseph, making an inquiry to the effect of that, if Philip Hilton did manufacture for the boys would they guarantee the payment of the bill; do you remember that? A. I am not positive enough to answer that.

Q. You had something in mind you said? A. There was something said but I don't remember the exact facts.

Q. There was something of that kind said, wasn't there? A. There was pro and con about the manufacturing.

Q. I am asking about Joseph guaranteeing the

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bills if Philip did manufacture for the boys; you remember that, don't you? A. No, sir.

Q. What? A. I don't remember the exact facts, I don't remember whether he said yes or no, it has been some time, I don't remember.

By the Court: Q. Don't remember who said yes or no? A. Mr. Hilton.

By the Court: Q. The question is whether Philip asked Joseph through you or somebody to your knowledge, somebody was to guarantee payment of the bill? A. I don't remember anything like that.

By the Court: Q. Anything that sounded like it? A. I do know there was some question of manufacturing for the boys; about guaranteeing and so on I don't remember taking any part in it at all.

Q. You do remember hearing something about it, don't you? A. I do remember there was some talk.

Q. I want to ask you if you don't recall in the month of May, 1916, upstairs on the third floor your going to Mr. Joseph Hilton and saying that his brother Philip wanted to know whether if he manufactured some goods for the boys, he, Joseph, would guarantee the bill, or words substantially to that effect? A. I don't think I do; I don't remember.

Adjourned until tomorrow at eleven o'clock.

Continuation of examination pursuant to adjournment on July 31, 1917, at the place

and in the presence of the Court and counsel as before.

PHILIP HILTON sworn:

Direct-examination by Mr. Hardin:

Q. Where do you reside? A. I reside in West Caldwell, at present.

Q. You are a brother of Joseph Hilton, the complainant in this case? A. Yes, sir.

Q. Do you recall the time when you bought your brother's interest in the business of The Hilton Company theretofore conducted by you and him? A. Yes.

Q. When was it that you took the business over? A. Twenty-fourth of June.

Q. Of 1916? A. Yes, sir.

Q. Did you know before that time that your brother, Joseph, had rented a place in Paterson? A. No, sir.

Q. I am now referring to the time when you took the conveyance from your brother, when did you first hear about your brother having taken a store in Paterson, and from whom did you hear it, who told you about it? A. Mrs. Hilton.

Q. Mrs. Joseph Hilton, you mean? A. Yes.

Q. When was it? A. On the 3d of May.

Q. And where was it? A. Branford place and Broad street.

Q. That was sometime before the actual conveyance by Joseph of the business to you?

Mr. McCarter: I object. He has already said he did not know it until after he had made his conveyance.

The Court: I will permit it.

Mr. McCarter: I object to the leading question to this complainant in the suit.

The Court: I will permit it.

Q. Who was present at the time that Mrs. Joseph Hilton told you about this? A. Mrs. Hilton and I.

Q. Did you meet her by appointment on that day? A. Yes.

Q. From whom did you get the request to meet her? A. I got in the Fourteenth Street store in the morning between eleven and twelve o'clock and I was told—

Mr. McCarter: I object to what he was told; it doesn't answer the question, what he was told.

Q. How did you happen to come to Newark on that day to meet Mrs. Hilton? A. I was called up from Newark in the Fourteenth Street store.

Q. Do you know by whom you were called? A. Miss Young.

Q. Who is Miss Young? A. She is the secretary in the office.

Q. Office of what? A. The Hilton Company.

Q. And where? A. Broad and Market.

Q. Newark? A. Newark, yes, sir.

Q. Did you come to Newark in accordance with that request? A. Yes.

Q. And did the message tell you whereabouts in Newark to come? A. Yes, Branford Place and Broad Street.

Q. What time did you get there? A. I got there around three o'clock.

Q. And was Mrs. Hilton there when you got there or did she come afterwards? A. I was waiting a few minutes for her.

Q. When she came how did she come? A. Come in a machine.

Q. And who was in the machine? A. The chauffeur and Mrs. Hilton.

Q. Did you get in the machine? A. She asked me to get in, yes.

Q. Where did you go? A. Went toward Weequahic Park, through Halsey Street towards Weequahic Park.

Q. What did she say to you about the Paterson store? Did she tell you why she wanted to see you? A. She didn't tell me anything; she told me she got some terrible news to tell me; I asked her what is it; she said, "Joe signed a lease for ten years in the Paterson store." I said, "It is terrible news"; I was a little upset; I says to her, "It is terrible news"; I was a little kind of upset; she said to me, "What are you upset about? You have got ten stores, you will have one more, eleven." I said, "You don't know the circumstances as well as I do; I promised the Market that I wouldn't take any more stores, I wouldn't start any more." She said, "He didn't take it for himself, he took it for Charlie Hilton." I said to her, I said, "That makes it worse yet, it looks like a fraud."

Q. What do you mean when you say you promised the market? A. The credit men

Q. Did you say anything more to her about your position with reference to Joseph taking the Paterson store? A. I told her he would have to give up that store, that is all I told her; I didn't see how she could ask me to sign the lease unless she could give me the name of the landlord; I might have him release it for a sum of money;

she says she will have to find out for me and let me know.

Q. And when was she to let you know? A. In the morning.

Q. Now, how long were you and Mrs. Joseph Hilton in this machine? You say you went down to Weequahic Park; did you come back again? A. About half an hour.

Q. Where did you separate from her on that day? A. I got out in front of the City Hall.

Q. You know Charles Hilton, Joseph's son? A. Yes.

Q. Was Charles in the car at all that day while you were in it? A. No, sir.

Q. Did you see him that day? A. No, sir, I did not.

By the Court: Q. Did Charles testify he was?

Mr. Hardin: Yes.

Q. Did you hear from Mrs. Hilton on the morning of May 4th? A. The next morning they telephoned, I called her up ten o'clock, she told me not to call her up before ten o'clock because my brother was out, and I called her up, and she told me he would not give up that store and would not give me the name of the landlord.

Q. Now, after you bought you brother out, which was on June 24, did your nephew Alec. Hilton make any application to you for employment? A. Yes.

Q. What employment did he want? A. He wanted to work in the designer's office, in Roshay's office.

Q. When was this, do you remember? A. The second week after the dissolution.

Q. Did you give him the employment in accordance with his request or not? A. No, sir, I did not.

Q. Do you recall any time during the month of July or August meeting your nephews Alec. and Charles together? A. No, sir, I did not.

Q. Did they at any time during those two months come to you and ask you for leave to use the advertising that you used in Providence? A. No, sir, they did not.

Q. And did you tell them that they could use it, have any conversation of any kind on that subject with them? A. Did not have any conversation with them.

Q. Did you have any conversation with either of them alone without the other? A. No, sir.

Q. Did they make any application through anybody else to you for leave to use that Providence advertising, that you heard of?

Mr. McCarter: I object to it. How can what he heard having been said to somebody else be competent.

The Court: I will admit it.

Mr. McCarter: What he has heard these boys said to somebody else?

The Court: That isn't it. Whether he knew from any other source, whether he asked for it, that is all, to his own knowledge did it come from any other source to him.

Q. Did you tell either Alec. or Charles, together or apart, that you had no objection to their using the name Hilton's in the Paterson store or elsewhere? A. I did not.

Q. Did they ever ask you for permission to use the name of Hilton's? A. No, sir.

Q. Or did you tell Mrs. Joseph Hilton at any time, either the day you met her in the auto, as

you have described, or any other time, that you had no objection or that Joseph or the boys could use the name Hilton's in Paterson? A. No, sir.

Q. Did you tell the boys or either of them that they could use the shield? A. No, sir, I did not.

Q. Did they ask you whether they could? A. No, sir.

Q. Did Mrs. Hilton ever ask you, did Mrs. Joseph Hilton ever ask you whether you would object to the use of the name Hilton's in Paterson? A. No, sir, she did not.

Q. Were you at any time before the dissolution asked by your brother Joseph or by the boys Alex. or Charles, or anybody else, for that matter, to manufacture some goods for Joseph for use in the Paterson store? A. No, sir.

Q. Did you hear anything about some goods that were being manufactured there? A. What time?

Q. Before the dissolution, some goods that were to be manufactured for Joseph in the Hilton Comany store? A. Before the 24th or after.

Q. Before the 24th? A. Yes.

Q. From whom did you hear it? A. I heard it from Mr. Kline, Sam Goldberg, Mr. Roshay, Mr. Kinsey, Mr. Fischer.

Q. And from these gentlemen or some of them were you told there were some goods to be manufactured?

Mr. McCarter: I object to this constant leading.

The Court: What were you told by these gentlemen.

Q. What did they tell you about these goods to be manufactured for Joseph? A. That he is

manufacturing the goods for the Paterson store in the factory.

Q. Did you agree to it? A. I objected to it.

By the Court: Q. How did you show your objection? What did you do? A. I sent word to different people, to Mr. Kline, and I told Sam Goldberg and Mr. Roshay not to give them any patterns.

Q. What position did Sam Goldberg have? A. He had charge of part of the manufacturing.

Q. Did Mr. Goldberg at any time say anything to you about having talked to your brother Joseph? A. Yes.

Q. About your objection? A. Yes.

Q. Do you know what your brother Joseph did after he heard of your objection?

Mr. McCarter: Your own knowledge, now.

Q. Yes. Were you there personally in the shop to know what your brother Joseph did, or did you only know what you heard from others about it? A. I was afraid to come to the manufactory, I was afraid I would be beaten by my brother; he used to beat me up every day.

Q. Had he ever beaten you? A. Yes.

Mr. McCarter: I object.

The Court: I overrule it.

Q. Did Mr. Goldberg continue to do that part of the manufacturing for the Hilton Company at Broad Street right down to the time of the dissolution? A. No, sir, he did not.

Q. What work was he doing prior to the dissolution? A. He was going around amongst the stores, the retail stores.

Q. By whose direction? A. My direction.

Q. How long before the dissolution had he been doing that by your direction? A. A couple of weeks previous to that.

Q. Did you ever refer your nephews Charles and Alec., either together, or either one of them separately, to Messrs. Sherman & O'Brien to get the so-called Uncle Sam advertisement that was used at the opening of the Providence store? A. No, sir, I didn't even know they had it.

Q. You also are unable to read? A. Yes, sir.

By the Court: Q. How old are you? A. I was born in 1869.

By the Court: Q. Is your brother older or younger than you? A. Younger.

Q. How much younger? A. About five years, I guess.

CROSS-EXAMINATION by Mr. McCarter:

Q. Mr. Hilton, you said you lived at West Caldwell, that is up in this county? A. I live now in West Caldwell, yes, sir.

Q. In the house owned by the West Caldwell Realty Corporation? A. Yes, sir.

Q. Who else lives in that house? A. My mother, my sister and my children.

Q. Including Goldberg? A. Yes.

Q. He said you didn't live there? A. I live there now.

Mr. Hardin: He didn't say so.

The Court: Never mind; I remember what he said.

Q. Were you in Newark the day that the deed of dissolution was signed by your brother Joseph? A. The last one? Which one do you mean?

Q. Well, the deed of conveyance that is at-

tached to your bill of complaint? A. 24th?

Q. Yes. A. Yes.

Q. Were you in Newark that day? A. I was at Mr. Hardin's office.

Q. Who reported to you that the papers had been signed? A. What do you mean, papers signed, which one, the first one?

Q. I am talking about this deed of dissolution, June 24? A. Mr. Hardin told me, Mr. Hardin was in the office at that time.

Q. Are you sure about that? A. Yes.

Q. Do you remember now, as a matter of fact, Mr. Hilton left before the deed was signed? A. He said everything was all right, he was going to leave for the country; he said everything was all right; I took it for granted it was signed.

Mr. Hardin: It was signed before I left. It was not delivered; perhaps it was signed before I left.

Q. Now, Mr. Hilton, as I understand you, you were informed on the 24th that the transaction had gone through? A. I was, yes.

Q. And you on the following Monday inserted in some paper in the Newark papers, something with reference to the dissolution, didn't you? A. I think I did.

Q. See if you recall having this put in the Newark Star Eagle, Monday evening, June 26, 1916?

Mr. Hardin: I suggest this is not cross-examination.

The Court: It is not cross-examination.

Mr. McCarter: Suppose this shows he knew something that he said he did not know. You must not decide these things too quick, your Honor.

Q. See if you remember this being the article that was by your direction put in the Newark Star-Eagle, Monday evening, June 26, 1916, "Hilton Brothers end partnership. Joseph sells his interest to start another business for his son." Those are the headings. Then the body of the article reads as follows: "Announcement was made Monday that Philip Hilton and Joseph Hilton, trading under the name of The Hilton Company, with a chain of ten clothing stores and a factory, had dissolved partnership. Joseph Hilton has withdrawn from the business. The former intends to embark in the same business with his son. The firm has achieved success as manufacturers and retailers of men's clothing from a small beginning fifteen years ago in a small store."

Mr. Hardin: That is not an advertisement; that is a news article. I understood you to ask him if he did not put an advertisement in the paper.

Mr. McCarter: Am I to be interrupted that way or be permitted to finish a question?

Mr. Hardin: You will be interrupted as long as you proceed that way?

The Court: I will overrule the question in the present form. You can ask him whether or not he caused that to be inserted.

Mr. McCarter: The only reason I am reading it, the witness can not read; I am pursuing that plan for that reason only.

The Court: Do you recollect—now, you have gone far enough—do you recollect,

Mr. Hilton, putting such an article in the newspaper, giving the information on which it was put in?

A. I instructed the advertising man to make some announcement in the paper.

By the Court: Q. Of that kind? A. I told Mr. Hanser to announce it in the papers, in every paper, that I dissolved with my brother.

By the Court: Q. Did you tell him to put in that Joseph was going to start business with his son, too? A. I didn't tell him nothing; I just told him to make announcement in the paper, and went away; he knows more about advertisements than I do.

By the Court: Q. You know he did put in the article that Joseph was going to start out with his son, don't you? A. No, didn't know anything about it, no, sir.

By the Court: Q. Are these advertisements read to you after they are put in? A. No, sir.

Mr. Hardin: This is not an advertisement; it is a news article.

Q. I just want to read to you one thing more. 'The business will be conducted in the future by Philip Hilton personally under the name The Hilton Company.'' Did you tell Mr. Hanser anything about that? A. He knows it himself.

Q. I asked you if you told him? A. No, sir, I did not.

Q. I understood you to say in reply to the inquiry of his Honor, the Vice Chancellor, that you did not have the advertisements read to you, is that a fact? A. No, sir.

Q. Mr. Hanser never read the advertisements to you and your brother? A. Mr. Hanser, some-

times he did and some times he did not.

Q. What is the fact about it? What is the fact about it now? You just said you didn't have them read to you, now you say you did, which is the truth? A. This particular one I did not because I was too excited to say anything of that kind.

Q. I had changed the subject and had asked you the same inquiry that Vice Chancellor Lane asked you, and that was this, whether the advertisements, not this advertisement, but the advertisements that were put out by the Hilton Company were read to you; now I want to know what the fact is? A. Not all of them.

Q. In what papers did you tell Mr. Hanser to insert the dissolution notices? A. Every paper he can.

Q. Including the Newark papers? A. Every paper he can.

Q. Including the Star-Eagle and Newark News? A. I just told him every paper he can.

Q. Do you recall the fact that there was also inserted in the Star-Eagle of July 14 an ad. announcing the dissolution? A. Read it out to me and I will tell you?

Q. I have here the Star-Eagle of Friday evening, July 14, 1916; it says on the one side in the black part there a number of suits at certain prices, and then on the other part it reads as follows, "The Hilton Company entire stock of suits of the ten metropolitan Hilton shops in New York, Brooklyn, Newark, Boston, Providence, Philadelphia, Pittsburg and Chicago at radical reductions on account of the dissolution of partnership between Joseph Hilton and Philip Hilton this extraordinary sale is necessary; the financial settle-

ment involved in the purchase of Joseph Hilton's interest in the firm can only be brought about in this manner and this result must be accomplished quickly, hence these extreme reductions. Note; these sale prices are subject to withdrawal without notice. The sale will terminate the day the final result has been secured. Stores open Saturday evening until ten o'clock. The Hilton Company, successors to George Watson Company, 793 Broad Street. New York stores Broadway corner Thirteenth, Broadway corner Thirty-seventh, Brooklyn, Fulton street; stores also in Pittsburg, Boston, Chicago and Providence." A. Yes, that was read to me.

Q. That was read to you? A. Yes.

Q. Were advertisements of that character inserted in all the papers you were accustomed to advertising in? A. I don't remember how many papers we advertised, but I know it was quite a few papers.

Q. You did it in New York, didn't you? A. Yes.

Q. And you did it in Pittsburg? A. Yes.

Q. Chicago? A. Yes.

Q. Boston? A. Yes.

Q. Providence? A. Yes.

Q. And of course, as I have read, you did it in Newark. I would like to have this and the other paper which I read to the witness marked for identification?

Marked 27 and 28 for identification.

Recess.

Q. I understood you to say that Miss Young was

secretary of the company? A. Yes.

Q. How long has she been secretary? A. She was since Mr. Yonkers was discharged.

Q. Well, that don't tell us when it was? A. 1912 I believe.

Q. Now, I will be glad if you will repeat the conversation that you say occurred in the automobile between Mrs. Joseph Hilton and yourself. You started out by saying something of other terrible; now, just repeat the conversation again just as well as you can recall it. A. I met Mrs. Hilton at Branford place and Broad Street and she asked me to get in the automobile; I got in the automobile and she said to me, "I have got terrible news to tell you." I says, "What is it?" She said, "Joe has signed a lease for ten years for Paterson;" I said, "It is bad," and I was kind of upset; she said to me, "what are you upset about? You have got ten stores, you will have eleven." I said, "You don't understand the circumstances as well as I do. I told the market I wouldn't start any more stores." "Well," she said to me, "He took it in Charlie's name." I said, "That makes it worse, because the thing is a fraud." Then she said to me, "I will have to ask you if you keep the store up in Paterson."

Q. She said to you? A. To me, yes.

Q. I don't quite understand what you mean; what was it she said to you? A. She said, "He will have to give up that store in Paterson;" I said, "I don't know how he could sign a lease unless you give me the name of the landlord; I might go over there and ask him to release it for some money." She said she would try to get his name and try to persuade him to give up that store; I should call

her up in the morning and she would tell me all about it, how she made out.

Q. Who first said that Joseph would have to give up that Paterson store, you or she? A. She says he will have to give it up.

Q. Now, you are sure about that? A. Yes.

Q. Do you remember making an affidavit about this in the case? A. Yes.

Q. I refer to your affidavit, a copy of which I have in my hand on the 8th of January, 1915, in which you said as follows, "When I met her she said to me I have some terrible news for you; Joe has rented a store in Paterson. This was while the partnership relations between Joseph and myself continued, and she commented upon the impropriety of his act in doing this. She asked me what she should do. I told her that she would have to get Joseph to give up the Paterson store and that I would telephone the next day to find out what he had done. When I telephoned the next day she said that Joe said he would not give it up." Now, which of those two statements is correct? A. Both.

Q. Both correct? A. Yes; I said to her—

Q. One moment. You said they were both correct? A. Yes.

Q. You told us that she was the one that first said Joe would have to give it up? A. She said first and I said it afterwards.

Q. Here you don't make her say anything of that kind at all, but you say you told her that she would have to get Joseph to give up the Paterson store? A. I told her that afterwards, yes, there was going to be trouble I said.

Q. There was going to be trouble? A. Yes.

Q. Who said that, you? A. I did, yes.

Q. Who said that? A. After she said it.

Q. Why didn't you make that statement in your affidavit or why didn't you make that statement in your testimony heretofore? A. I believe I did in my statement.

Q. What? A. I believe I did in the testimony and in the statement.

Q. You say you made that statement in the affidavit? A. I believe I did.

Q. Take out your glasses and read the affidavit and see if you did? A. Yes.

Q. Put them on? A. I can't read it.

Q. You have got reading glasses in your clothes, haven't you? A. Yes.

Q. What do you have them for if you can't read? A. I can read other languages.

Q. Put on your glasses now; I have got a copy of the affidavit here, see if in that affidavit you said anything about there going to be trouble? A. I can't read it?

Q. Eh? A. I can't read it.

Q. Mr. Hilton, as a matter of fact, you do read plain words in English, don't you? A. No, sir.

Q. What? A. No, sir.

Q. Have you never used those glasses in the presence of Mr. Younkers or Mr. Joseph Hilton? A. I use my glasses, yes.

Q. In reading what? A. I read different languages.

Q. Well, English language? A. Jewish language.

Q. Jewish language? A. Yes.

Q. Hebrew, you mean? A. No, just plain Jewish language.

Q. What language is Jewish language if it is not Hebrew? A. It is not Hebrew, it is different language.

Q. Haven't you read telegrams in the presence of Mr. Younkers? A. A word or two.

Q. Now, put on your glasses so you can see? A. I can't read it without any help.

Q. Put on your glasses and read this affidavit or the part of it I am going to point out to you, which is the part I read before, and see if you can find there any reference to that there is going to be trouble that you now say you included in your affidavit. I won't trouble you to read any more about the line I made there. There is where I commenced; now, read that the very best you can; we will give you all the time you want? A. I can't read it.

Q. Can't read that, eh? A. No.

Q. It don't mean anything to you? A. No.

Q. You can read telegrams? A. A few words in in the store sometimes with somebody I read it off.

Q. Now, as I understand you at some phase of this conversation Mrs. Joseph Hilton said, "Well, he has taken it in Charlie's name"? A. Yes, sir.

Q. And you said that would be a fraud? A. It would be worse yet.

Q. What did you mean by that? A. Worse then.

Q. What did you mean by that? A. Credit men would think that we are doing it on purpose, giving it in his son's name to rob The Hilton Company.

Q. When had you made this agreement with the credit men that you would not expand yourself any broader? A. About two years before.

Q. Two years before that? A. Yes.

Q. Then you wanted to keep that agreement? A. Yes.

Q. You proposed to abide by that agreement? A. Yes.

Q. And are you trying to pursuade Vice Chancellor Lane here that if Joseph took that Paterson lease in Charlie's name that that would really be a fraud on your creditors? A. Yes.

Q. You did not believe in that? A. I believed that myself.

Q. I say you did not believe in that kind of thing? A. I don't believe in it, no.

Q. You wouldn't think of doing such a thing? A. No.

Q. You know perfectly well, don't you, that in the spring of 1916, early summer of 1916, you went even to go as far as to select a site in Kansas City for opening of a store of your own on the quiet? A. I did?

Q. You? A. No, sir; I went to Excelsior Springs for my health.

Q. And didn't you in the early summer of 1916 tell Mr. Younker that you proposed to open a store on the side in your own name or in the name of a corporation in Kansas City and ask him to put some money in it? A. I did not sir.

Q. Never had any such conversation? A. Not with Mr. Younkers, no, sir.

Q. Or anybody else? A. No, sir.

Q. And you didn't have any such idea? A. No, sir.

Q. You are sure about that? A. Positively.

Q. The idea never entered your mind of opening a store in Kansas City? A. I would open stores all over the United States if I had the money.

Q. I mean the summer of 1916, before the dissolution? A. No, sir.

Q. Or after the dissolution? A. After the dissolution, no, sir.

Q. And you did not ask Mr. Younkers to ask the managers of the different stores if they would take some stock in this side enterprise of yours? A. After I bought my brother out.

Q. Then you were going to enlarge? A. No, I was going to incorporate, put some of the money in there because the money was all drawn out of the business when he left, I had to get money somewheres to run the business.

Q. Do you now say that after you dissolved with your brother that you did contemplate having a store in Kansas City? A. No, sir.

Q. You did not tell Mr. Younkers what I have said? A. No, sir.

Q. Now, when did you first hear that some goods were being manufactured for the boys or for somebody outside of the Hilton Company by your concern, when did you first hear of it? A. What?

Q. When did you first hear that some goods were being manufactured in your place by The Hilton Company for somebody outside of the Hilton Company, either Mr. Joseph Hilton or the boys? A. I didn't hear of anybody except the people that were in the manufacturing department.

Q. I asked you when you first heard of it? A. About the third week in May, second or third.

Q. Which do you think it was, are you able to tell more definitely? A. I don't.

Q. You knew as early as the first or second week in May? A. Second or third.

Q. Second or third week in May, is that right? A. Yes.

Q. Who told you? A. Sam Goldberg, Mr. Roshay, Mr. Kline, Mr. Kinsey, Mr. Fisher.

Q. They were all employes of yours? A. Yes.

Q. What did Mr. Kline tell you? A. That Joe Hilton is manufacturing goods.

Q. What did Mr. Goldberg tell you? A. The same thing.

Q. What did Mr. Roshay tell you? A. The same thing, he is taking patterns from the cutting department, is going to manufacture goods.

Q. Who was taking them? A. Joe Hilton.

Q. Had taken patterns from the cutting department? A. Yes.

Q. What did Mr. Kinsey tell you? A. The same thing.

Q. What did Mr. Fisher tell you? A. Mr. Fisher also wanted to help him to buy goods for his Paterson store.

Q. Then he didn't tell you about the manufacturing? A. He said he wanted to manufacture; he is manufacturing; yes.

Q. I am asking you what Mr. Fisher told you about the goods? A. He wanted me to help him buy woolens and also help him to manufacture.

Q. This is all as early as the second week in May? A. Second and third.

Q. You remember that you received a thousand dollars for the work done in your concern? A. No, sir; I wasn't there to receive it.

Q. Did you hear you received it? A. No, sir.

Q. Never knew you received it? A. No, sir.

Q. I again refer to your affidavit in this case, last page, "The sum of one thousand dollars

which Mrs. Joseph Hilton says in her affidavit was paid to The Hilton Company about the middle of June, 1916, for the manufacture of woolens was under the following circumstances: Joseph Hilton had no personal bank account, but deposited his money in his wife's account. Joseph, against my will and without my consent, had ordered and caused our employes to cut and make up into garments the woolen to which she referred, and when it was necessary to pay for their manufacture it was his money that was paid for it, but payment was made through the medium of the wife's account." Did you say that? A. That was after.

Q. Did you say that? A. What?

Q. What I have just read to you? A. I don't remember.

Q. What? A. I don't remember that.

Q. Put on your glasses and see if you can read it? A. I couldn't read it.

Q. This is not Jewish, it is plain English in typewriter; just read that and see if you said that? A. I can't read it.

Q. Can't read it? A. No, sir.

Q. Can't read it at all? A. No, sir.

Q. I ask you if you remember making the affidavit which I read to you? A. I don't remember this.

Q. Is that your signature? A. Yes, sir.

Q. Did you read the affidavit before you signed it? A. I suppose they read it for me; I didn't read it myself; I suppose they read it for me.

Q. What ever you said in that affidavit was true, wasn't it? A. I suppose so.

Q. Was it? A. Yes.

Q. Now, I read from the affidavit, "The sum of a thousand dollars which Mrs. Joseph Hilton says

in her affidavit was paid to The Hilton Company about the middle of June, 1916, for the manufacture of woolens was under the following circumstances: Joseph Hilton had no personal bank account, but deposited his money in his wife's account. Joseph without my will and without my consent had ordered and caused our employes to cut and make up into garments the woolens to which she refers and when it was necessary to pay for their manufacture it was his money that was paid for it, but payment was made through the medium of the wife's account;" Did you say that or didn't you? A. Some parts of it.

Q. When did you learn that? A. What?

Q. What I just read to you? You told us a little while ago you never knew he paid for it? A. I don't remember; I don't keep the books.

Q. No, you don't keep the books? A. No.

Q. Do you still say you never knew that Joe Hilton paid for this by his wife's check? A. I know it was paid the day I dissolved partnership, everything was settled.

Q. And didn't you as a matter of fact exact as part of the partnership settlement the payment by Joseph Hilton of $125 more than his wife had already paid you as a final settlement for those other goods? A. It was paid I know, it was paid the day of the settlement.

Q. Did you know that your cutters were working on these goods? A. I heard about it.

Q. Did you know that Herring Brothers, woolen merchants of New York, sent, consigned to C. M. Hilton, care of Hilton Company, Broad Street, Newark, New Jersey, as early as May 6, 1916, a bill of goods? A. I don't remember the time, but

I know he bought some goods of Herring Brothers; when they were shipped I don't know.

Q. Where did you suppose those goods were being manufactured for? A. Sir?

Q. Where did you suppose those goods were to be sold after they were manufactured in your place? A. I heard they were manufacturing them for the Paterson store.

Q. Then you knew as early as the second week in May? A. Second or third week.

Q. Had you been up to the store before this, up to the Paterson store before this? A. Before when?

By the Court: Q. When did you first go to the Paterson store? A. I went to the Paterson store, for a ride, I saw the store.

By the Court: Q. When? A. That was,—I forget already the exact time.

Q. As near as you can recall? A. I just looked at the building, the building was not touched yet.

Q. It was when? A. I don't know what time it was.

Q. Were you up there during the summer? A. Which summer?

Q. You were up there during the summer before the dissolution? A. Before the dissolution, yes.

Q. See some signs in the windows? A. When I was there there was no signs, there was nothing touched yet.

Q. You were up there then before any signs were there? A. Yes.

Q. How did you know where it was? A. I was told.

Q. Who told you? A. I was told.

Q. Who told you? A. Sam Goldberg told me, and everybody else told me.

Q. Sam Goldberg told you, eh? A. Yes.

Q. Where did he tell you, up at the house of the West Cadwell Realty Corporation? A. Yes.

Q. And he told you where the store was, eh, and so the following Sunday you motored up there, did you? A. I don't know what day I went there; I went there some Sunday.

Q. To see the store? A. I just went for a ride.

Q. And saw the store? A. Yes.

Q. You went again, didn't you, in your automobile? A. No, sir.

Q. You mean to tell me you did not go up there after the signs were up? A. No, sir.

Q. Well, did you tell Joseph you had seen this store? A. I didn't speak to Joseph.

By the Court: Q. How long had it been before the dissolution that you were on bad terms with Joseph? A. For the last two years.

By the Court: Q. How long had you been at a point where you wouldn't speak to each other? A. We only spoke, we had a fight, we only spoke when we had a fight.

Q. You say you were born in 1869; are you sure about that? A. To the best of my knowledge.

Q. What month? A. In December, I believe.

Q. Eh? A. December.

Q. December? A. I believe December, yes.

Q. You said that somebody told you that Joseph had taken patterns; you didn't see Joseph take any patterns, did you? A. No

Q. Who was it told you Joseph had taken patterns? A. Mrs. Hilton.

Q. Mrs. Hilton? A. Yes, everybody told me,

Kline told me, Mr. Roshay, Kinsey, everybody in the manufacturing department told me he took patterns.

Q. Joseph was taking patterns? A. Yes.

Q. When did they tell you that? A. They told me every day.

Q. Were you in the store every day? A. No, sir, I didn't go upstairs because I was afraid of a fight.

Q. I didn't ask you that; I asked you where you saw these men every day? A. New York City.

Q. Did you see Kline in New York City every day? A. Not every day, different times.

Q. Did you see Kinsey in New York City every day? A. Not everybody one day, some day I see Kinsey, some day I see Mr. Roshay, some day I see Mr. Fisher, some day Mr. Kline.

Q. You have stated under oath here that these gentlemen by the name of Kline, Goldberg, Roshay and Kinsey and Fisher told you every day? A. Yes.

Q. That Mr. Joseph Hilton was taking patterns away, is that right? A. Right.

Q. Where did you see them every day? A. Sometimes I saw them in New York, sometimes they call me up on the telephone, sometimes I call them up and they told me.

Q. I want to know if you were in the store in Newark during the month of May? A. Month of May I can't remember, I probably have been there.

Q. Before, I bean, before June 24, were you there? A. Perhaps I was in the store, not upstairs.

Q. Were you there in the month of June? A. After the dissolution?

BEATRICE V. YOUNG, sworn:

Direct-examination by Mr. Hardin:

Q. Where do you live? A. 65 Lehigh Avenue.

Q. And are you employed by The Hilton Company? A. Yes.

Q. How long have you been so employed? A. Since I think 1907.

Q. What was your employment up until 1912? A. I was sort of assistant bookkeeper, and since that time I was made secretary, since 1912.

Q. And where was your office? A. On the third floor, 791 Broad Street.

Q. Do you know Joseph Hilton and Philip Hilton? A. Yes.

Q. And was that office you refer to the headquarters of the business? A. Yes, sir.

Q. You are related, I believe, to Mr. Murray? A. Yes, he is married to my sister.

Q. You know Mrs. Joseph Hilton? A. Very well.

Q. Did Joseph Hilton at any time tell you about his intention of leasing a clothing store in Paterson? A. Yes, sir.

Q. When? A. Sometime during the early part of April, 1916.

Q. What did he say to you about it? A. He said he intended getting a store in Paterson, told me that it was the best corner in Paterson, he was getting it for about $5,000, all that it was actually worth, he thought he would do a very large business there.

Q. Did he say anything about Philip in reference to it? A. He wanted me not to tell Philip about it because he said if Philip knew about it,

he was negotiating for the store, he certainly would stop it.

Q. Did he speak to you about it more than once? A. Very often, most every day.

Q. Was Philip in the habit of coming to the office during the time, during April of 1916? A. No, came there very seldom.

Q. And how about the succeeding months of May and June down to the dissolution? A. I don't think he was in the office at all during May and June.

Q. Did you hear from Joseph about the actual signing of the lease of the Paterson property ? A. Yes, I heard it at noon time, he said he had an appointment with Mr. Bernhard at two o'clock to sign up the lease, the Paterson lease, and subsequently I learned that he had signed it later that afternoon.

Q. Who is Mr. Bernhard? A. Mr. Hilton's attorney at that time.

Q. Did you learn afterwards from anybody that the lease had been signed? A. Yes.

Q. From whom? A. Mr. Bernhard told me and Mr. Hilton told me.

Q. Mr. Joseph Hilton? A. Yes.

Q. When did he tell you? A. He told me that very afternoon, he told me he was going to make a lot of money there.

Q. Did he speak about it again the next morning? A. Yes, he came down the next morning and he was very excited and he said he didn't sleep all night, he was so sorry he had taken the Paterson store because he said as soon as Philip found out he was positive he would make a disturbance about it and he regretted having done so and said,

"What shall I do about it?" I said, "You are always getting yourself in a muss; why did you do it if you regret it now?" He said, "You know how it is, Philip and I are always fighting and I expect any day there will be trouble, the creditors will shut down on us when they hear of these continuous fights and quarrels," and he said, "I thought if I got a Paterson store and incorporated it in Charlie's name and The Hilton Company should fail they couldn't touch them because it would be incorporated in Charlie's name."

Q. Do you remember the date on which the lease was signed? A. Yes, I remember the day because I know it was the same week that Mr. Hilton offered to sell out to his brother Joseph, it was Tuesday of that week.

Q. And the last conversation you have been telling us was on the day after the signing of the lease? A. The day after, yes, because I remember that Mr. Hilton asked me to call up Mr. Cone, I believe it was, an attorney who had an office in Paterson, and Mr. Hilton said to me, "I think I will offer him $2000 and see if he will release me from the lease, then Philip could not know anything about it," and I remember I tried to get Mr. Cone on the telephone, but I was unsuccessful.

Q. Were you present when this matter was talked about by Mrs. Hilton and Joseph Hilton together? A. Yes, I was dining at Mr. Hilton's home that evening.

Q. Where does he live? A. In South Orange.

Q. Was this matter talked about? A. Yes.

Q. And you recall the conversation? A. Why, Mr. Joseph Hilton referred to it continually and asked Mrs. Hilton if she had talked with Phil-

ip, and Philip said, "There is nothing else to it you will have to give up that store;" Joe Hilton said he would rather give up every other store the Hilton Company had; Joseph Hilton became very much excited and said he would rather give up every other store the Hilton Company had rather than give up the Paterson store.

Q. Do you recall the matter of the incorporation that you spoke about, anything more about that? A. Well, I know sometime during May Mr. Brady came over to our office and inquired about—

Mr. McCarter: I object.

Q. Did Mr. Brady talk with Mr. Hilton in your presence? A. Yes.

By the Court: Q. Which Mr. Hilton? A. Mr. Joseph Hilton.

Q. Go on. A. Mr. Brady come over and asked him about the incorporation and Mr. Brady was quite astonished to think a concern like the Hilton Company that was rated between two hundred and three hundred thousand dollars should incoporate for ten thousand, and asked Mr. Hilton how it happened that way; Mr. Hilton said, "That don't belong to me, that belongs to my nephew Charles Hilton of Perth Amboy, it has nothing to do with the Hilton Company." As soon as Mr. Brady left Mr. Hilton said, "Call up Mr. Bernhard right away and ask him what he done about that incorporation; if I had known it was going to become public property I certainly never would have incorporated it;" I did; I called up Mr. Bernhard and he said, "Mr. Hilton certainly is a changeable man"—

Q. Never mind what he said. A. He said he would do it, he would call up the Secretary of State and cancel it off of the record.

Q. Now, did you have anything to do with arranging a meeting between Philip and Mrs. Joseph Hilton? A. Yes, I arranged the meeting.

Q. And how did you do it and at whose direction? A. At both Mr. Hilton's direction and Mrs. Hilton's direction.

Q. And how did you accomplish it? A. I called up the various stores to try and locate Mr. Hilton and he had not been at any of the stores; I left word as soon as he come in to call me up, and he did.

Q. When you used the term, "Called up," you used a telephone? A. I used a telephone, yes.

Q. Do you know Mr. Alec. Hilton? A. Yes.

Q. Do you know whether after the dissolution—

Mr McCarter: Don't lead, please.

Mr. Hardin: I don't think that is leading.

Q. Do you know whether he ever applied to the Hilton Company for employment after the dissolution? A. Yes, he did.

Q. When was it, if you remember? A. It was sometime during July.

Q. And how do you know it? A. I met Alec. and his present wife down in Asbury Park and Alec. asked me if I thought his uncle would give him a position, and Mr. Joseph Hilton also asked me if I thought Philip would employ Alec. to help Mr. Roshay in the designing department, he would like Alec. to be a designer; as a result of that conversation Alec. came in the office.

Q. Were you there? A. Yes, I was there.

Q. When Philip Hilton was there and Alec. who else was there? A. I was there all during the converation.

Q. What position did Alec. want? A. He wanted to learn to be a designer with Mr. Roshay.

Q. Mr. Younkers, I think, or Mr. Joseph Hilton, one of them, referred to what are called Kesner agreement, were you familiar with that? A. Yes, I was.

Q. Did you hear Joseph refer to Kesner agreement matter? A. Yes, I did.

Q. Do you remember about when it was? A. I think it was in March.

Q. Did you see the agreements? A. Yes, I did.

Q. Where? A. In our office.

Q. Who had them? A. Mr. Joseph Hilton.

Q. Do you know whether they had been signed at that time or not? A. They were signed by Mr. Joseph Hilton; they were addressed to Mr. Philip Hilton, Mr. Joseph Hilton destroyed the signature and asked me to duplicate them, but he wanted me to leave out a very important part of the agreement and he ordered the stenographer to retype them, wording them entirely different than the original agreement.

Mr. McCarter: May I ask what this rebuts?

Mr. Hardin: Rebuts a statement made by Mr. Younkers, more particularly about the agreement arrived at, about the agreement in Chicago.

Mr. McCarter: I don't think this rebuts anything and I ask that it be stricken out.

Mr. Hardin: Mr. Younkers testified that he was present in Chicago when the agreement was made by the two Hiltons in the presence of Kesner for the division of their duties in the business and he witnessed an agreement, and I asked him if he knew

anything more about the agreement and he said he didn't; I asked him whether he didn't know Philip destroyed that and he said he didn't know any thing about it.

The Court: I will admit it; I don't think it is at all important.

CROSS-EXAMINATION by Mr. McCarter:

Q. Miss Young, you already have testified you are a sister-in-law of Mr. Murray? A. Yes, he is married to my sister.

Q. You used to be quite intimate at the house of Mr. Joseph Hilton? A. Very intimate.

Q. And were enjoying their hospitality on the evening you have testified about? A. Yes.

Q. You made an affidavit in this case, didn't you? A. Yes.

Q. Have you read that affidavit since you made it? A. Yes, I read it before I signed it.

Q. And read it since you made it? A. No, I don't think I have read it since.

Q. Try and recollect whether you have or have not. A. I think I read it the first day of the trial in March, but not since.

Q. The first day of the trial in March, but not since? A. Yes, just to refresh my memory.

Q. Do you know, I think you do from what you said, do you know Mrs. Alexander Hilton? A. Yes, I know her.

Q. Do you remember seeing her one of the days we were here on the application for preliminary injunction? A. No.

Q. And being asked by her in the city of Newark why you had made that affidavit, which she said was untrue, and you replying to her that you had to make the affidavits to keep your position? A.

Certainly not; I haven't spoken to Mrs. Hilton; I met her one day on the trolley-car several months ago, that was before the preliminary injunction came up.

Q. I haven't asked you about some other occasion? A. This is the only occasion I have spoken to Mrs. Hilton; I am trying to impress on your mind I have never spoken to Mrs. Hilton except once on the trolley-car last summer and I am trying to tell you that conversation.

Q. You remember meeting her on the trolley-car? A. Yes.

Q. And wasn't that about the time the application for preliminary injunction was on? A. It was right after the papers were filed I know.

Q. Do you remember her asking you why you swore to that affidavit? A. No.

Q. Did she ask you about the affidavit? A. She said "that was some affidavit you made"; I said, "Yes, it surely was, but it was the truth, wasn't it?"

Q. You did not say to her you had to sign the affidavit in order to keep your position in the store? A. That would be absurd.

Q. I didn't ask you that? A. No.

Q. Why would it be absurd? A. Do you think Mr. Hilton would discharge me if I didn't make an affidavit?

Q. That would be absurd? A. Yes, it would be absurd for me to make it.

Q. Now, as I understand you, early in April Joseph spoke to you about a proposition to lease a Paterson store? A. Yes.

Q. How early in April? A. The early part.

Q. How early? A. I can't just remember the date.

Q. Did he repeat it during April? A. Almost daily.

Q. Told you he was going to do it? A. Yes.

Q. The fact is he was getting ready for it most of the time? A. He was going there almost daily.

Q. Getting ready for it? A. Yes.

Q. Did he tell you he proposed to go and execute it? A. He told me before he signed the lease he was going to sign the lease.

Q. Did he tell you when he went to execute it? A. Yes.

Q. Did he tell you he made it in Charlie's name? A. Yes.

Q. Now, I understood that after having talked to you a month about his proposition to take it, during the course of which did he refer to the fact that it was a good lease? A. He told me it was a good store.

Q. And he expected to make a great deal of money there? A. Yes.

Q. He told you that, didn't he? A. Yes.

Q. Then he told you he was going to sign it? A. Yes.

Q. Did he tell you he had signed it the day he did sign it? A. He didn't tell me he had signed it, he said the lease had been signed.

Q. The day it had been signed? A. Yes.

Q. He was still happy about it? A. Very happy.

Q. And the very next morning he came down and was very unhappy? A. Yes.

Q. Did he say what occurred during the night that made him so unhappy, did he tell you what happened, did he tell you what had happened over night to make him change his mind? A. Yes.

Q. What did he say had happened that made him change his mind? A. He said he had been thinking about Philip.

Q. About Philip? A. Yes.

Q. He had told you before not to say anything to Philip about it? A. He said Philip would ultimately discover the fact he had signed the lease.

Q. Did he tell you that? A. Yes.

Q. When? A. The next morning.

Q. Did he ever tell you not to tell Philip? A. Before he signed the lease he warned me almost daily not to tell Philip.

Q. And he was delighted with the prospect of getting it? A. Yes.

Q. He told you all about it? A. Yes.

Q. And at this time was he your brother-in-law? A. Yes he had been my brother-in-law for a few years.

Q. And at the time he and Philip were quarrelling? A. Yes.

Q. At this time you were employed there? A. Yes.

Q.At this time were negotiations for dissolutions in progress, to your knowledge? A. No.

Q. What? A. No.

Q. Well, now the day after he had signed the lease, after this night he came down and was very regretful and sorry? A. Yes.

Q. And was willing to give up $2,000? A. Yes.

Q. To get rid of it? A. Yes.

Q. And that night you were up at the house to dinner? A. Not that night.

Q. How soon? A. The morning that he was so excited, that night.

Q. That is what I say? A. I thought you meant the previous night.

Q. The next morning he was very regretful about this lease and was willing to give $2,000 to get rid of it? A. Yes.

Q. And that night you were dining up there? A. Yes.

Q. Now, you overheard a conversation between Mrs. Hilton and him about this lease, and Mrs. Hilton said he would have to give up the lease and he said he would rather give up any lease than that lease? A. I didn't overhear conversation; it was openly discussed and he and Mrs. Hilton were talking.

Q. I am not intimating you were eavesdropping? A. I thought you were.

Q. You heard the conversation between Joseph and his wife in which Mrs. Hilton said that he had to give that lease up and he said he would rather give up any lease? A. Yes.

By the Court: Q. How do you account for the fact that he said in the morning he was so anxious to get rid of the lease and give up $2000, then in the evening said he would rather give up any lease than that lease? A. You don't know Mr. Hilton; he chages over night; one minute he likes a person and will give them anything, five minutes after he will change, he has that reputation, a very changeable man.

Q. Now, as I understand your testimony today you say that some gentleman from R. G. Dun & Company called, Mr. Brady, and made some inquiry, what was the inquiry? A. He asked Mr. Hilton why we had incorporated the Hilton Company for $10,000.

Q. You said something about two hundred thousand dollars? A. He thought it strange we should

be rated at three hundred and incorporated for ten thousand.

Q. Then your knowledge of the situation was such as to know you were rated as three hundred thousand? A. Yes.

Q. Did Mr. Joseph Hilton explain to you if their concern was rated at three hundred thousand dollars how it was that creditors were going to take the concern and he would have the Paterson store in Charlie's name? A. He was rated at $300,000, but it was not the right rating.

Q. That was all a fraud, too, was it? A. We gave false statements.

Q. I don't suppose you had anything to do with that? A. Mr. Joseph Hilton and Mr. Philip Hilton had entire charge of that.

Q. Mr. Joseph and Mr. Philip did that, eh? A. Yes.

Q. Aren't you wrong about Philip? I geuss that was all Joe, wasn't it? A. No, both of them.

Q. Did Phil. do that? A. Both of them, yes.

Q. Now, as I understand you, as soon as Mr. Brady asked that question Joseph flew off the tangent and said, "Oh, I didn't incorporate this concern, I was incorporating Charlie's business down in Perth Amboy?" A. He didn't say, "I was incorporating;" he said, "You must have made a mistake, that is my nephew in Perth Amboy, Charles Hilton of Perth Amboy."

Q. There is no doubt about that, is there? A. No.

Q. About his saying Charles Hilton of Perth Amboy? A. No.

Q. Why didn't you say that in your affidavit? A. I don't know why I didn't say it?

Q. I will read your affidavit to you: "Mr. Joseph Hilton told me even before he had signed the lease he intended to incorporate and was about the middle of May or April before that that Mr. Brady of R. G. Dun & Company came over to the office and inquired or Mr. Joseph Hilton about the incorporation and there was some conversation about the matter, and as soon as Mr. Brady left Mr. Joseph Hilton had a conversation on the telephone with his lawyer, Mr. Bernhard and told him to take the incorporation off the records." You remember testifying to that? A. Yes, sir.

Q. He said to him he didn't want it known about the incorporation and wouldn't have had it incorporated if he had known it would become public knowledge, did he tell Mr. Bernhard that? A. I was the one had the conversation with Mr. Bernhard; Mr. Hilton had no conversation on that day with Mr. Bernhard, I did all the talking.

Q. Then why do you say as you do in your affidavit as follows: "About the middle of May or April before that that a Mr. Brady of R. G. Dun & Company came over to the office and inquired of Mr. Joseph Hilton about the incorporation; there was some conversation about the matter, and as soon as Mr. Brady left Mr. Joseph Hilton had a conversation on the telephone with his lawyer and told him to stop the incorporation and take it off the record. Now, who had the conversation on the 'phone? A. I had the conversation on the 'phone.

Q. Then you were wrong when you said Mr. Joseph Hilton had the conversation? A. I meant Mr. Joseph Hilton directed the conversation he was standing alongside of me and told me what to tell him.

Q. He said, did he, that he did not want it known, the incorporation? A. I said to Mr. Bernhard for Mr. Hilton that he did not want it known.

Q. That is your version of it now? A. That has always been my version.

Q. Then why did you swear to it that way? Can you read? A. I certainly can.

Q. Did you read this affidavit before you signed it? A. Yes.

Q. Why didn't you say something in this affidavit about Charlie Hilton down at Perth Amboy? A. I couldn't remember everything at the time.

Q. I didn't bring out Charlie Hilton's name on cross examination; you understand Mr. Hardin brought it out. A. I remembered it after I made out the affidavit.

Q. You also state in this affidavit that about in April, 1916, Mrs. Joseph Hilton started a personal bank account and I know thereafter checks made payable to Joseph Hilton were deposited in that bank account? A. That was her bank account; she started a new one around that time; she formerly had a bank account in the Newark Trust Company for several years, but discontinued it.

Q. Why didn't you say that in your affidavit? A. Oh, Mr. McCarter, I didn't think that was necessary.

Q. Now, I understand that you say that you were or were not an intimate friend of Mrs. Alexander Hilton? A. I was not an intimate friend of Mrs. Alexander, of Mrs. Joseph Hilton.

Q. Do you know Mrs. Alexander Hilton? A. Yes.

Q. Do you see her frequently? A. Not frequently; we had a quarrel and were not on speaking terms for several months.

Q. When did that commence? A. About a year and a half ago.

Q. When would that be, get it as near as you can? A. When we became friendly in May; I know it was the night we went to a dance at the South Orange field club, I don't remember the date.

Q. I want to know how long you were unfriendly to Mrs. Alexander Hilton? A. I think about six months?

Q. And that was you said a year and a half? A. Oh, it was more than that.

Q. I want to know when it was you were not on speaking terms with Mrs. Alexander Hilton? A. I can't remember.

By the Court: Q. When did you first meet her? A. About two and a half years ago; I don't know her intimately, your Honor; I really can't remember.

Q. You had a quarrel didn't you? A. Yes.

Q. You were not speaking for several months? A. Yes.

Q. When did you make up? A. We made up the night of the South Orange field dance, it was sometime in the spring.

Q. Of what? A. 1916.

By the Court: Q. Before the dissolution? A. Yes, sir.

Q. How long before the dissolution? A. I guess it was about in April, I am not sure, it was the night of the dance; I am quite sure it was in April because the field club had a dance that night.

Q. I understood you to say that you arranged the interview between Mrs. Hilton and Mr. Philip Hilton at the suggestion of both Mrs. Hilton and Mr. Joseph Hilton? A. Yes, I did.

Q. I call your attention to your affidavit, the middle of the second page, "this same day after the signing of the lease Joseph Hilton asked me to arrange a meeting between his wife and Philip." A. Yes, and Mrs. Philip did it, that should have been put in.

Q. Why didn't you say that before? A. I thought one was sufficient.

Q. In the meantime had you read the affidavit that Philip Hilton filed at the same time in which he swore that this meeting took place pursuant to an appointment which Mrs. Hilton had? A. Mrs. Hilton asked me to make it.

Q. No, no; had you read the affidavit Philip Hilton filed at the same time yours was in which he swore that Mrs. Hilton had called for that appointment? A. I never read Philip Hilton's affidavit.

Mr. Hardin: I would like to introduce but counsel is insisting on having the books brought here, I would like to show the proportion of the goods manufactured for the parties outside in 1915 and 1916. Yesterday counsel objected because the books were not here.

SAMUEL JACOBSTEIN re-called:

Direct-examination by Mr. Hardin:

Q. You were asked yesterday for some figures concerning the proportion of manufactued goods and the goods bought outside, and for the time being the matter was dropped. Have you by my

instruction made some investigations from the books over night for the purpose of ascertaining the percentages of the manufactured and outside goods for the years 1915 and 1916? A. I have sir.

Q. Are those figures exactly accurate? A. According to the books.

Q. And did you use any item in your figures that you did not get directly from the books? A. No, sir.

Q. How about goods shipped directly to the stores, is that estimated? A. That is estimated.

Q. Goods shipped direct to the stores are not charged in the home office books? A. No, not to those books.

Q. Who made that estimate? A. I did.

Q. Otherwise the figures you used were taken from the books? A. Exactly.

Q. Just as they are kept? A. Yes.

Q. Are the books here? A. Yes.

Q. What were the goods manufactured during the year 1915?

Mr. McCarter: I object to it. I don't see how we can have testimony that purports to be taken partially from the books and partly from estimates?

The Court: I will permit it. I am permitting it really upon the ground that your witness did the same. Mr. Hilton was allowed to make estimates, Mr. Younkers made estimates, I don't know how many others made estimates.

Q. What is the estimated item for goods shipped direct to stores for the year 1915? A. Estimated about five thousand.

Q. The year 1916? A. About the same.

Q. Otherwise the figures were taken from the books? A. Exactly.

Q. Have you escertained as to percentage of goods bought outside for the year 1915 using the books and the single items that you have named?

Mr. McCarter: I object to it.

The Court: I will admit it.

Q. 1915 percentage? A. About five per cent. outside goods.

Q. And during the year 1916? A. During 1916 was six per cent.

The Court: It seems to me as far as the principle of law is concerned it don't make a particle of difference whether it is thirty per cent. or five per cent.

Q. Do you know of what character the bulk of of the goods that are purchased from the outside may be? A. I don't quite understand that.

Q. Do you know the character of the goods, most of the goods that are purchased outside, the kind? A. The kind of goods that is bought outside, different kinds, pants, suits, vests, overcoats.

Q. Are you acquainted with the chief items of outside purchase? A. I can't say that I am.

CROSS-EXAMINATION by Mr. McCarter:

Q. Who told you to confine this estimate to the years 1915 and 1916?

Mr. Hardin: I did.

Q. Have you of your own information or anybody else's information or anybody else's suggestion made estimates for the years anterior to that, say, for 1915? A. I have not.

Q. And when did you make this estimate? A. The estimate you mean of all these figures that I gave a little while ago?

Q. Yes. A. Since the court adjourned yesterday.

Q. Did you make an estimate of the what Mr. Philip Hilton had incorporated in his affidavit? A. I don't remember giving Mr. Philip any items for his affidavit.

Q. You were not asked? A. I don't remember being; I don't think so.

Q. What are those two figures $5000 and $6000 that you said you estimated? A. $5000 each year I gave as an estimate of goods received at the stores.

Q. Goods what? A. Outside goods received direct at the stores, that is what you asked me.

Q. Do I understand you that you now say that the estimate is for $5000 for both years? A. Yes, for the amount of goods bought on the outside, shipped direct to the stores, yes.

Q. $6000 is a mistake? A. You are mistaken in the figures, in five or six per cent.

Q. What? A. Unless you have got the figures it makes five and six per cent.

Q. Did you or did you not say that you estimated the goods, outside goods that were shipped to your stores respectively at $5000 and $6000? A. I did not.

Q. Then it is $5000? A. Yes.

Q. Do I understand then that you say you estimate that all the goods that were bought from the outside for all the other stores and Newark aggregate $5000 a year? A. About $5000, yes.

The Court: Now, be careful how you answer. Listen to that queston.

Q. (Question read.) A. Shipped direct to the stores, $5000, yes.

By the Court: Q. How much known value of goods were bought on the outside in 1915? A. I have the figures here.

By the Court: Q. What? A. I have the figures here. 1915 was $38,405.38.

By the Court: Q. That includes the $5000 shipped direct? A. That includes the $5000 shipped direct.

By the Court: Q. 1916? A. $53,010.12.

By the Court: Q. That I suppose likewise includes the $5000? A. Includes the $5000.

Q. And the difference between the $5000 and these two sums that you have just named represents the amount of goods bought on the outside and taken in at headquarters? A. $5000 on each year, yes.

Q. Just pay attention to the question. (Question read.) A. I don't understand the question.

By the Court: Q. Was the difference between the respective sums and $5000 for each year and the $5000 the amount of goods bought on the outside through headquarters? A. Yes, sir.

Q. How much of the average would add to the price, to cost?

Mr. Hardin: I object to that; I don't think that is material to this controversy.

The Court: The figures that you use bought on the outside what is that, is that cost to Hilton?

A. Yes, sir.

By the Court: Q. The figures that you have used for goods made on the inside do you use the figures of cost to Hilton? A. Plus overhead.

By the Court: Q. The manufacturing price? A. Yes.

RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. Are you able to tell us the cost to Hilton of the goods manufactured during the year 1915? A. Yes.

Q. Will you give it to us, please? A. $712,298.-49.

Q. And during the year 1916 the same figures? A. Yes, $824,041.29.

By the Court: Q. In that case of manufacture, what does that include, generally, now, not specifically? A. Merchandise, labor and overhead.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. What do you include in overhead? A. Take a flat sum to cover the lights, the rent, &c.

Q. That is what I want to know, you made up the estimate, didn't you? A. I gave you those figures from the books.

Q. What is included in the overhead? A. I gave it to you, rent, lights.

By the Court: Q. Interest on investment? A. The overhead is given to me in flat figures, percentage basis.

Q. I want to get at the way you make the estimate, who gave you the overhead? A. I found it in the books.

Q. What? A. It is in the books, sir.

Q. You said a moment ago somebody gave it to you or it was given to you? A. I told you I got it out of the book.

By the Court: Q. Who in your establishment fixes it? A. Mr. Goldberg has charge of that.

Q. Is he the man that lives in the West Caldwell Realty Company house? A. Yes.

Q. He gave it to you, did he? A. No, sir; it is in his manufacturing books.

Q. Do you know what is in it or do you just accept the quantity, what Goldberg put in there? A. I know how it is handled, it is just as every percentage basis, amount of cost for overhead.

Q. Then it does not include simply lights, rents, &c., but it is percentage basis? A. Percentage basis is including lights.

Q. What is it? A. Twenty per cent.

Q. Twenty per cent. cost of labor and cost of material in manufacture is added for overhead? A. Yes.

Q. Is it twenty or is it about twenty? A. I can't say, sir.

Q. Can you find out, are they the books that are here? A. The books are here, yes.

Q. Go and look and tell us? A. It will take me some time to find out if that is the exact amount.

Q. If a certain figure is there as certain percentage can't you find that figure? A. I can show you just how it is worked.

The Court: Not today. Go on to something else. Try that tomorrow.

FRANK J. MURRAY re-called:

Direct-examination by Mr. Hardin:

Q. I show you Exhibit D-11, being a letter from the Hilton Company to Messrs. R. G. Dun & Company; do you recognize the signature to that letter? A. Yes.

Q. Who is the author of that signature? A. Philip Hilton.

Q. Did you ever see that letter before? A. Yes.

Q. Where? A. I wrote it; I dictated it and it was signed in my presence.

Q. And at whose request did you prepare it? At the request of Mr. Joseph Hilton.

Q. Did you receive any instructions from Mr. Joseph Hilton as to the letter?

Mr. McCarter: I object. The letter so far as the instructions are concerned are utterly immaterial. He signed the letter; the way it came about, how he dictated it I think is utterly immaterial.

The Court: I think that is true, Mr. Hardin.

Q. Did you ever hear, Mr. Murray, I think you told us the other day in your examination by Mr. McCarter that you became connected with The Hilton Company some little time after the dissolution? A. Yes.

Q. And have you been active in the business since that time? A. Yes.

Q. Did you ever hear of the Hilton store at Yonkers? A. Yes.

Q. When did you first hear of it? A. About a month or so after I became general manager of The Hilton Company I was informed that a customer called at our store at Broadway and Fourteenth Street.

Mr. McCarter: I object.

A. About August, I should say, 1916, or the first of September probably.

Q. And from what source did you hear about it? A. From one of our stores.

Q. And did you get any report of it or anything of that kind? A. I sent a man up there.

Mr. McCarter: Is that material?

The Court: I don't think so.

Q. You sent a man up there you say and got a report from him, did you? A. Yes.

Mr. McCarter: I object.

Q. And what, if anything, did you do further with reference to the matter?

Mr. McCarter: I object.

The Court: Show what he did.

A. When I learned the name and address of the people interested I wrote a letter on my stationery demanding that they discontinue.

Mr. McCarter: I object.

The Court: I won't let the contents of that letter go in. He wrote a letter.

Q. Did you keep a copy of the letter? A. Yes.

By the Court: Q. As a result of that letter what happened? A. I received a reply from the lawyer of this man in which he agreed to discontinue using the name?

Mr. McCarter: I object.

By the Court' Q. What ultimately happened? Is that store in existence? A. No.

By the Court: Q. When did it cease to be? A. I don't know the date, except I know a few months ago it was not in existence.

By the Court: Q. By a few months you mean how many? A. Two or three months ago.

Q. You may look at the letter you got from the lawyer to fix your mind as to date. This letter is dated September 14, 1916. I was told—

Mr. McCarter: I object.

Q. During the summer of 1916 did you have anything to do with the insurance of stock in the

loft 841 Broad Street of Joseph Hilton? A. Yes.

Q. Have you any memorandum which will enable you to fix the date? A. Yes; on July 12 the insurance was ordered for Mr. Joseph Hilton by Mr. Wolf, his manufacturing man at that time, $7000 insurance, $1000 on the furniture and fixtures and $6000 on the stock at 841 Broad Street, Newark, and I placed that policy with the Firemen's Insurance Company, and the policy was delivered to me and I sent it to Mr. Hilton and he returned it and I sent it back to the Firemen's Insurance Company, and I wrote a letter to Mr. Hilton to tell him what the rate would be on a short term and I got no reply to the letter.

Q. When he returned the policy to you did he return it for any particular purpose?

Mr. McCarter: I object.

By the Court: Q. Did you get your information by letter or how? A. I believe Mr. Wolf brought me the policy back; I don't believe I got a letter, except I wrote to Mr. Hilton about the matter myself; when Mr. Wolf placed the order July 12 I wrote a letter next day to Mr. Joseph Hilton thanking him for the order and telling him according to Mr. Wolf's directions I had placed $7000 on the stock and $1000 on the furniture and fixtures—no, $6000 on the stock and $1000 on the furniture and fixtures at 841 Broad Street, Newark; referred also to the fact that the policy could be changed to a new location; it was written for one year, and that was why Mr. Hilton returned it.

Q. Did you keep a copy of the letter that you wrote to Mr. Hilton? A. This is a copy of that letter.

Mr. Hardin: Have you the original letter, Mr. McCarter?

Mr. McCarter: No, sir.

Mr. Hardin: Dated July 13, 1916, addressed to Mr. Joseph Hilton, 29 Kingman Road, South Orange.

Mr. McCarter: We have no such letter.

Letter offered in evidence dated July 13, 1916, and mraked Exhibit C-168.

Q. Was the policy referred to in that letter enclosed to Mr. Hilton in the letter? A. No.

Q. Did you procure a policy later? A. Yes.

Q. What did you do with that? A. I sent it to Mr. Hilton.

Q. And who brought it back to you do you say? A. I believe Mr. Wolf brought it back.

Q. Did you have any further communication with Mr. Joseph Hilton about this insurance matter? A. I think I wrote him another letter.

Q. What date? A. August 2.

Letter dated August 2, 1916, offered in evidence and marked Exhibit C 169.

Q. Now, after the dissolution did you have any conversation with Joseph Hilton with reference to the use by him of the name Hilton's? A. After the dissolution, yes.

Q. About when, can you fix the time? A. About the middle of July.

Q. And where did that conversation take place? A. On Broad and Market Streets, Newark.

Q. Did Mr. Joseph Hilton say anything to you at that time about his desire to use the name? A. Yes, sir.

Q. What did he say to you? A. I said when I was leaving Mr. Hilton, "If there is anything I

can do for you I will be glad to have you call on me,'' and Mr. Hilton said, ''There is nothing you can do for me unless you can get my brother Philip to let me use the name in Paterson.''

Q. What name? A. He didn't say; I understood he meant the name Hilton's.

Mr. McCarter: I object and move that be stricken out.

The Court: Strike it out.

Q. What did you say in reply? A. I said I couldn't do anything for him on that line.

Q. Had he talked to you about the use of the name, asked you about the use of the name prior to the dissolution?

Mr. McCarter: I think under the position counsel has taken in the case, in which he stated expressly, and I understood the Court to rule the same way, that the proceedings prior to the dissolution were merged in the deed, that conversations or the preliminary negotiations or the preliminary agreements and what not are not relevant.

The Court: What is the purpose of it?

Mr. Hardin: It would seem to me to meet he suggestion that Mr. Philip Hilton from the first of May, and some suggested as eary as March, had been consenting to the use of this name. I am not proposing to go into the early history of this thing, but I am proposing to ask this witness—

The Court: You may ask him for anything that Joseph said which would indicate that Philip did not know or would not consent to the use of the name.

Mr. McCarter: But Philip signed a letter in which he expressly said he did know it.

Q. Did you understand the Court's question? The Court said I might ask you whether Joseph had said anything to you which indicated knowledge on his part that Philip had not consented? A. I would say yes.

Mr. McCarter: I object to the question.

Q. And when was that? A. On June 23d, 1916.

Q. And what thing of that nature did he say to you at that time?

Mr. McCarter: That I object to because under the ruling heretofore made that is all merged in the deed.

A. On June twenty-third he called me on the telephone and asked me to be present at the closing on the twenty-fourth, and at the same time he asked me if in my opinion Philip would agree to let him use the name J. Hilton Company. I told him that I knew that Philip would not agree to that. I declined to attend that meeting on the twenty-fourth. He called me again the same afternoon and urged me to be present at that meeting, and also renewed his question, and I gave him the same answer.

Mr. McCarter: There are a couple of witnesses here from Paterson, that have been here all day under subpoena; it will not take two minutes to examine them. Can we pause here and examine them, so as to let them go?

Mr. Hardin: Certainly.

JULE C. LEVINE, sworn:

Direct-examination by Mr. Mindes:

Q. Are you connected with any newspaper? A. Yes.

Q. What newspaper? A. Paterson Evening News.

Q. How long have you been with that paper? A. Ten years.

Q. What are your duties? A. I am business manager.

Q. What have you to do with the advertisements? A. Why I oversee the advertising of the concern.

Q. Do you recall receiving any orders or instructions for inserting advertisements for Hilton's? A. Yes, sir.

Q. Do you recall receiving any in the month of September? A. Yes, sir.

Q. Do you recall when you received it in the month of September? A. Early part.

Q. Do you recall who you received the instructions from? A. Sherman & Bryan.

Q. Have you got the order there? A. Yes, sir. (Produced.)

Q. Is this the order you refer to, dated September 6, 1916? A. Yes.

Q. On the letter head of Sherman & Bryan? A. Yes.

Mr. Mindes: I offer it in evidence.

Marked Exhibit D-29.

Mr. Hardin: I have no objection.

Not cross-examined.

HENRY DURKIN, sworn:

Direct-examination by Mr. Mindes:

Q. You are connected with what newspaper in the city of Paterson? A. The Press Guardian.

Q. Your duties in connection with that paper are what, with reference to advertisements? A. I am in charge of the advertising department.

Q. Do you recall receiving any instructions for the placing of an ad in the paper you are connected with in Paterson on behalf of Hilton's? A. I do.

Q. Do you recall from whom you received your instructions, and order?

The Court: From whom did you receive them, and when?

A. We received them the early part of September, an order to insert the advertisement of Hilton's, from Sherman & Bryan, advertising agents, New York City.

Q. Have you that order with you? A. I have.

Q. And this is the order? A. Yes.

Mr. Mindes: I offer it in evidence.

Mr. Hardin: No objection.

Marked Exhibit D-30.

Q. I note that the order was for September 8, 12, 14 and 15; do you know whether the ads were inserted on those days? A. I believe they were.

Not cross-examined.

JULE C. LEVINE, re-called:

Direct-examination by Mr. Mindes:

Q. After you received this order from Sherman

& Bryan what, if anything, did you do with reference to showing them the form of ad? A. I have certain days in New York, and they demanded proofs of all ads, and one day I went over myself, I took a proof over there to be O. K.'d by Miss Harris.

Q. Of? A. Sherman & Bryan.

Not cross-examined.

August 1, 1917.

Continuation of examination pursuant to adjournment on August 1, 1917, at the place and in the presence of the Court and counsel as before.

FRANK J. MURRAY, resumed:

Cross-examination by Mr. McCarter:

Q. I want to direct your attention to that part of your evidence in which you refer to this insurance policy. Do you remember when it was that you first received a request from Mr. Wolf to write a policy? A. Yes, sir.

Q. When was that? A. July 12, 1916.

Q. Were you then in charge of the management of The Hilton Company? A. I had just started, yes, sir.

Q. Were you an insurance broker? A. Yes; I was interested in a corporation which was an insurance broker.

Q. The question I asked you was were you an insurance broker? A. I don't think I was technically, except I was an officer in a corporation

which was an insurance agent or broker.

Q. At any rate Mr. Joseph Hilton did not bring you any request to get that insurance, did he? A. No, sir.

Q. Did Mr. Wolf tell you he was away at the time? A. No, sir.

Q. Have you those letters that you produced yesterday? A. I believe Mr. Hilton has them.

Q. Mr. Wolf was a cutter, wasn't he? A. Yes.

Q. You knew him? A. Yes.

Q. How long had he been connected with The Hilton Company? A. I remember Mr. Wolf for at least five or six years.

Q. When did he leave The Hilton Company's employ? A. About a week or two after Joe Hilton left, after the dissolution.

Q. Well, was he in the employ of The Hilton Company on July 12, when he brought the order for a policy to you? A. No, sir.

Q. As I understand it the net result of the correspondence was that the policy was returned to you? A. Yes.

Q. You never got a commission for placing it? A. No, sir.

Q. And, in fact, it was not an accomplished fact, was it? A. The first policy—

Q. Will you answer my question? A. Yes; the first policy was an accomplished fact.

Q. It was returned to you, wasn't it? A. It was returned to me, yes.

Q. You never got a commission on it? A. No.

Q. No premium paid on it, was there? A. No, sir.

Q. Well, now, you wrote this letter Exhibit C-168, July 13, 1916, to Mr. Joseph Hilton; you had seen the announcement of the dissolution as pub-

lished in the Newark Star-Eagle of Monday evening, June 26, and as appears from the evidence Mr. Philip Hilton published in all of the papers in which the concern was accustomed to advertise? A. I don't think that was Mr. Hilton's testimony.

Q. I would be obliged if you will answer the question. We won't have an argument from you? A. I don't want to argue; I meant to answer; I believe I read it.

Q. About the time it was published? A. Yes, sir.

Q. And you assumed that the insurance that you undertook to place at the request of Mr. Wolf was to be upon goods that were to be used in the business that was announced in this notice of dissolution, didn't you? A. I assumed they were for the man he asked me to place the policy for.

Q. That is the answer to my question? A. I had no thought of the article in the newspaper at the time of the insurance.

By the Court: Q. Did you give the information to the newspaper on which this article was printed? A. No, sir.

EXAMINED by the Court:

Q. Who did? A. I believe Mr. Hanser.

Q. Who is he? A. He is the advertising man of Hilton Company.

Q. You knew of the information being given? A. I knew that Mr. Philip Hilton had asked him to get a writeup on the matter; I don't know of any details that were told him.

Q. Was it announced that Mr. Joseph Hilton was to embark in the same business with his son, was that stated in the newspaper? A. Not at the time.

Q. By Mr. Hanser? A. I believe Mr. Hanser stated that; I haven't any doubt about that.

Q. That was known to you at that time and also known to Philip Hilton, wasn't it? A. I didn't know it; I don't think Mr. Hilton did until after the paper was published. I read it, I remember reading it; I don't remember reading any particular article; I remember the writeup about the dissolution.

Q. Was that the article? Look at that? A. I believe that is the article; I remember it was in the paper around that date.

Q. Then it was known to you and known to Philip Hilton at that time that Joseph Hilton was going to embark in the same business with his son? A. I believed that he was at that time.

Q. So did Philip Hilton believe it, didn't he? A. I believe he did.

Q. Did he say anything that indicated he did to you? A. Not that I recall, no, sir.

Further CROSS-EXAMINATION by Mr. McCarter:

Q. Now, the writeup that has been referred to was published at least in Newark, where your headquarters were, on the Monday following the Saturday that the deal was closed, June 26th. This letter, Exhibit C 168, that you wrote to Mr. Joseph Hilton, ends up, I see, with the following clause, "Thanking you and wishing you success". What did you wish him success in? A. In his business enterprises.

Q. Now, at this time you were general manager, weren't you, of the enterprise of The Hilton Company? A. Yes.

Q. How long after July 13th, that being the

date of the letter, do you imagine or recall that it was before the policy was brought back to you? A. You mean from the insurance company?

Q. Oh, no; you said the policy was returned? A. Yes; why, I think they held the policy for two or three weeks.

By the Court: Q. Mr. Murray, let me ask you this. Knowing that Mr. Joseph Hilton was going to embark in the same business with his son, what name did you think he would assume? A. I hadn't the slightest idea, Mr. Vice Chancellor.

By the Court: Q. That was not discussed between you and Philip? A. No, sir, except, in further answering that question I might state I knew or I was informed during the negotiations between Mr. Hardin and Mr. McCarter preliminary to June.

Q. Informed by whom? A. By Mr. Philip Hilton.

Mr. McCarter: Does your Honor think that that—

The Court: I will admit it.

A. That Mr. Joseph Hilton was refusing to sign the bill of sale unless Philip would agree to let him use the name Philip in Paterson, and Philip refused to let him use that name, and it was signed without that later.

Q. You say Philip told you that, eh? A. Yes.

The Court: I will desregard that testimony.

Q. Well, now, it already appears, I simply wish to reiterate for the purpose of getting it before the mind of the Vice Chancellor, it already appears that the so-called offer and acceptance were both in your handwriting and both prepared by you? A. Yes.

Q. Mr. Hardin, the counsellor who appeared in the matter, had nothing to do with that preparation, did he? A. No, sir.

Q. Mr. Hardin drew the conveyance or the bill of sale? A. Yes.

Q. Under your direction? A. No, sir.

Q. Well, did you have no talk with him? A. He asked me to provide some data about the location of the leases so he could describe them.

Q. Whatever instructions he got concerning the matter that any lawyer had to have in order to prepare the paper he got from you, didn't he? A. I gave him no instructions; I complied with his request for the data.

Q. I am not seeking to minimize Mr. Hardin's effort or make yours great; I am simply asking you if it is not a fact that whatever information Mr. Hardin or any other lawyer would have to have to draw a paper you gave him instead of Philip, didn't you? A. I don't think it is a fair question; for that reason I want to answer it according to the facts. I supplied Mr. Hardin with such information as he requested of me in the matter, furnishing data for his preparation of these papers.

By the Court: Q. He had the offer and acceptance? A. He had the offer and he had a copy of the acceptance.

By the Court: Q. Was Mr. Joseph Hilton represented by counsel in those negotiations? A. He was represented by Mr. McCarter from May 18th until June 24th, until the thing was consummated.

By the Court: Q. Mr. Robert H. McCarter? A. Yes, sir.

Q. As long as you have said that I would like to find out what you know about Mr. McCarter's

concern with the negotiations previous to the date the papers were brought in his office to be executed? A. I know that on May 18th that a letter was written by Mr. McCarter to Mr. Philip Hilton, and on May 19th I was informed by Mr. Hilton of that, either May 19th or May 21, I think it was May 19th, and at that time Mr. Philip Hilton engaged Mr. Hardin, because I told him if there was to be a fight between these two brothers I didn't care to have anything to do with it.

Q. Now, you say that Mr. McCarter was concerned with the negotiation; don't you know that the offer and acceptance had both been signed before Mr. McCarter ever heard of the matter? A. Yes.

Q. So that the negotiation had been closed then.

The Court: I don't understand him to say you had been engaged in the negotiation.

Q. Did you know of a single thing that Mr. McCarter had to do with the matter beyond undertaking to repudiate it on behalf of Joseph Hilton until the day the papers were executed? A. I don't know it except what I might have learned on the 21st at our office or what I was told by Mr. Hilton.

Q. Now, during the negotiations whom did you represent? A. I was attorney for The Hilton Company and presume I represented both parties.

Q. Do you remember telling Mr. Joseph Hilton during those negotiations when the question of the amount to be paid was being discussed and the figures placed on valuation either on the

trade name The Hilton Company or on the good will that inasmuch as he proposed, he, Joseph, proposed, as you knew, to go into business, that it was foolish to talk about any value being attached to either of those things? A. I never said any such thing, Mr. McCarter.

Mr. Hardin: I object.

The Court: The answer may stand.

Q. Now, Mr. Murray, you have given some evidence here yesterday of two conversations with Mr. Hilton, one with Joseph Hilton you placed as having occurred on the corner of Broad and Market Streets, as I have it, about the middle of July, and the other on June 23, the day before the matter was consummated? A. Yes.

Q. After the declaration of war and the employment of Mr. Hardin I imagine the active preparation so far as the client was concerned of the bill and affidavits to procure the order to show cause for an injunction were done by you, were they not? A. No, sir.

Q. You have already testified that you read the bill and read the affidavits that were filed? A. Yes.

Q. You are a lawyer of how many years standing? A. Ten years.

Q. You knew the theory of the suit? A. Yes; I thought I did, anyway.

Q. You mean to say that Mr. Philip Hilton gave all the directions to Mr. Hardin? A. No, sir.

Q. You did a lot, didn't you? A. I had consultation with Mr. Stanley.

Q. Oh, you are making a distinction between Mr. Stanley and Mr. Hardin, and Mr. Stanley

prepared all the papers with the advice and assistance of yourself? A. Not entirely.

Q. Well, largely? A. I told all I knew about it to him; he interviewed all the other witnesses.

Q. Now, why didn't you either in the original affidavits or rebutting affidavits make an affidavit of what you have testified here to-day or yesterday as having occurred in the office between you and Joseph Hilton? A. I left the management of the business to Mr. Hardin and Mr. Stanley and I told them right along all I knew about the case, was always ready and willing to make an affidavit if they wished it, and never declined or asked to be excused.

Q. Is that the only reason why you now say—you did not make an affidavit in the case, did you? A. I did not, no, sir.

Q. And you now say you did not decline to swear to anything or you did not offer to swear to anything? A. No, sir; I was willing to do what they wanted me to do as far as anything I knew.

Q. As a matter of fact you made no affidavit of either one of those alleged conversations? A. No, sir.

THOMAS F. DUFFY re-called:

Direct-examination by Mr. Hardin:

Q. Mr. Duffy, do you know John J. Brennan? A. Yes, sir.

Q. You saw him on the witness stand here the other day? A. Yes, sir.

Q. How long have you known him? A. About twelve years.

Q. Did he wait on you at the time you called at the store 243 Broadway? A. No, sir.

Q. Did you see him at all that day? A. Yes.

Q. Where and when with reference to the time you called at the store? A. Well, I come out of the store after being dissatisfied and was standing on the corner north of the store on Broadway, that street north on Broadway, I don't know just the name of it; he was standing about 150 feet in from the corner at 12:25 p. m.

Q. Did you see him in the store at all that day? A. No, sir, he was not in the store.

Q. While you were there you mean? A. Yes.

CROSS-EXAMINATION by Mr. McCarter:

Q. Where have you known Brennan? A. Why, from Newark here, around the four corners, for the last twelve years and up in my own neighborhood.

Q. You have known him around the four corners and up in your neighborhood? Where is your neighborhood? A. My old neighborhood on Warren Street, Warren and High.

Q. Is that where you refer to as having known him, Warren and High? A. From there and when he worked for Hahne & Hahne, I think it was when they went in the hands of a receiver I bought a pair of $2.50 gloves for sixty-five cents of him, Adler's kid gloves.

Q. Now, the question is whether you claim acquaintance of twelve years standing with Mr. Brennan from the fact that you bought a pair of gloves of him at Hahne & Hahne for sixty-five cents, or acquaintance on the four corners, or acquaintance in your locality, High and Warren, which is it? A. I have known him about town for the last twelve years.

Q. Where do you say he was standing that day? A. About 150 feet in off Broadway, smoking a cigarette on the curbstone, street north on Broadway from the Hilton store.

Q. What time was this? A. About 12:25.

By the Court: Q. Hilton's store where? A. 243 Broadway.

Q. How long were you in the store that day? A. About from twenty-five to thirty minutes.

Q. And this was as you came out of the store and walked up Broadway? A. I was standing on the corner taking the dimensions of the signs in front of the building &c.

Q. I say it was immediately after your exit from the store? A. Yes.

Q. Didn't you testify you went to the store at 11 o'clock? A. No, sir, I did not; I left Newark at about 11:10 train.

Q. And went right to the store? A. Went right direct to the store, arriving there about 11:55.

Q. You left the depot station at Park Place at 11:10? A. At 11:10, yes, pretty sure that is the train.

Q. Went to the terminal? A. Fulton Street, New York, yes.

Q. How far is the Hilton store from the terminal? A. Can't be over ten minutes' walk.

By the Court: Q. Near what store is it? A. It is Two hundred and thirty-four Broadway, I can't just say.

Q. What is the number? A. I think 234 or 243; I haven't got my notebook; I testified once before as to the correct number of it.

Q. Right above Park place, isn't it? A. Yes, sir.

Q. Two doors from Park place? A. I won't say

two doors; it is around that neighborhood.

Mr. Hardin: I want to offer in evidence certified copy of the certificate filed by Philip Hilton under the act of 1906—he was conducting business under the name The Hilton Company—filed in the Essex County Clerk's office after the dissolution of the old partnership.

Marked Exhibit C 170.

Mr. McCarter: It seems to me this is utterly immaterial; I can not see how that can affect the case, something you did on June 26th.

Mr. Hardin: The law requires an individual trading under a firm name to file a certificate; it merely shows compliance with that law, that is all.

Mr. Hardin: Your Honor will recall in March when we began the trial of this case there was a gentleman on the stand, Miller, he left promising to secure certain information he got certain information with reference to the passengers that travel on the tubes and he got certain other information with reference to the Erie Railway Company. The letters are separate. Mr. McCarter has no objection to the one relating to the number of passengers traveling in the tunnel, so that I will offer that before I say nothing about the other.

Marked Exhibit C 171.

Mr. Miller also wrote at the same time a letter which Mr. McCarter objected to as being without the range of knowledge of the witness, if he had been present he could not have testified to it. This letter refers

to inquiries of the Erie Railroad people rather than of the Hudson and Manhattan people and seems to be within the scope of the understanding at the time Mr. Miller went away, left the Court, but Mr. McCarter objects to it and I submit it to your Honor.

The Court: I am going to overrule the offer of this, Mr. Hardin, not upon the ground urged by Mr. McCarter, but it is unimportant; I do not think it is important; there is enough in this case to show that there is a large traffic from Paterson to New York over those tubes.

Exhibit 141 for identification is offered and marked Exhibit C 141.

SAMUEL JACOBSTEIN resumed:

Cross-examination by Mr. McCarter:

Q. Are you the bookkeeper of the enterprise? A. No, sir.

Q. Who is? A. Miss Young is looking after the books.

Q. She is the bookkeeper? A. Call her bookkeeper; she has charge of that department, secretary and head of the office.

Q. Miss Young then keeps the books? A. She has assistants to keep books.

Q. Who keeps the books? A. Her assistants.

Q. Who are they? A. Several girls there.

Q. And your duties do not extend to the keeping of the books ? A. Not the actual keeping of them.

By the Court: Q. What is your title, auditor? A. Auditor.

Q. You stated yesterday that in getting at the overhead that you simply, as I understood your testimony, adopted some figures that was in the books? A. In the manufacturing books; I gave you figures right from the manufacturing figures on that list.

Q. Did you or did you not say yesterday that the overhead you charged up was taken from some entry in the book? A. Yes.

Q. Have you got the book from which that entry is taken here? A. Yes.

Q. Will you produce it? A. Yes.

Q. Please refer to that portion of the book which you hold in your hand and indicate the figure or charge for overhead that you refer to? A. It runs all through the book.

By the Court: Q. Give us a sample. A. Here is figure $32,929.31, ten per cent added onto that would make it—this $844,041.29 is included, the cost of the goods, cost of the trimmings, cost of the making of the garments, plus ten per cent, plus ten per cent.

By the Court: Q. Plus ten, plus ten.

By the Court: Q. Plus ten for what? A. Plus ten is for the actual overhead.

By the Court: Q. And the other plus ten. A. Sometimes it runs below and sometimes over, the difference of that is profit to the manufacturing department.

By the Court: Q. And on top of that is put a retail profit? A. In the stores.

By the Court: Q. So that that last ten per cent is really a profit? A. Well, it takes care of the profit, sometimes a larger overhead than ten per

cent and sometimes less, according to the amount of goods manufactured.

By the Court: Q. The purpose is to permit the retail department and manufacturing department to show separate profits? A. Yes.

Q. Now, what book is this that you produce? A. Manufacturing book.

Q. Cost of manufacturing? A. Cost of manufacturing to the stores.

Q. What period does it cover? A. This book?

Q. I am not speaking of any other book. A. February, 1915, to July 13, 1917.

Q. Is it a daily record? A. As the goods are cut and manufactured it is entered into this book.

Q. Well, is that the only page you can find that ten plus ten added? A. That is the total for the year; it is carried forward from one day to the other, from one sheet to the other to the finish of the year.

Q. Are you now referring again to the same page that you were as before? A. Yes.

Q. Is this the page you were looking at before? A. No.

Q. Find it, please. Now, what I am driving at is is this the last day of the year? A. Last day of 1916 year, yes.

Q. December 31? A. December 8 is the last manufacturing page of that year.

Q. Is the total coast carried forward of that particular piece of goods or the whole manufacturing carried forward to that day? A. I don't quite understand you.

Q. I am trying to get at where did you find any ten per cent previous to this particular page, this December 8, 1916, lot No. 415? A. $905.90.

Q. That represents what? A. That is under the column total amount.

Q. Total amount of what? A. That lot.

Q. Cost? A. Yes, lot 415.

Q. Now, the next column is headed what, manufacturing? A. Manufacturing, ten per cent.

Q. $90.59? A. Yes.

Q. And the next column is headed— A. Is the other ten per cent. I was just speaking about.

Q. Ten per cent on what? A. On the total of these two.

Q. Which two? A. $905.90 and $90.59.

Q. So that the second ten per cent is ten per cent of the manufacturing cost plus the first ten added? A. That is right.

Q. You did not tell us that? A. I said added ten and ten.

The Court: Yes, he did, in the question of the trade, ten and ten; ten and ten mean first ten per cent added and then ten per cent on the whole.

Q. Who told you to put ten plus ten on there? You didn't put it there, did you? A. I put nothing in.

Q. You know the source of that direction ten plus ten? A. I just gave it to you; I said ten per cent actual overhead.

Q. From whose authority does that come from, do you know? A. I don't know.

Q. That is not all the overhead you have included, is it, in the total cost? A. Ten and ten is all I have in this book, according to the figures I gave you on my slip yesterday.

Q. Well, do you make up profit and loss balance sheets at the end of the year? A. Do I make it up?

By the Court: Q. Is there profit and loss balance sheet made up? A. Yes, sir.

Q. And in making that up do you deduct any further overhead? A. The balance sheets are taken from the regular set of books.

Q. In making that up is there any further overhead deducted before the profit is ascertained than the ten and ten? A. I don't make up the balance sheet.

Q. I ask you again if any further overhead is deducted in making up the balance sheet before the profit is ascertained? A. The balance sheet is taken of the whole business in general, stores and manufacture.

Q. Do you understand what I mean?

The Court: What Mr. McCarter means is when you come to figure your profit do you use these figures or do you add to your cost and still further overhead? A. The inventory is taken at these figures.

Q. Why won't you answer the question? A. I don't understand it any different.

Mr. Hardin: That answers it.

Q. You at the end of the year make up, under your direction in the bookkeeping department there is made up balance sheet for the year, isn't there? A. Yes.

Q. To see whether you have lost money or made money? A. Yes.

By the Court: Q. In order to ascertain that you take your income, gross sales, and take from that your cost of manufacturing and cost of selling, don't you, and show your profit? A. Naturally.

By the Court: Q. Now, when you come to make

your costs of manufacturing, costs of sale, do you include a further figure for overhead, a lump sum for overhead per centage on the whole business? A. Not any different than in this book.

Q. By the Court: Then you do not include, or do you know anything about it? A. If I can understand the question I may be able to answer it more intelligently.

By the Court: Q. I think an auditor ought to be able to answer it? A. I might explain how the inventory is taken.

By the Court: Q. I don't care about the inventory. When you take your cost of manufacturing, cost of sale, and your cost of manufacturing, or do you do it in two different ways? Do you take your gross profit from your manufacturing end and your profit from your selling end separate? A. No, all together.

By the Court: Q. You lump your business when you come to draw off your profit and loss? A. Yes, at the end of the year.

Q. When you come to figure the cost, the actual cost of running the business, which will be included, of course, these figures for manufacturing which will be included, the figures for selling, do you on top of that to your cost add something for overhead, the percentage? A. No, sir.

Q. You understand that, do you? A. Now, I understand it, yes.

Q. You have some further items of cost, haven't you, in making up your final balance sheet at the end of the year to find out whether Hilton & Company made money have you got your store in there in these figures? A. No, sir; that is what you had me puzzled on, with reference to the overhead each store carries its own overhead.

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Q. Have you your rent charge in there? A. Of the manufacturing plant included in the ten per cent.

Q. Yes. A. Yes.

Q. None of the rent of your stores? A. No.

Q. Any electric lights? A. Not for the stores.

Q. No clerk hire? A. Not at the stores.

Q. All of those have got to be separate before you finally ascertain whether the concern has made or lost money? A. On the whole.

Q. I am looking at that whole figure. A. I didn't know whether you did or not at the time.

Q. When you get at the whole figure at the end of the year that you either made or lost what expenses are deducted from the gross receipts in addition to the manufacturing expenses with the ten and ten added? A. Rent of the stores, the light, salaries, all miscellaneous expenses.

Q. Anything for supervision in overhead? A. That all goes into the overhead.

Q. Is there anything else, is there charged anything for supervision? A. Not from the partners.

Q. Well, for the managers, then? A. Managers, certainly.

Q. What is there charged in the form of overhead? A. All salaries, rents, lights, and all expenses that might occur during the year.

Q. In addition to the items of lights, rents, clerk hire, and other physical expenses is there any item under the title of overhead? A. No, sir.

Mr. Hardin: The books containing the advertisements I want in.

The Court: They may be considered in evidence for the purpose of being referred to.

Q. You gave us yesterday the figures of the goods bought at $38,000 or $36,000, whatever those figures are? A. Yes, something like that.

Q. Have you the books here that show that? A. I have the books here, all that were sent; you didn't ask for that yesterday.

Q. I asked if you had the books here that show that? A. I don't know; there are some books here; they were here yesterday; I don't know whether they are here this morning or not.

Q. Is that the same book? A. No, sir.

Q. Now, I just want to get out from you—that book represents what? A. All purchases to the manufacturing department.

Q. General ledger, is it? A. No, sir.

Q. Have you the general ledger here? A. No, sir.

Q. Well, you keep one, don't you? A. Yes, sir.

Q. Does that show the expense of goods that are bought? A. That are bought, yes, sir.

Q. What figure do you add to the expense of goods that are bought before they are sold? A. Outside of manufactured goods you mean? Nothing, sir.

Q. So you sell goods for the same price that you buy them? A. No, sir.

Q. You mean to say the concern makes no money on the goods it sells? A. Yes.

Q. You buy a bill of clothes from a manufacturer and you sell them for the same price you pay for them? A. No, sir.

Q. Now, I am not distinguishing between the manufacturing department and retail store; I am asking what the Hilton Company adds to the cost of the goods it buys when it sells it? A. The selling price about fifty-five per cent.

Q. Isn't it more than that? A. No, sir.

Q. Never? A. Might average fifty-five, sometimes more, sometimes less.

Q. What is the highest? A. I can't just say, probably sixty, sixty-five, sometimes forty and thirty-five, averaging fifty per cent on the whole?

Q. Sometimes seventy-five? A. Some goods might go seventy-five, some might go twenty, to show you how I get the average of fifty-five.

Q. Did you make any calculation or is that a guess? A. That is not a guess, no, sir.

Q. You had them all before you and added them up, did you? A. I know how the average has been running.

Q. What is the highest? A. I should say seventy-five per cent.

Q. And the lowest? A. I should judge about twenty.

Mr. Hardin: That is our case.

SAMUEL WOLF, sworn:

Direct-examination by Mr. McCarter:

Q. You live in Newark? A. Yes.

Q. How long have you lived here? A. How long I lived in Newark? About twenty years.

Q. Did you use to work for the Hilton Company? A. Yes.

Q. Until when did you continue to work for them? A. May until July 3.

Q. 1916? A. Yes.

Q. What position did you have there? A. Cutter.

Q. Where were you located, 791 Broad? A. Yes.

Q. On July 3 you left? A. Yes.

Q. Why? Were you discharged? A. Yes; I was laid off for lack of work.

Q. With whom did you then go to work? A. Why, with Charles Hilton.

Q. Where? A. Well, I hired at Eight hundred and forty-one Broad Street.

Q. And where is that, near what street? A. Why, that is near William Street, between William and Lafayette.

Q. Before you left the employ of The Hilton Company on the 3d of July and while you were still at Seven Hundred and Ninety-one Broad was there any manufacturing done there by The Hilton Company or anybody else than the Hilton Company? A. Yes, sir.

Q. For whom? A. For Charles Hilton.

Q. Did you do any work on them? A. Yes.

Q. What work did you do? A. I done the cutting.

Q. Did you know of the arrival there of any goods from Herring Brothers? A. Well, I happened to see it.

Q. I call your attention to an invoice May 6, 1916, Herring Brothers, C. M. Hilton, c/o Hilton Company, it says, 291 Broad Street, Newark, N. J. Did some goods arrive if you recall? A. I don't know whether they did or not no, I don't recall; I had nothing to do with the receiving of the goods.

Q. Now, while you were still in the employ of the Hilton Company do you remember a conver-

sation occurring between Mr. Jacobstein and Mr. Joseph Hilton? A. Yes.

Q. What was said?

Mr. Hardin: Wait a minute. Let us find out what it was about—I mean when was it, etc. I don't know that every conversation between Mr. Jacobstein and Mr. Joseph Hilton is competent in this case.

Mr. McCarter: I asked Mr. Jacobstein if he did not say to Mr. Joseph Hilton that Mr. Philip Hilton had asked him to inquire of Mr. Joseph Hilton whether or not if the concern manufactured those goods for Charlie he, Joseph, would be responsible for the cloth. Did such a conversation occur in your presence?

A. Yes, sir.

Q. Where was that? A. On the cutting floor.

Q. After you left the employ of The Hilton Company and went down to this new loft which you say you rented who did the designing down there? A. Why, shortly after we hired a man by the name of Mr. Paulin.

Q. Mr. Paulin? A. Yes.

Q. And did you down there do the cutting from those designs? A. Yes.

Q. And what became of the goods that you cut from those designs of Mr. Paulin, what stores were they taken to? A. They went to Charles Hilton's store at Paterson.

Q. What designs were used at Seven hundred and Ninety-one Broad Street in the manufacturing that was done there? A. Mr. Roshay's patterns.

Q. The firm's patterns? A. Yes, the Hilton Company's patterns, designed by Mr. Roshay.

Q. Now, it appears that after you got located down below something came up about insurance was Mr. Joseph Hilton home at that time? A. No, sir, he was not.

Q. He was away? A. Yes.

Q. Did you have anything to do with seeing about the insurance? A. I did, yes, I went to see Mr. Murray, and I thought it would be wise to place a little insurance in case of a fire.

Q. It appears from Mr. Murray's testimony that the policy that he sent for that was returned; did you return it or not? A. No, sir, I did not return it.

Q. Do you know who did, of your own knowledge? A. No, I do not.

Q. During the time that the manufacturing was going on at Seven hundred and ninety-one Broad Street was Goldberg there? A. Yes.

Q. Did you have any talk with Goldberg with reference to this manufacturing that was going on for Charlie? A. Well, I remember Mr. Goldberg passed one day a joking remark, he said to me, "Wolf, I see you are superintendent over Charlie's work."

CROSS-EXAMINATION by Mr. Hardin:

Q. How long have you known Joseph Hilton? A. Why, a little over a year. Joseph Hilton?

Q. Yes. A. Well, I have started him in to work for Charles Hilton.

Q. How long have you known Joseph Hilton? A. About twenty years.

Q. And how long did you work as cutter for the Hilton Company? A. About eight years.

Q. During that time was Joseph Hilton in

charge of the manufacturing department of The Hilton Company? A. Well, a short while, to my knowledge.

Mr. McCarter: I don't see how that is cross-examination.

Q. Who was your superior as a cutter in that shop? A. Mr. Goldberg.

Q. Who was Mr. Goldberg's superior? A. Well, the Hilton Company.

Q. Was Mr. Joseph Hilton frequently in the shop? A. Yes.

Mr. McCarter: I object; that is not cross-examination.

The Court: I overrule it as not cross-examination; not only not cross-examination, but I fail to see the importance of it.

BELLANGEE D. PAULIN sworn:

Direct-examination by Mr. McCarter:

Q. You are in what business? A. In the men's and young men's clothing in the capacity of designer.

Q. And at present are engaged by The Hiltons? A. The Hiltons, yes.

Q. Did you do any work previous to your employment by the Hiltons in Newark in the way of designing? A. Yes.

Q. Where? A. Why, as near as I can recollect the number was 821 or 841 Broad Street.

Q. It was down Broad Street, lower end of this clothing row? A. Yes.

Q. About how long a time did you work there?

A. Why, from the middle of July, I should say about the middle of July.

Q. Until? A. Until the 1st of September.

Q. Now, what work were you engaged in? A. Well, making patterns.

Q. For men's clothing? A. For men's and young men's clothing.

Q. And who cut from those patterns? A. Why, Mr. Wolf.

Q. And what became of the goods that were cut from the patterns that you made? A. Why, they went to the Paterson store of Charlie Hilton's.

Q. By the way, who employed you? A. Mr. Alec Hilton.

CROSS-EXAMINATION by Mr. Hardin:

Q. How long were you employed before you went to work? A. Why, from the second week in July; about the 1st of September I signed an agreement with them, with Alec. Hilton.

Q. Signed an agreement on the 1st of September? A. Yes.

Q. Worked without an agreement up to that time? A. I was in my own position in New York at the time, and patterns I was to make depended on whether I was to get the position or not.

Q. The first contract you made, the first of September was with Mr. Joseph Hilton? A. Joseph Hilton was there.

Q. The permanent contracts you had, the written contracts you had was with Joseph Hilton? A. It was with the Hiltons.

Q. Joseph Hilton signed it? A. Mr. Alec Hilto signed it and Mr. Joseph Hilton.

Q. Joseph Hilton signed it also? A. Yes.

Q. Have you got it with you? A. No, sir.

Q. And where did you make the arrangement with Joseph Hilton and Alec. Hilton? A. Why, in this building, 841 or 821, I am not sure.

Q. Do you remember the date? A. Why, yes; I remember the date very well.

By the Court: Q. When was it? A. September 1st.

Q. 1916? A. 1916, yes.

Q. How long did they keep the loft there? A. I should judge five weeks after I went with them.

Q. Does that mean up to the 1st of September or five weeks after the 1st of September? A. After the 1st of September.

Q. Did you take charge of the manufacturing there? A. Yes, I took charge of the entire manufacturing.

MRS. ALEX. HILTON, sworn:

Direct-examination by Mr. McCarter:

Q. You are the wife of Alexander Hilton? A. Yes, sir.

Q. How long have you been married? A. Just about a year.

Q. Miss Young testified yesterday that one day at Asbury Park you and your husband met her and your huband Aexander asked her whether or not Mr. Philip Hilton would give Alexander employment. Did such a conversation take place? A. No, sir. To the contrary, I told her how well Alec. and Charlie were getting along working for their father.

Q. When was that conversation? A. I think it was around Labor Day.

Q. What year? A. 1916.

Q. Now, were you aware of the fact that we were all in court here on an application for preliminary injunction in this matter? A. Yes.

Q. Did you meet Miss Young on the trolley-car? A. Yes.

Q. That day? A. Yes.

Q. Did you have a conversation with her? A. Yes.

Q. I want to know whether upon that occasion you said anything like this to Miss Young: "How did you happen to make an affidavit so full of untruths?" And she replied to you that she had to make it in order to keep her position, or words to that effect? A. Yes, sir.

Q. She did? A. Yes.

CROSS-EXAMINATION by Mr. Hardin:

Q. Suppose you recall words that both of you used? A. Miss Young came up to me—

Q. In the trolley car? A. Yes, and she asked me how I was feeling; I said, "Very well," and I asked her the same; I asked her, I said. "Do you know when the trial is going on? She said, "No, she didn't;" I said, "That was some affidavit you made about Mr. Hilton, saying all those things when you know they are not true, when you always spoke and said what a wonderful man and what a wonderful character he was in comparison with Philip Hilton." She said, "Yes, it was a case of either making out the affidavit or losing of my position, and I certainly did not intend to lose my position." And I said, "Well, I know, but you always said Philip was such a terrible man," "I do still," she said, "Philip is the hardest man to get along with; nobody in the

world could get along with him;'' she said, ''If it wasn't my brother-in-law was the general manager there now I wouldn't be working for Philip Hilton.''

Q. That was the whole conversation? A. Yes.

Q. You said, ''Good-bye.'' A. I said good-by and asked her to come and see my new apartment.

Q. Were you on the car when she got on? A. Yes, and she came up to me.

Q. Did you leave the car before she did? A. Yes.

Q. What kind of a trolley-car was this as to route? A. Broad Street; I got on at Market and Broad Street, this side of Market and Broad, and she got on the other side; it went straight up Clinton Avenue and over to Elizabeth.

Q. What time of day was it? A. It was about half-past six in the evening.

Q. You are sure you have given us the whole conversation? A. Yes.

Q. When was this conversation in Asbury Park? A. I think that was over Labor Day, it was during some of the days make the vacation up of over Labor Day.

Q. Of 1916? A. Yes.

MRS. JOSEPH HILTON, re-called:

Direct-examination by Mr. McCarter:

Q. Philip Hilton says that while it is true that he met you in an automobile, it is untrue that your

son Charles was with you. I won't ask you about that; you have already testified about it. I want to ask you whether you ever had any automobile ride during the year 1916 with your brother-in-law Philip other than the one to which you testified the other day? A. I don't remember; I don't think I did, no, sir.

Q. He says he met you on the corner of Brandford Place in an afternoon not in the automobile and that you opened the conversation by some such question as this, that a terrible thing had happened, that Joseph had rented the Paterson store and that he agreed it was a terrible thing, and that you said Joseph would have to get out of it and Philip replied that he was afraid he could not get out of it if the lease was signed, and that thereupon Philip asked you to see Joseph that night and see if he would not sign it, surrender the lease, or, if he would not do that, would at least ascertain the name of the landlord. Did any such conversation ever take place between you and Philip? A. No, sir.

Q. Miss Young says that on a certain evening she took a meal at your house and she overheard a conversation between you and your husband in which the subject of the lease of the Paterson store was adverted to in which you urged Joseph to surrender that lease and he declined to do so and said he would rather give up any other lease

they had than that store. Did any such conversation take place? A. No, sir.

Q. You say no such conversation occurred? A. No, sir.

Q. Did you have any telephone conversation with Philip Hilton at all with reference to the Paterson store? A. No, sir.

No cross-examination.

CHARLES HILTON, re-called:

Direct-examination by Mr. McCarter:

Q. I show you an invoice from Herring Brothers, dated May 6, 1916 to C. M. Hilton, care Hilton Company, 291 Broad street, Newark. Did you order any goods from Herring Brothers? A. Yes, I did.

Q. And was this the invoice that came from them? A. Yes.

Offered in evidence and marked Exhibit D-31.

Q. Now, after the loft at 481 Broad Street was procured what patterns were used in the manufacture of clothes in the business that was there being conducted and prepared for?

Mr. Hardin: I don't think this is rebuttal.

A. As far as I can remember the only patterns we ever used were Mr. Paulin's patterns.

No cross-examination.

JOSEPH HILTON, re-called:

Direct-examination by Mr. McCarter:

Q. Mr. Hilton, some reference has been made to an insurance policy upon the stock at 843 Broad Street. When did you first learn that any policy of insurance had been applied for or taken out or procured upon that stock? A. About a month later, after the policy was issued.

Q. What did you direct to be done with that policy after you ascertained that it had been procured? A. Told my son to take it back.

Q. Was any premium ever paid on that policy? A. No, sir.

Q. Did you carry out from the store 791 Broad Street the book of advertisements containing the Providence advertisement? A. No, sir.

Q. Some reference has been made to the fact that some patterns were taken away. Was that by you? Was that a matter of comment during the negotiations leading up to the final sale by you? A. Yes.

Q. What conversation occurred in my office the day the papers were signed with reference to those patterns between you and Mr. Murray? A. I told Mr. Murray if he want the pattern he can have them; he said, "You better keep them, I give it to the boy and we will help you out as much as we could.

Q. Mr. Murray said that the day before the closing out of the deal that you called him on the telephone and asked him if he wouldn't endeavor to procure the consent of Mr. Philip Hilton to your using the name I. Hilton & Company in the business you proposed to conduct at Paterson.

Did that conversation take place? A. I never told him, never asked him for anything.

Q. He also said you repeated the same request the same day later, did he? A. I never said anything to him.

Q. He further says that he met you one day on the corner of Broad and Market Streets after the dissolution had been signed and that he asked you if he could do anything for you and that you said nothing, unless he, that is, Murray, can persuade Philip to let you use the name in Paterson, and he replied, "I can't do anything on that line, or words to that effect. Did that conversation take place? A. No, never conversation like this took place.

Q. You met him in Bamberger's? A. I met him in Bamberger's; I called him name, nobody should stand name I called him; I should not go to him and ask favors of him.

Q. When was it that you met him in Bamberger's? A. The second day from the dissolution, it was on Monday, Monday or Tuesday; I don't remember exactly; what I called him was a a shame.

The Court: Never mind.

Q. Now, during negotiaations and before the papers were signed, and I think, in fact, before the offer and acceptance were signed did you have any talk with Mr. Murray touching the good will and the name of the business? A. I did.

Mr. Hardin: If your Honor wants to go into this Mr. Murray is entitled to have the whole thing investigated rather than an occasional spot.

The Court: I ruled on that before; I am not going to change my ruling.

Q. Did you see or have any conversation with Mr. Hanser, the advertising agent, after the dissolution on June 24, and give him any information with reference to what you proposed to do? A. No, sir.

Q. Who gave to Sherman & Bryan the advertising that included the Providence store, did you? A. I don't know anything about it.

CROSS-EXAMINATION by Mr. Hardin:

Q. You had more than one conversation with Mr. Murray on the day that this transaction, these papers were passed in Mr. McCarter's office? A. I had one conversation but a good one.

Q. And whereabouts, in Mr. McCarter's office? A. Mr. McCarter's office.

Q. Mr. McCarter there all the time you were talking to Mr. Murray? A. I don't know, I don't remember.

Q. Was I there? A. I don't remember.

Q. Was Mr. McCarter there when Mr. Murray advised you by all means to keep the patterns? A. Mr. McCarter didn't show what he advised me.

Mr. McCarter: Answer the question. A. Mr. McCarter didn't advise me anything.

Mr. McCarter: That is not the question. Listen to the question. A. Mr. Murray offered me—

Mr. McCarter: Please listen to the question.

Q. (Question read) "Was Mr. McCarter there when Mr. Murray advised you by all means to keep the patterns?" A. I don't remember.

Q. As a matter of fact, you had objected, had you not, to making an affidavit that was wanted of you with reference to closing the title? A. I objected.

Q. You objected to making it because you said you had some patterns and this referred to transfer of patterns and you were unwilling to sign that because you had some patterns? A. Not on account of patterns, something else, but not on account patterns.

Q. Did you and Mr. Murray talk by yourselves that morning? A. I was upset and I was talking to Mr. Murray and I don't know who was around me. He was there and I was talking to him, he was supposed to be the boss, Philip's man.

Q. You don't remember whether Mr. McCarter as there or whether I was there? A. You were there, I remember; I don't know you were around Mr. Murray; Mr. Murray took me back with him in the hallway, I remember Mr. Murray wanted me to sign a paper of some kind; he wanted me to sign a paper that I should pay and I told Mr. Murray I wouldn't sign anything.

Q. When you and Mr. Murray were talking that morning in Mr. McCarter's office about the patterns, who opened the subject, you or Mr. Murray? A. I don't remember who opened the conversation.

Q. You don't remember whether you first spoke about the patterns or Mr. Murray spoke about the patterns? A. I don't remember, Mr. Hardin.

Q. When you sent back the insurance policy on 841 Broad Street do you remember sending it back because it was for a year and you were not going to stay there that long? A. I sent it back because it come from Mr. Murray, that is the reason I sent it back.

Q. You were sore on Mr. Murray? A. I am sore today yet.

Q. Did you place the insurance elsewhere? A. I guess we did.

Q. What company? A. I don't remember exactly what company; I told the boss to place it somewhere else.

Q. You don't know as a matter of fact it was placed or not. A. It was placed; Mr. Younker at that time took hold of the insurance and placed everything.

Q. Did Mr. Younker come to you before the Paterson store was opened? A. No, sir.

Q. How did Mr. Younker take charge of the insurance then in 841 Broad Street? A. The boys took charge of it before.

Q. Mr. Younker did not have anything to do with it, you are mistaken? A. Mr. Younker took charge afterwards when he come from Chicago.

Q. You remember meeting Mr. Murray sometime after this matter was closed, somewhere along the middle of July, taking lunch with him? A. I never tried to meet him, never want to meet him.

Q. Did you meet him and take lunch with him?

The Court: Yes or no? A. No.

Q. Never had any luncheon with him in July? A. No, only one time in July.

Q. Or August? A. No, sir.

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. While the manufacturing was going on at 791 Broad Street of the goods that had been ordered by Charlie did Mr. Jacobstein come to you

and ask you in the presence of Mr. Wolf if they did that manufacturing would you be responsible for the bill? A. Yes.

MAX YOUNKER, re-called:

Direct-examination by Mr. McCarter:

Q. During the early summer of 1916 did Philip Hilton say anything to you about his project of having a store on the side in Kansas City? A. He did.

Q. What did he say? A. He broached the subject to me, also in early spring as well as in the summer.

Q. What did he say? A. He had an ideaa f opening a store in Kansas City and getting all the managers and salesmen of the different stores interested in it; he broached the subject to me and said he wanted me interested and I said I hadn't enough money; he said, "Can't you get the others interested?" I said, "Why," he said, "They have a lot of confidence in you and will do pretty near what you tell them." He broached the subject to me twice and once went down to Kansas City.

Q. Now, I show you Exhibit 27 for identification, being the writeup of the dissolution that has been referred to, and ask you on June 23 and 24 where you were located? A. I was in Chicago, sir.

Q. In charge of what store? A. Chicago.

Q. Did you get any directions with reference to inserting in the newspapers out there a writeup

similar to the writeup that is contained in Exhibit C-27 for identification? A. I did, sir.

Q. In writing? A. I did.

Q. I show you a letter dated Hanser Agency, advertising, Kineey Building, Newark, June 23, 1916, and see if that is the letter you received? A. I recognize the letter, sir.

Q. Pursuant to the request contained in that letter what did you do with reference to the writeup out in Chicago? A. I got the writeup inserted in the Chicago American and Chicago Daily Evening News, and also inserted local notice in the Chicago Evening News.

Q. Was the writeup the same writeup as seems to be in this exhibit? A. Well, about the same thing.

Mr. McCarter: I would like to offer the letter in evidence.

Marked Exhibit D-32.

CROSS-EXAMINATION by Mr. Hardin:

Q. Do I understand you to say the enclosure in this letter was like the exhibit Mr. McCarter showed you? A. I said something like it, sir.

Q. Hilton Brothers partnership, Exhibit 27? A. Something like it.

Q. I notice this letter refers to the local notice, "Wish to have inserted in the Chicago Daily News on Monday." A. Yes.

Q. Then the paper had two things in, one something like this Exhibit C-27 and also formal local notice? A. It had copy, it didn't have the newspaper clipping, it had a copy, and I was to get the Chicago News to put it in, and the Chicago American; they both put it in in different ways;

the Chicago News and Chicago American gave us a pretty good writeup.

Q. You also put in local notice? A. Yes.

Q. What is this word down at the bottom of this? A. That is a slang Jewish word.

Q. What is it? A. The same thing, and it is hard to translate it; I can't translate it; that is about all, it is a slang word.

Q. You tell me it is a slang word; what does it mean? A. This word to tell exactly you will have to get a competent linguist.

Q. You understand what it meant, what did it mean when you got it? A. I just had a faint idea, and Hanser is not a Jew and I don't know how he came to do that.

Q. What did it mean to you when you got it?

Mr. McCarter: Is that material.

A. "Big argument."

Q. That referred to the row between the two Hiltons, didn't it? A. It meant some trouble.

Q. The trouble is over that word? A. I don't know; he was a thousand miles away from me when he wrote it, I can't tell his thoughts.

Q. You got this letter clear back June 23, 1916; you knew about the conditions between these brothers, didn't you? Well, from hearsay; that is when I was in Chicago.

Q. You were in Chicago when you got this letter? A. Yes.

Q. This postscript the row is over—

Mr. McCarter: I object.

The Court: He says now he don't know; I won't let it go any further.

Q. You are the same Mr. Younker that was present and testified on the stand the other day

about the interview in Chicago before Mr. Hanser? A. Yes.

Q. You have had this letter ever since you received it, June, 1916? A. Yes.

Q. You kept it in private files somewhere? A. I found it amongst other letters; I was looking over some letters last night and I found it.

Q. Just found it last night? A. I knew I had it; I got it last night.

Q. This is a business letter of The Hilton Company, isn't it, received by you when you were in the employ of The Hilton Company? A. Written to me.

Q. You were in the employ of The Hilton Company? A. Yes.

Q. With reference to Hilton and Company business? A. Yes.

JOHN J. BRENNAN, re-called:

Direct-examination by Mr. McCarter:

Q. Were you in court this morning when Mr. Duffy testified? A. No.

Q. You were sent for? A. Yes.

Q. He says that he has known you for twelve years in Newark? A. Wrong.

Q. How long have you lived in Newark? A. A little over seven years.

Q. He said on the day he referred to as having been in the store you were salesman, and about which you have already testified, that you were not in the store at all, but that you stood at or near the corner of a street somewhat above the

store when he went out at 12:25, smoking a cigarette; is that a fact? A. No, sir; it is not.

Q. Do you know the gentleman? A. Yes, I met him once, I belive, once or twice in saloon in nearby locality around town.

CROSS-EXAMINATION by Mr. Hardin:

Q. You mean saloons in nearby localities in Newark? A. In Newark, yes.

Q. And where did you live before you lived in Newark? A. Philadelphia.

Mr. McCarter: I want to offer in evidence the two exhibits, all exhibits we have got marked for identification I would like to have marked in evidence.

We rest.

FRANK J. MURRAY, re-called:

Direct-examination by Mr. Hardin:

Q. Did you talk with him about the patterns on that day, or some patterns? A. I listened to your conversation with him about the patterns.

Q. Did you tell him that day by all means to keep the patterns? A. No, sir.

Q. Did you talk with him about patterns on that day, or some patterns? A. I listened to your conversation with him about the patterns.

Q. Did you tell him by all means to keep the patterns? A. No, sir.

Q. Do you remember how he came to talk with me about the patterns or you came to talk with

me about the patterns? A. I had no conversation with him about the patterns; we were in the ante-room of Mr. McCarter's office, you and myself and Mr. Hilton and Mr. Brinn, I believe Mr. Brinn was there that time, he was there later, anyway; I think he was there then; Mr. Hilton said he wanted an affidavit from Joseph Hilton that—

By Mr. McCarter: Q. Was Joseph present at this? A. Joseph was present, yes—as to the amount of money, limit on the amount of money had had drawn from the business between May 5 and June 24, Mr. Hardin drew up that affidavit, and when it was drawn Mr. Hilton objected because no exception of patterns was made and insisted upon patterns being excepted from that aggregate which he was allowed as a limit, and Mr. Philip Hilton at first declined to except it, but Mr. Joseph Hilton refused to sign it unless that change were made, and Mr. Hilton had the affidavit redrawn with that exception.

Q. Now, have you told all you had to do with Mr. Philip Hilton and Mr. Joseph Hilton with reference to patterns on that day? A. Yes.

CROSS-EXAMINATION by Mr. McCarter:

Q. You say all this occurred in the ante-room in my office? A. No, sir; I don't think it all did, it may have.

Q. Was Philip Hilton in my office that day? A. No, sir.

Q. Did any conversation occure about patterns there that day? A. This conversation, yes.

Q. What conversation? A. The one that I have related.

Q. Namely? A. Mr. Hardin told Mr. Hilton that he would have to give an affidavit to Mr.

Philip Hilton stating a maximum amount he had drawn; he said he might have drawn all the money out of the business, and check would come in later, and Mr. Hardin drew the affidavits after the agreement was made on the amount of the limit, and when it was drawn Mr. Hilton objected on the ground that it would require him to return the patterns, and he wanted an exception made of the patterns, and I think we had to wait an hour or so for you, the appointment I understood was eleven o'clock, and we were not able to see you, I believe you were out, but at any rate we could not see you until about 12 o'clock.

Q. You say Mr. Hardin dictated, drew the affidavit or had it dictated? A. Mr. Hardin, I believe, went up in his office, dictated to his stenographer and had it drawn up there.

Q. Sure about that? A. That is my recollection, yes.

Q. And did not the conversation occur in my own private office and wasn't Mr. Hardin there and wasn't I there and wasn't Mr. Joseph Hilton there and wasn't new affidavit prepared and wasn't this new affidavit, wasn't that dictated by me in my office and isn't that my own typewriting out of my own machine? A. As I said before, I was not certain whether the matter was completed in your office or all down in the ante-room; my recollection is that the first affidavit was done by Mr. Hardin, brought down and objected to, and it may be that the second affidavit was drawn in your office.

Q. Didn't I summon the stenographer to my room and dictate that affidavit myself and didn't I take that affidavit? A. You took the affidavit, yes, but Mr. Hardin prepared it.

Q. And didn't Mr. Philip Hilton object to the first affidavit that it was suggested he should sign because it overlooked the fact or would have him say that he had taken nothing whereas he had admitted he had taken patterns of Joseph Hilton? A. My recollection of what Joseph Hilton said was he was not going to give back those patterns, Philip wanted the patterns back, Philip told him, Joe, he must return the patterns.

Q. How did the first affidavit read, that he must give back the patterns? A. No, it read the same as this affidavit except it did not contain the words "except patterns."

Q. Wasn't the execution of it objected to because of the fact that he had taken nothing from the enterprise except patterns? A. No, sir; he wanted the words "except patterns" inserted.

Q. And a conversation occurred about that, didn't it? A. Such as I have related, yes.

Q. You said he said he would not return the patterns? A. He said he would refuse to return the patterns.

Q. Mr. Hardin did not remain all through that performance, did he? A. He remained until everything had been agreed upon.

Q. Were not most of the papers signed after Mr. Hardin had left? A. In your office, you mean?

Q. Have I referred to anything else at all except that Mr. Philip Hilton signed these papers in Mr. McCarter's office? A. Mr. Hardin was there when he signed them.

Q. I am talking about the time Mr. Joseph Hilton signed in my office; didn't Mr. Hardin leave before the transaction was closed? A. Yes, I think he did.

RE-DIRECT-EXAMINATION by Mr. Hardin:

Q. You went from Mr. McCarter's office to my office to see Mr. Philip Hilton about this pattern matter, did you not? A. Yes.

Q. And after you returned consent was given to change the affidavit? A. Yes.

Q. Did you lunch with Mr. Joseph Hilton at any time during July? A. The same day of the closing, June 24, I went to lunch right after we left Mr. McCarter's office with Mr. Hilton and Mr. Brinn.

Q. Now, later in July did you? A. Yes, on the 13th, I think, of July, Mr. Hilton called me up and asked me and Mr. Jacobstein to meet him in Thompson's hat store and go lunch with him in Bamberger's.

Q. Did Mr. Jacobstein and you meet him and go to lunch with him? A. Yes.

Exhibit C-73

Written memo. on back: Beginning Oct. 20, 1915

THE HILTON CO.
New York Stores
Broadway, at 14th St.—
Broadway, at 37th St.—
85 Nassau St., *Near Fulton*
Brooklyn: Fulton St., cor. Gallatin Pl.
Newark: 793 Broad St.

BEEN ON FIFTH AVENUE LATELY?

(DESIGN)

Look the next time for this model. It is not common.

HILTON
makes it possible for you to buy it—this beautiful Overcoat for

$15

That is the HILTON policy—exclusive style at popular prices.

Why pay $30. or more for such an Overcoat, we want to know?

ASK
TO SEE THIS MODEL.

HILTON—Stores in New York.
Brooklyn,
Newark,
Philadelphia,
Pittsburg,
Chicago,
Providence,
Boston.

Exhibit C-74

Written memo. on back: Beginning Apr. 12, 1916

HILTON'S
New York Stores:
Broadway, at 14th St.—
Broadway, at 37th St.—
85 Nassau St., *Near Fulton*
Brooklyn: Fulton St., cor. Gallatin Pl.
Newark: 793 Broad St.

YOUTH

(DESIGN)
Prices
Range
from
$12.50 to
$40

Without a single extravagance—conservatism with distinctive dignity—are the qualities peculiar to
HILTON CLOTHES
that have won for us the patronage of younger men.

THE SANFORD
At
$20
is an example of the virile and smart style of HILTON CLOTHES—designed, cut, tailored and retailed by us.

Stores also
PHILADELPHIA, CHICAGO.
BOSTON, PITTSBURG,
PROVIDENCE.

Exhibit C-75

Written memo. on back: Beginning Jan. 22, 1916

THE HILTON CO.
New York Stores:
Broadway, at 14th St.—Broaday, at 37th St.—
85 Nassau St., *Near Fulton*
Brooklyn: Fulton St., cor. Gallatin Pl.
Newark: 793 Broad St.

Other Stores
in
Philadelphia
Pittsburg
Chicago
Boston
Providence

We design,
cut, tailor and
retail
HILTON CLOTHES

(DESIGN)

HILTON'S
MARK DOWN SALE

Our
Midwinter
Mark Down sale.
is now on in full swing.
It embraces our entire remaining stock of Suits and Overcoats of Fall and Winter—at the following substantial reductions.

$18.00 Suits and Overcoats $11.75

$20.00 Suits and Overcoats $13.50

$28.00 Suits and Overcoats $17.50

$30.00 Suits and Overcoats $19.75

$35.00 Suits and Overcoats $22.50

Exhibit C-76

Written memo. on back: Beginning July 18, 1916

DISSOLUTION OF PARTNERSHIP
Between Joseph Hilton and Philip Hilton
Trading as
THE HILTON CO.

PHILIP HILTON has acquired the entire interest in this company, and on account of the financial readjustment resulting from this change in the personnel of the concern, this Extraordinary Sale is necessary. This result must be brought about quickly—and to that end

EVERY SUIT IN STOCK HAS BEEN RADICALLY REDUCED

Note: These Sale Prices Are Subject to Withdrawal Without Notice. Sale Will Terminate the Day the Desired Result Has Been Secured.

$15 and $18 Men's Suits Reduced to $11.50	$20 and $22.50 Men's Suits Reduced to $14.75

$25 and $28 Men's Suits Reduced to $17.75	$30 and $35 Men's Suits Reduced to $23.50	$40 Men's Suits Reduced to $26.50

STORES OPEN SATURDAY EVENINGS
UNTIL 10 o'clock.

Exhibit C-77

THE HILTON CO.
The Young Men's Stores
New York Stores
Broadway, at 14th Street, Broadway, at 37th Street, 85 Nassau St., Near Fulton
BROOKLYN: Fulton Street, Corner Gallatin Place.
Newark: 791 Broad Street
STORES ALSO IN PHILADELPHIA, PITTSBURGH, CHICAGO, BOSTON AND PROVIDENCE.

Exhibit C-77

Written memo on back: Beginning Jan. 19, 1917

(Design)

THE HILTON CO.
ANNUAL CLEARANCE SALE
Entire remaining stock of fall and winter suits and overcoats substantially reduced in price.

Note particularly the addresses of our three New York stores:
New York City.
85 Nassau Street, at Fulton St.
853 Broadway, Cor. 14th St.
1375 Broadway, Cor. 37th St.
Newark Store
793 Broad St., at Market St.
Brooklyn store
408-12 Fulton St., Cor. Gallatin Pl.

ALSO STORES IN PHILADELPHIA, PITTSBURG, CHICAGO, PROVIDENCE AND BOSTON.

Exhibit C-78

Written memo. on back: Beginning Aug. 4, 1916

Three New York Stores:

Broadway Corner 14th Street

Broadway Corner 37th Street

85 Nassau St.
Near
Fulton Street

Brooklyn: 408-412 Fulton Street, Corner Gallatin Place.

Newark: 379 Broad Street.

(DESIGN)
HILTON'S
AUGUST CLEARANCE

$12.50—$15
SUITS
Reduced to $11.00

$18—$20
SUITS
Reduced to $14.00

Exhibit C-79

$22.50—$25
SUITS
Reduced to $17.00

$28—$30
SUITS
Reduced to $21.00

$35—$40
SUITS
Reduced to $24.00

THE HILTON CO.
STORES ALSO IN PHILADELPHIA, PITTSBURGH, CHICAGO, BOSTON and PROVIDENCE.

Exhibit C-79

Written memo. on back: Beginning May 11, 1916

THE HILTON CO.
The Young Men's Stores
New York Stores:
Broadway, at 14th Street
Broadway, at 37th Street
85 Nassau Street, near Fulton
Brooklyn: Fulton Street, Corner Gallatin Place
Newark: 793 Broad Street
THE "STROLLER"
A New Hilton Model at
$20 (DESIGN)

Exhibit C-80

HILTON CLOTHES
come to you
DIRECT—
combining all the virtues of Quality and Style, with the saving of the middlemen's profits.
Prices
$12.50 to $40.00
HILTON STORES IN
New York, Brooklyn, Newark, Boston, Providence, Chicago, Pittsburg, Philadelphia.

Exhibit C-80

Written memo. on back: Beginning Oct. 23, 191t

ONE-PIECE SEAMLESS COAT
Devoid of Seams
New York,
Brooklyn, Newark,
Boston, Providence,
Philadelphia,
(DESIGN) Pittsburg, Chicago.
Designed by
THE HILTON CO.
In Both Suits and Overcoats. $15 to $40.
ANOTHER EVIDENCE OF
HILTON leadership

Exhibit C-81

Written memo. on back: Beginning Jan. 19, 1917

THE HILTON CO.
ANNUAL CLEARING SALE

Entire remaining stock of fall and winter suits and overcoats substantially reduced in price.
85 Nassau St.
Broadway, Cor. 14th St.
Broadway, Cor. 37th St.
Brooklyn
408-12 Fulton St.
Newark: 793 Broad St.

Exhibit C-82

Written memo. on back:Beginning Sept. 2, 1916

THE HILTON CO.
An Advance Fall Model of Hilton "STYLE-BUILT" Clothes

(DESIGN)

THREE NEW YORK STORES:
Broadway, Corner 14th Street
Broadway, Corner 37th Street
85 Nassau St., Near Fulton Street
Brooklyn: 408-412 Fulton Street, Corner Gallatin Place
Newark: 793 Broad Street

Exhibit C-83

Written memo. on back: Beginning Aug. 5, 1916

HILTON'S AUGUST CLEARANCE SALE

Entire Stock of Men's Suits Reduced

$12.50—$15 Men's Suits NOW	$11.00	$18—$20 Men's Suits NOW	$14.00
$22.50—$25 Men's Suits NOW	$17.00	$28—$30 Men's Suits NOW	$21.00
		$35—$40 Men's Suits	$24.00

NOW

THE HILTON COMPANY

New York: 1375 Broadway Corner 37th St.	New York: 853 Broadway Corner 14th St.	New York: 85 Nassau St.
Brooklyn: 408-412 Fulton St. Corner Gallatin Place		Newark: 793 Broad St. At Market Street

STORES ALSO IN PHILADELPHIA, PITTSBURG, CHICAGO, PROVIDENCE AND BOSTON.

Exhibit C-84

Written memo. on back: *Beginning Dec. 21, 1915*

HILTON CLOTHES

reflect both in fabric and style, as well as fit, the work of the costly custom tailor.

Our prices are a revelation of moderateness $12.50 to $40.00

THE HILTON CO.

New York Stores
Brodway at 14th St.
Broadway at 37th St.
85 Nassau St.

Brooklyn
Fulton St. cor. Gallatin Pl.

Newark
793 Broad St.

Exhibit C-85

Written memo. on back: Beginning Jan. 23, 1917

(DESIGN)

THE HILTON CO.
ANNUAL
CLEARANCE SALE

Entire remaining stock of fall and winter suits and overcoats substantially reduced in price.

Note particularly the addresses of our three New York stores:

New York City.
85 Nassau Street, at Fulton St.
853 Broadway, Cor. 14th St.
1375 Broadway, Cor. 37th St.

Newark Store
793 *Broad St.*, at Market St.

Brooklyn Store
408-12 *Fulton St.*, Cor. Gallatin Pl.

Also stores in Philadelphia, Pittsburg, Chicago, Providence and Boston.

Exhibit C-86

(*Written memo. on back.*)

K. B. CONGER,
President

P. C. MILLER,
Secretary

TUNNEL ADVERTISING COMPANY
No. 30 Church Street
New York

May 11, 1915.

THIS CONTRACT IS NOT BINDING UNLESS ACCEPTED BY ONE OF THE ABOVE OFFICERS OF THE COMPANY

To TUNNEL ADVERTISING COMPANY:

We hereby lease from you a space mentioned below in the cars of the HUDSON AND MANHATTAN RAILROAD COMPANY, upon the terms and conditions printed on the back hereof, for a term of Six (6) months, commencing June 1st, 1915, and terminating on December first Nineteen hundred and fifteen and in consideration of the above we agree to pay you the sum of Four Hundred and Fifteen dollars ($415.00) per month, payable monthly, in advance, during the term of this contract. Space to be as follows: one space 16 x 28″ next to centre door in all cars owned and operated by the Hudson & Manhattan R. R. Co. during the term of this contract. Subject of advertising:—Hilton Clothing Co.

The Hilton Co., is hereby given the right to continue this contract upon the same terms for a further period of two years and six months from and after its termination, providing the Hilton Co. shall have given written notice to that

effect to the Tunnel Advertising Company at least 15 days prior to December 1st, 1915. If the Hilton Co. does not continue this contract after its termination they shall pay to the Tunnel Advertising Company an additional sum of $249.00 on December 1st, 1915.

The letter of Tunnel Advertising Company of April 26, 1915 addressed to the Hilton Co., is hereby made a part of this contract.

Privilege to advertiser to change signs weekly.

Name, Hilton Co.

By Joseph Hilton

Address,

Accepted:

TUNNEL ADVERTISING COMPANY

By P. Compton Miller,

Secy.

Exhibit C-87

(Written memo. on back.)

April 26th, 1915.

The Hilton Co.,
Newark, N. J. MR. NATHENSON:
Gentlemen:—

Mr. Turner tells me of his talk with you about advertising in the Hudson Tunnels, and brought to my attention especially your inquiry as to whether or not we could provide you with some posters at various stations, and three painted signs on columns at the Hudson Terminal.

Or course our rates for car advertising have been based on the car service alone and posters and painted signs are sold under separate contracts. However, we are in line with every one at this time seeking business, especially of a substantial nature, and I beg to say that if the Hilton Co. will contract with us over a period of years for the 16 x 28″ space next to the centre door in the Hudson Tunnel cars I would include twenty one-sheet posters distributed at various stations and three painted signs on columns of the Hudson Terminal, you to pay the cost of painting.

I hope that you and Mr. Turner will be able to close up the contract at an early date.

Very truly yours,
P. C. M.,
Secretary.

ENCL.

Exhibit C-88

(*Written memo. on back.*)

K. B. CONGER, President

P. C. MILLER, Secretary

TUNNEL ADVERTISING COMPANY
No. 30 Church Street
New York

December 9, 1915.

THIS CONTRACT IS NOT BINDING UNLESS ACCEPTED BY ONE OF THE ABOVE OFFICERS OF THE COMPANY

To TUNNEL ADVERTISING COMPANY:

We hereby lease from you space mentioned below on the Concourse floor of the Hudson Terminal Station, of the HUDSON AND MANHATTAN RAILROAD COMPANY, upon the terms and conditions printed on the back hereof, for a term of Twelve months, commencing January 15, 1916, and in consideration of the above we agree to pay you the sum of Sixty-five dollars ($65.00) per month, payable monthly, in advance, during the term of this contract. Space to be as follows: space for show case south of column at the foot of the northeast stairway to Dey St. Show case not to be higher than tile work on the column. Other dimensions of the case to be approved by the Tunnel Advertising Company from plans to be submitted by Hilton Company. The Tunnel Advertising Co. will furnish reasonable amount of current for electric lights.

Name, Hilton Co.

By Joseph Hilton

Accepted: Address,

TUNNEL ADVERTISING COMPANY

By

Exhibit C-90

(Written memo. on back.)

K. B. CONGER,
President

P. C. MILLER,
Secretary

TUNNEL ADVERTISING COMPANY
No. 30 Church Street
New York

November 23, 1915.

THIS CONTRACT IS NOT BINDING UNLESS ACCEPTED BY ONE OF THE ABOVE OFFICERS OF THE COMPANY

To TUNNEL ADVERTISING COMPANY:

We hereby lease from you a space mentioned below in the cars of the HUDSON AND MANHATTAN RAILROAD COMPANY, upon the terms and conditions printed on the back hereof, for a term of Six (6) months, commencing December 1st, 1915, and terminating on June first Nineteen Hundred and sixteen and, in consideration of the above we agree to pay you the sum of Four Hundred and Fifteen dollars ($415.00) per month, payable monthly; in advance, during the term of this contract. Some to be as follows: One space 16 x 28″ next to centre door in all cars owned and operated by the Hudson & Manhattan R. R. Co during the term of this contract.

Subject of advertising:—"Hilton Clothing Co."

The Hilton Co., is hereby given the right to continue this contract upon the same terms for a further period of two years and six months from and after its termination provided the Hilton Co. shall have given written notice to that effect to

the Tunnel Advertising Company at least 15 days prior to June 1st, 1916.

P. C. M.

The letter of Tunnel Advertising Company of April 26th, 1915, addressed to the Hilton Co., is hereby made a part of this contract.

Privilege to advertiser to change signs weekly. In consideration of the execution and delivery of this agreement it is mutually agreed that the Hilton Co. is hereby released of all obligation or liability to pay to the Tunnel Advertising Company the additional sum of $249.00 on December 1st, 1915 as provided by the previous agreement dated May 11th, 1915.

Name, Hilton Co.

By Joseph Hilton

Accepted: Address,

TUNNEL ADVERTISING COMPANY

By P. Compton Miller,

Secy.

Exhibit C-91

(*Written memo. on back.*)

K. B. CONGER,
President

P. C. MILLER,
Secretary

TUNNEL ADVERTISING COMPANY
No. 30 Church Street
New York

February 9th, 1916.

THIS CONTRACT IS NOT BINDING UNLESS ACCEPTED BY ONE OF THE ABOVE OFFICERS OF THE COMPANY

To TUNNEL ADVERTISING COMPANY:

We hereby lease from you space mentioned below on the 33rd Street Station floor of the HUDSON AND MANHATTAN RAILROAD COMPANY, upon the terms and conditions printed on the back hereof, for a term of Twelve months, commencing March 15th, 1916, and in consideration of the above we agree to pay you the sum of Forty-five dollars ($45.00) per month, payable monthly, in advance, during the term of this contract. Space to be as follows: Space for show case near exit to Saks' Store, covering the Steero Cube sign. Size to be 6 ft. high by 10 ft. long. Other dimensions of the case to be approved by the Tunnel Advertising Company from plans to be submitted by Hilton Company. The Tunnel Advertising Company will furnish reasonable amount of current for electric lights.

Name, Hilton Co.
By J. Hilton
Accepted: Address,
Newark, N. J.

TUNNEL ADVERTISING COMPANY
By P. Compton Miller,
Secy.

Exhibit C-93

(*Written memo. on back.*)

K. B. CONGER,
President

P. C. MILLER,
Secretary

TUNNEL ADVERTISING COMPANY
No. 30 Church Street
New York

April 26, 1916.

Hilton Co.

THIS CONTRACT IS NOT BINDING UNLESS ACCEPTED BY ONE OF THE ABOVE OFFICERS OF THE COMPANY

To TUNNEL ADVERTISING COMPANY:

We hereby lease from you a space mentioned below in the cars of the HUDSON AND MANHATTAN RAILROAD COMPANY, upon the terms and conditions printed on the back hereof, for a term of One Hundred and Twenty, months, commencing June 1st, 1916, and in consideration of the above we agree to pay you the sum of Five Hundred and Twenty-five dollars ($525.00) per month, payable monthly, in advance, during the term of this contract. Space to be as follows: As shown on Exhibit "A" attached hereto, which is hereby made a part of this contract.

Subject of advertising:—"HILTON'S CLOTHES". Cards may be changed and new cards inserted once each week.

Name, Hilton Co.
By Philip Hilton,
Joseph Hilton.

Accepted: Address,
791 Broad Street, Newark, N. J.

TUNNEL ADVERTISING COMPANY
By P. Compton Miller,
Secy.

Exhibit C-93

Exhibit "A," part of contract between Tunnel Advertising Co. and Hilton Co., dated April 26, 1916.

One space 16 x 28" next to centre door in all cars owned and operated by the Hudson & Manhattan Railroad Co. during the term of this contract.

30 x 46 Twenty (20) one-sheet poster spaces distributed among various stations of the Hudson & Manhattan Railroad Co.

3 x 10 One plaster face above the tile on three columns at Hudson Terminal, now used for painted signs by Hilton Co.

All cost of painting to be borne by Hilton Co.

Space on Concourse floor of Hudson Terminal for show case (being the space now occupied by a show case of Hilton Co.) on the west and south sides of column at the foot of the northeast stairway to Dey Street. The case to be the same dimensions as the present case at this location. Tunnel Advertising Co. will furnish a reasonable amount of electric current for lighting this booth.

Space on the Concourse floor of the Hudson Tubes Station at 33d St. and 6th Ave., being on the north wall, between the passageway leading to Saks' corner and the stairway leading to Gimbel's corner. Size to be 6 feet high by 10 ft. long by 2 ft. 10 inches deep. The Tunnel Advertising Co. will furnish a reasonable amount of electric current for lighting this booth.

It is agreed that no other show case space on the Concourse floor of the Hudson Terminal or at Hudson Tubes Station 33rd St. shall be leased during the term of this contract for displaying men's suits.

Exhibit C-93

The execution of this contract by Hilton Co. and its acceptance by the Tunnel Advertising Co. shall terminate and cease two contracts between the parties hereto, one for a show case space at Hudson Terminal on a contract dated December 9, 1915, and the other for a show case space at 33rd St. Station on a contract dated February 9, 1916.

In addition to the above mentioned space, the following space is also to be included in this contract:—Space for show case at the Cortlandt St. end of the Hudson Terminal Concourse, around four sides of column in front of the Barber Shop, to extend out three feet from the column, and to extend from the floor up to the top of the tile. The Tunnel Advertising Co. will furnish a reasonable amount of electric current for lighting this show case.

Hilton Co. may assign this contract to another clothing dealer but only for the purpose of advertising men's clothing, and the right to so assign is upon the condition that such assignment shall not release or discharge the said Hilton Co. from any liability whatsoever under this contract, and that said Hilton Co. will continue fully liable hereon without notice in case of default of any of the terms of this contract by any party to whom it may be assigned.

This contract to be binding upon the Hilton Co. it must be signed by Phillip and Joseph Hilton, partners, trading as the Hilton Co., and it is expressly understood that all advertising copy for the space mentioned in this Exhibit "A" must be signed by Phillip Hilton for the first year of this agreement and by Phillip and Joseph Hil-

Exhibit C-93

ton thereafter. The death, retirement, or incapacity of either of (Exhibit "A," page 2,) the said partners shall not abrogate this contract, and in the event of the death, retirement, or incapacity of one of the partners copy shall be furnished by the other party.

This agreement is based on the understanding that the average annual traffic in the Hudson Tubes is sixty million people. If the average annual traffic should fall below that number there shall be a corresponding reduction in the rental to be paid by Hilton Co.

Hilton Co. has the right to terminate
Approved (and cancel this agreement on May 31,
P. H. (1912, upon first having given Tunnel
5/4/1916 (Advertising Co. four (4) months prior
(written notice of intention to so ter-
(minate and cancel, and also upon hav-
(ing first paid to Tunnel Advertising
(Co. the sum of $2,000.00 bonus for
(this right to terminate and cancel this
(agreement.

HILTON CO.,
By Philip Hilton,
Joseph Hilton.

Exhibit C-95

Written memo. on back: Beginning May 18, 1915

HILTON'S

THIS SUIT
SELLS FOR—
$20.00 (DESIGN)
Other Hilton Models
$12.50 to $40.00
(Crest)
New York
Broadway at 14th
Broadway at 37th
Nassau near Fulton
Brooklyn
Fulton at Smith
Newark
793 Broad Street
Other Stores
Chicago Philadelphia
Providence.
Boston Pittsburg

Exhibit C-96

Written memo. on back: Beginning June 30, 1915

THE HILTON CO.
New York Stores
Broadway at 14th St.
Broadway at 37th St.
85 Nassau St. Near Fulton

---

793 Broad St.
Newark, N. J.
Fulton & Smith St.
Brooklyn, N. Y.

(DESIGN)

THE
ARGYLE
An
Exclusive
HILTON CREATION
in
BLUE SERGE
$20.

Made in One—Two and Three Button Models Either Plain or Patch Pockets. See these Suits in Our Windows.

STORES
New York
Chicago
Boston
Pittsburg
Phila.
Providence
Brooklyn
Newark.

Exhibit C-97

Written memo. on back: Beginning Aug. 10, 1915

THE HILTON CO.
New York Stores
Broadway at 14th St.
Broadway at 37th St.
85 Nassau St. Near Fulton
Fulton & Smith Sts., Brooklyn
793 Broad St., Newark, N. J.

All
Summer
Suits
Now
Greatly
Reduced

THE
SANFORD
A Correctly
Proportioned
and
Scientifically Designed
Model for
STOUT MEN
$20.

Hilton Made Clothes for Stout Men possess that touch of individuality found only in the Higher Priced Custom Made Suits.

(DESIGN)
STORES
New York
Chicago
Boston
Pittsburg
Phila.
Providence
Brooklyn
Newark

Exhibit C-98

(*Written memo on back.*)

(DESIGN)

HILTON'S
New
SPRING
MODELS
SUITS
and
TOP COATS
$12.50
$40.

Exhibit C-99

(*Written memo. on back.*)

(DESIGN)

HILTON'S
In creating a series of
SPRING
MODELS
that really meet the demands of younger men we feel that we have accomplished the impossible

To produce youth without foppishness—conservatism with real distinction is an achievement.

The Hilton Co.

Exhibit C-100

(*Written memo on back.*)

HILTON'S
SUITS & OVERCOATS
$12.50 $15. $18.

Not Reductions—
Not Special Prices—
But actual savings made
possible by

Hilton Designing
Hilton Cutting and
Hilton Tailoring

Selling direct from Maker to Wearer.

Exhibit C-101

(*Written memo on back.*)

HILTON'S
SUITS & OVERCOATS
$12.50 $15. $18.

By designing, cutting, tailoring and retailing Hilton Clothes ourselves. We are able not only to give you intensely individual creations, but also save you the retailers part of the profit in the transaction.

Exhibit C-102

(*Written memo. on back.*)

(DESIGN)

HILTON'S
New
SPRING
MODELS
SUITS
and
TOP COATS
$12.50
to
$40.

Exhibit C-103

HILTON'S

½ PRICE
SALE

A Hilton sale is never held for any other purpose than to bring a season to its logical conclusion. Our season is now technically over and big reductions are now in order.

SUITS & OVERCOATS

~~15.00~~		~~25.00~~	
Now	$ 7.50	Now	$12.50
~~18.00~~		~~28.00~~	
Now	$ 9.	Now	$14.
~~20.00~~		~~30.00~~	
Now	$10.	Now	$15.
~~22.50~~		~~35.00~~	
Now	$11.25	Now	$17.50
	~~40.00~~		
	Now $20.		

Exhibit C-104

HILTON'S

½ PRICE

SALE

A Hilton Sale is never held for any other purpose than to bring a season to its logical conclusion.

Our season is now technically over and big reductions are now in order.

SUITS & OVERCOATS

~~15.~~			~~25.~~	
Now	7.50		Now	12.50
~~18.~~			~~28.~~	
Now	9.		Now	14.
~~20.~~			~~30.~~	
Now	10.		Now	15.
~~22.50~~			~~35.~~	
Now	11.50		Now	17.50
			~~40.~~	
			Now	20.

Exhibit C-105

HILTON'S

The Wholesale

(DESIGN) Profit

which we manage to save for
our customers because we make

HILTON
CLOTHES
ourselves

would be impossible if we indulged in expensive newspaper advertising.

The Hilton Co.

Exhibit C-106

HILTON'S
HALF PRICE SALE

We go by the calendar with our plans. August is clearance time, so that the Fall will not find us with a plus.

~~$18.~~ Suits
Now $ 9.

~~$20.~~ Suits
Now $10.

~~$22.50~~ Suits
Now $11.25

~~$25.~~ Suits
Now $12.50

~~$28.~~ Suits
Now $14.

~~$30.~~ Suits
Now $15.

~~$35.~~ Suits
Now $17.50

~~$40.~~ Suits
Now $20.

~~$45.~~ Suits
Now $22.50

Exhibit C-107

HILTON SUITS
and
OVERCOATS
$12.50
and
$15.

Beautiful garments revealing in every detail of their making, the characteristic perfection of their origin and demonstration beyond the shadow of a doubt that it is not necessary to spend 18.00 to 25.00 for clothes of character and distinction. They are modern to the minute and finished with exquisite care.

Exhibit C-108

HILTON SUITS
combine
Style & Economy
We design & make
them ourselves
$15.
Is the Price
for
Some of the Suits
shown in this Window.
They are worth
much more.

Exhibit C-109

HILTON'S
JANUARY MARK DOWN
SALE

When it comes to clearing time we do the thing in the big, generous way making the prices so evidently low that the saving becomes compelling.

This great sale is now in progress, with greater values and greater assortments than ever.

Realize that every suit and overcoat in our store is involved in this sale even Black and Blue Suits and Overcoats.

We display a few of these remarkable values in our windows.

Note the Prices
Take advantage of them

The Hilton Co.

Exhibits C-110, and 111

$13.75
Is the price we
have set for these
remaining
HILTON
SUITS AND
OVERCOATS
of Fall and Winter.
Values Up to $30.

Exhibit C-130

HILTON'S

(DESIGN) ½ PRICE SALE (DESIGN)

Exhibits C-131, and 135

(design)

HILTON
EVENING CLOTHES

The new Dress Coat is designed along new lines. The "High Waisted Coat" The Slightly longer Vest and graceful Trousers

---

We are showing these New Dress Suits at
$17.50 to $40.
The Hilton Co.

Exhibit C-132

(Crest)

JANUARY
MARKDOWN SALE

Your Opportunity

to get the
FAMOUS
HILTON GARMENTS
at
GREATLY REDUCED PRICES

Exhibit C-133

(Crest)

HILTON
POLICY

The Hilton Company is 21 years of age.
From small beginnings it has grown to an enormous organization. And this enormous growth can be attributed to one factor in Hilton success.

Hilton Policy

for Hilton Policy has made

Hilton Success.

The value of Hilton Clothes has been raised higher and higher and the Hilton prices have been pushed down lower and lower.
And today the Hilton Company believes that a perfect balance has been attained.

MAXIMUM VALUES.
MINIMUM PRICE.

Exhibit C-134

YOUNG MEN'S CLOTHES

HILTON'S

Young Men's Clothes possess that intangible quality called "Style"

There is an air of distinction tailored into every garment.
$12.50 to $40.

Exhibit C-136

H

YOUR
SPRING SUIT
You can buy a good and Stylish looking suit at almost any high grade Clothing Store. The price however may be higher than it is at Hiltons.
OUR
SPRING CLOTHING
is designed by a master designer who commands the highest salary paid to any designer in the country.

The Hilton Co.

Exhibit C-137

H

HILTON
MADE
SUITS
$15.

These Suits are unconditionally guaranteed to be all wool and strictly hand tailored.
We aim to make clothes that are better than the average and as good as the best.

The Hilton Co.

Exhibit C-138

H

TWO RULES
FOR
SUCCESS

1. Be correctly dressed
2. Save money.

Hilton's $15.00 Suits are correctly designed and are worth 10.00 more than the prices we ask.

$12.50 to $40.

Exhibit C-139

HILTON'S

½

PRICE SALE.

Exhibit C-141

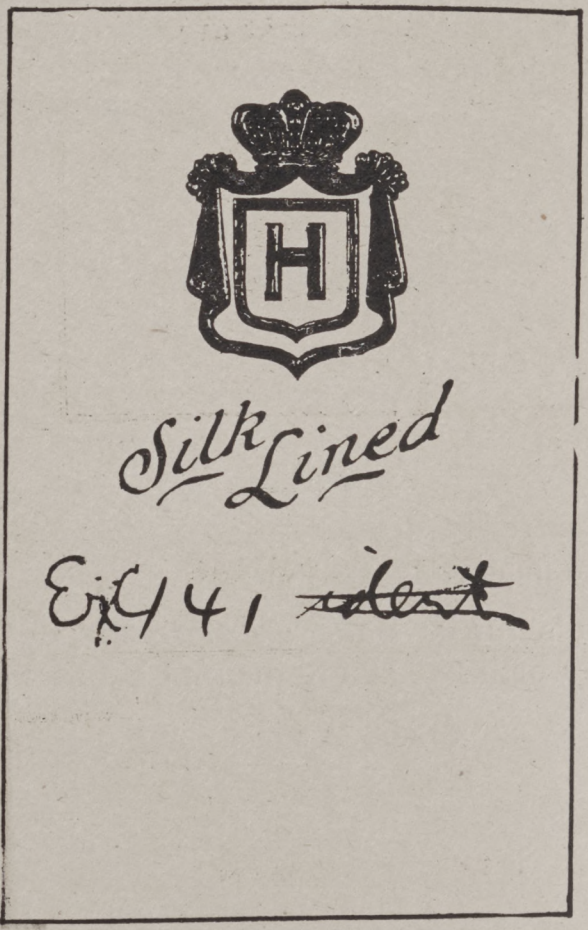


Exhibit C-142

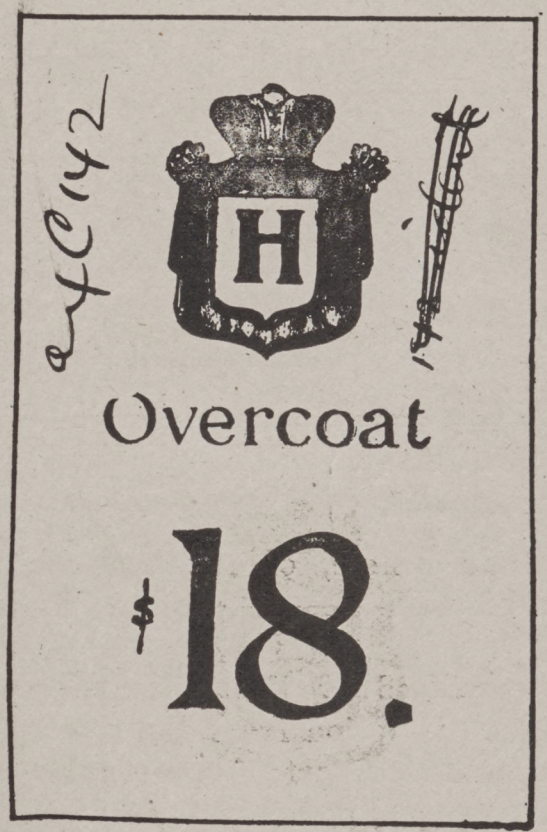


Exhibit C-144

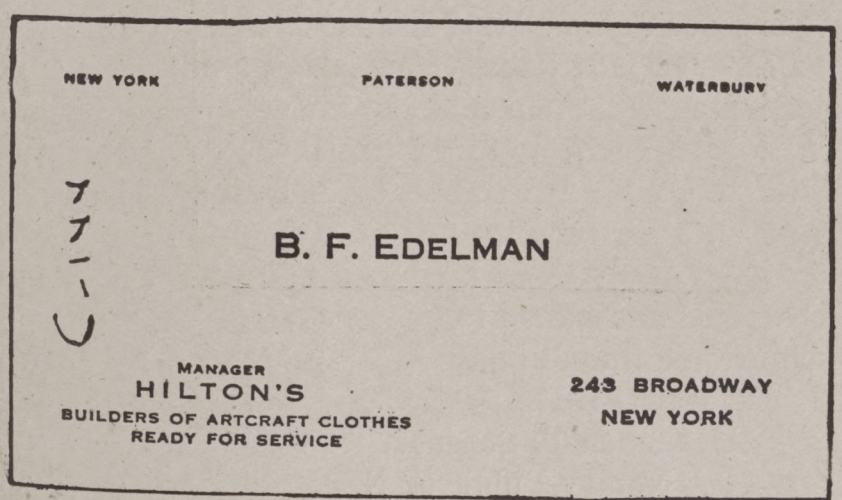


Exhibit C-148

IN CHANCERY OF NEW JERSEY

Between PHILIP HILTON, Complainant, and JOSEPH HILTON, Defendant.	On Bill, etc. Affidavit

State of New Jersey,
County of Essex. } ss:

Samuel Jacobstein, of full age, being duly sworn on his oath according to law, deposes and says:

I was employed by The Hilton Company as Auditor for the period from January 1, 1909 to this date and as a part of my regular duties I would examine the newspapers in which the advertisements of The Hilton Company appeared in order to check the bills for such advertising. I cut out and pasted in a scrapbook all such advertisements and marked them with the date of publication. I have recently examined scrapbooks covering the period from September 1, 1915 to December, 1916 and know that the advertisements pasted therein and appearing on the list hereto attached appeared in the newspapers noted on such advertisements and on the days noted on such clippings.

SAMUEL JACOBSTEIN.

Subscribed and sworn to
before me this 6th day
of March, 1917.
Alexander T. Schenck,
A Notary Public of N. J.

Exhibit C-148

LIST OF PUBLICATIONS

Annexed to foregoing Exhibit C-148

NEWARK EVENING NEWS:

1915 September 10, 15, 17; October 1, 8, 15, 22, 27, 29; November 5, 12, 19; December 3, 10, 16, 17, 21, 22.

1916 January 6, 7, 14, 21, 26, 28; February 2, 4, 11, 16, 18, 23, 25; March 3, 10, 17, 24, 29, 31; April 5, 7, 14, 19, 21, 28; May 5, 12, 19, 26; June 2, 9, 16, 23, 29, 30; July 5, 7, 14, 21, 28; August 4, 11, 18, 25; September 1, 8, 15, 22, 29; October 6, 13, 20, 27, 31.

NEWARK EAGLE:

1915 October 16, 23, 30; November 6, 13.

NEWARK STAR:

1915 October 15, 22, 29; November 5, 12, 19; December 3.

1916 February 4, 11, 18; March 10, 17; May 12; June 30; July 7, 14; August 4, 11, 18, 25; September 1, 8, 15, 22, 29; October 6, 13, 31.

ELIZABETH DAILY JOURNAL:

1915 October 15; December 10, 17.

1916 January 6, 7, 14, 21, 28; February 4, 11, 18, 25; March 3, 10, 24, 31; April 7, 14, 21, 28; May 5, 12, 19, 26; June 30.

ELIZABETH TIMES:

1915 November 5; December 17.

1916 January 14, 28; February 4, 11, 18, 25; March

Exhibit C-148

10, 24, 31; April 7, 14, 21, 28; May 5, 12, 19, 26; June 30.

BELLEVILLE TIMES:

1915 October 28; November 4.

CALDWELL PROGRESS:

1916 July 1.

BROOKLYN DAILY EAGLE:

1916 July 7.

BROOKLYN DAILY STANDARD UNION:

1916 July 7, 14.

NEW YORK EVENING WORLD:

1916 July 7.

NEW YORK JOURNAL:

1916 July 14. Chicago Daily News.

1915 October 8; November 23, 26; December 1, 3.

1916 January 14, 21; February 3, 4, 9, 11, 25.

CHICAGO EVENING AMERICAN:

1916 January 14; February 4.

BOSTON POST:

1915 October 15, 22, 29; November 5, 12.

1916 January 28; February 2, 4, 11, 25; March 3, 10, 31; April 7.

BOSTON AMERICAN:

1916 February 25.

Exhibit C-148

PITTSBURGH CHRONICAL TELEGRAPH:

1915 September 3; November 11, 12, 19, 22, 23, 26; December 1, 2, 3.

1916 January 20, 21, 26.

PITTSBURGH PRESS:

1915 September 2; October 7, 8, 14, 15, 22, 28, 29; November 5, 11, 19, 22, 23, 26; December 1, 2, 3, 10, 21.

1916 January 6, 7, 14, 20, 21, 26, 28; February 2, 4, 17, 18, 23, 25; March 3, 10, 31; April 7, 14, 21, 28.

PHILADELPHIA BULLETIN:

1915 September 3, 17; October 8, 15, 22, 29; November 5, 12, 11, 19; December 3, 17.

1916 January 7, 14, 19, 21, 26, 28; February 4, 9, 11, 16, 18, 25; March 3, 10, 24, 31; April 21, 28.

PROVIDENCE BULLETIN:

1916 January 2, 14; February 10, 11, 16, 25; March 3, 10, 31; April 14, 20.

ATTLEBORO SUN:

1916 January 7, 14; February 11.

PROVIDENCE TRIBUNE:

1916 January 7, 14; February 11.

Exhibit C-149

THE HILTON COMPANY
Newark, N. J., 1915.

Paid for Adv.

	Philadelphia	Newark	Chicago	Pittsburg	Boston	Providence
January	678.46	1553.61	669.80	2122.32		1453.31
February	312.00	600.00	2875.00	1438.00		600.00
March	628.42	461.88	2899.28	890.10		550.00
April	632.60	907.57	54.40	412.43	621.60	318.27
May	485.16	571.88		371.38	669.30	209.18
June	466.70	260.25			226.20	500.00
July	537.42	492.40		426.24		402.84
August	136.24	42.66				67.68
September	251.16	101.00				
October	531.18	600.00	272.00	516.64	403.50	450.00
November	586.48	550.00	626.32	1593.52	313.50	635.00
December	259.56	641.12	214.62	925.40		600.00
	5505.38	6782.37	7611.42	8696.03	2234.10	5786.28
						36615.58

Exhibit C-150

THE HILTON COMPANY
Newark, N. J., 1916.

Paid for Adv.

	Philadelphia	Newark	Chicago	Pittsburg	Boston	Providence
January	1047.48	650.00	509.28	1073.83	240.00	200.00
February	940.52	975.00	1939.90	610.20	830.10	500.00
March	56.96	700.00		241.29	438.30	264.51
April	246.96	750.00		378.80	131.05	259.65
May	411.60	768.60		386.40		340.04
June	364.56	859.00		199.62		340.04
July	966.00	653.83	1226.12	498.30	792.30	546.56
August	465.36	566.58	205.44	233.86		227.36
September	629.16	738.00		407.15		
October	453.60	693.95		318.80		88.65
November	884.69	667.78		521.00		290.77
December	512.44	600.00		500.00		
	7484.33	8622.74	3880.74	5369.25	2431.75	3057.58
						30846.39

Exhibit C-151

1915

All Stores

NY & Bk	516,922.95	
Newk	103,861.63	
Phil	115,082.28	10
Ch	232,565.97	
Pitt	159,459.48	
Bos	42,897.38	
Prov	68,434.43	
	1,239,294.12	T

Exhibit C-152

20

1916

All Stores

NY & Bk	541.068.45	
Newk	116,384.96	
Phil	115,971.57	
Ch	260,630.51	
Pitt	173,663.43	
Bos	55,260.05	
Prov	53,567.17	30
	1,316.546.14	T

Sales

Exhibit C-153

PITNEY, HARDIN & SKINNER

John O. Pitney
John R. Hardin
Alfred F. Skinner
William L. Morgan
Corwin Howell
J. Frederic Wherry
Waldron M. Ward
Edward O. Stanley, Jr.
J. Howard Conver.

Prudential Building

Newark, N. J., October 4, 1916.

Mr. Joseph Hilton,
29 Kingman Road,
South Orange, N. J.

Dear Sir:

Mr. Philip Hilton has instructed me to bring to your attention his protest against the unauthorized use by you of the name "Hilton's" for your recently opened Paterson store and in the newspaper advertising of that store. Mr. Philip Hilton also objects to the use of the trade emblem (a shield with a crown on top and the letter "H" in the center) belonging to The Hilton Company partnership, and the introduction into your advertisements of matter used by The Hilton Company during your membership in that firm. Your attention is particularly directed to references in your advertisements to your merchandise in association with the hearing in 1909 before the Ways and Means Committee of the House of Representatives, and to the claim made in your advertisements for your merchandise as the same sold in leading metropolitan cities through the ten Hilton stores.

The use of the name and the character of the advertisements seem to disclose a purpose on your part not only to appropriate to yourself the benefit of the name and good-will of The Hilton

Exhibit C-153

Company partnership, in contradiction of your sale of your interest therein to your brother Philip, but also to deceive the public into the belief that your output originates from the same source as the goods sold by The Hilton Company.

You do not need to be reminded that upon the dissolution of the partnership between you and your brother on the 24th of June last you executed a transfer to him or your interest in not only the physical properties of the partnership theretofore conducted by yourself and your brother, but also in all the name and goodwill of said business and all rights of every kind and nature wheresoever situate and to whatsoever relating, of and to which you or your brother, as co-partners and as members of the firm, were then possessed or entitled. It was your expectation and your brother's expectation at the time the partnership was dissolved and your interest therein was acquired by your brother that he should continue the business under the old name. You know that in accordance with such expectation on your part and on his part he has continued and is continuing under the old name.

Neither can you have forgotten that The Hilton Company partnership, at the time you conveyed your interest therein, was conducting stores in Newark, New York, Chicago, Philadelphia, Brooklyn, Providence, Boston and Pittsburg, and that included in the papers transferring your interest were assignments by your of your interest in the leaseholds occupied by the partnership in these several cities.

It is well known to you that the good-will of the Hilton business was not localized in Newark, but that by wide advertising of the Hilton name and

Exhibit C-153

Hilton clothes the reputation of the product sold by the company had been extended far beyond the cities in which the stores were conducted.

Mr. Philip Hilton has been informed that you have leased a store in New York City which you intend to open in the name "Hilton's," and that you are contemplating establishing stores in other cities in which the partnership did business and in nearby places.

Your present methods in the conduct of your Paterson store and your intentions as to the conduct of business under like methods in other cities, in which The Hilton Company is already established, are clearly appropriations by you of the good-will of the partnership of which you were formerly a member and in which your interest was sold by you to your brother for a large consideration, and are in addition misrepresentations to the public.

Mr. Philip Hilton directs me to advise you that he cannot submit to such invasion by you of his rights and that if compelled to do so for their protection he will resort to legal measures. Unless you promptly discontinue the unauthorized use of the name and trademark and abandon in your advertising the use of objectionable matter and such statements, or statements similar to such statements, as are hereinabove specifically mentioned, appropriate legal action will be instituted against you without further notice for the protection of not only the private rights of Mr. Philip Hilton but also for the prevention of imposition upon the public.

Yours very respectfully,

JOHN R. HARDIN.

Exhibit C-154

KNOW ALL MEN BY THESE PRESENTS, That I,
PHILIP HILTON
of the Borough of West Caldwell, in the County of Essex and State of New Jersey, am held and firmly bound unto
JOSEPH HILTON
of the Village of South Orange, in the County of Essex and State of New Jersey, in the sum of EIGHTY THOUSAND ($80,000) DOLLARS, lawful money of the United States of America, to be paid to the said Joseph Hilton or to his certain attorney, executors, administrators or assigns; To which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal and dated the 24th day of June, in the year of our Lord, One Thousand Nine Hundred and Sixteen.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bounden PHILIP HILTON, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above mentioned JOSEPH HILTON, or to his certain attorney, executors, administrators or assigns, the just and full sum of FORTY THOUSAND ($40,000) DOLLATS, lawful money aforesaid, in the following installments and at the following times, to wit: one hundred and fifty dollars per week at the end of each week beginning with the week ending July 1, 1916, until the whole amount of $40,000 shall be fully paid and satisfied, without any fraud or other delay, then this obligation to be void, or else to be and remain in full force and virtue.

Signed, Sealed and Delivered
in the presence of

JOSEPH HILTON.
(seal)

Exhibit C-155

1916

WHERE THE
NEWARK EVENING NEWS
GOES

ESSEX COUNTY

Oranges	11,494
Brookdale	80
Caldwell-Verona	1,168
Montclair	1,434
Millburn-Short Hills	605
Belleville	1,231
Bloomfield-Watsessing	2,248
Irvington	2,091
Nutley	589
Newark	44,913
	65,853

MORRIS COUNTY

Bartley	18
Boonton	288
Chester	50
German Valley	50
Denville-Rockaway	225
Dover	623
Flanders	30
Ironia	8
Kenvil	200
Lake Hopatcong	6
Landing	23
Ledgewood	13
Mt. Arlington	40
Mt. Tabor	43
Mt. Hope	32
Montville	33
Netcong	170
Port Morris	36
Towaco	20
Wharton	99
Richards	24
Naughright	5
Cary	4
Brookside	18
Florham Park	15
Hanover	36
Madison	322
Morristown	565
Mendham	87
Ralston	13
Whippany	25
Mountain Lakes	14
Butler	142
Lincoln Park	12
Newfoundland	12
Pequannock	16
Pompton Plains	100
Chatham	195
Gillette	8
Millington	20
Stirling	28
Pine Brook	35
Middle Valley	19
	3,722

HUDSON COUNTY

Harrison-East Newark	1,702
Arlington-Kearny	2,055
Bayonne	33
Jersey City	80
	3,870

UNION COUNTY

Springfield-Union	200
Aldene	4
Cranford	27
Elizabeth	434
Kenilworth	10
Linden	11
Rahway	185
Roselle	47
Lorraine	15

Exhibit C-155

Fanwood	3
Garwood	29
Plainfield	133
Westfield	83
Netherwood	1
Berkeley Heights	13
Murray Hill	22
Summit	566
	1,783

PASSAIC COUNTY

Great Notch	15
Little Falls	12
Midvale	60
Mountainview	9
Pompton	51
Wayne	12
Haskell	18
Passaic	59
Paterson	105
	341

SOMERSET COUNTY

Neshanic	23
North Branch	15
Flagtown	2
East Millstone	15
Middlebush	6
Bound Brook	57
Raritan	17
Somerville	113
Basking Ridge	103
Bedminster	26
Bernardsville	160
Far Hills	42
Gladstone	59
Peapack	65
Liberty Corner	16
Pluckemin	20
	739

WARREN COUNTY

Allamuchy	25
Belvidere	50
Blairstown	55
Broadway	12
Buttzville	10
Columbia	5
Delaware	9
Great Meadows	44
Hackettstown	337
Hamburg	16
Johnsonburg	20
Marksboro	16
New Village	15
Oxford	69
Phillipsburg	50
Port Murray	24
Stewartsville	10
Vienna	26
Washington	350
Changewater	10
Beattystown	14
	1,167

SUSSEX COUNTY

Andover	45
Augusta	10
Branchville	65
Franklin	140
Halsey	6
Hamburg	69
Lafayette	40
McAfee	12
Monroe	17
Newton	495
Ogdensburg	25
Sparta	40
Sussex	88
Swartswood	7
Vernon	19
Waterloo	9
Greendell	15
Tranquility	11
	1,113

MONMOUTH COUNTY

Branchport	5
Eatontown	8
Englishtown	9
Freehold	41
Keyport	29

Exhibit C-155

Marlboro	5
Matawan	26
Middletown	3
Red Bank	51
Wickatunk	5
Farmingdale	3
Asbury Park	91
Atlantic Highlands	28
Avon	3
Belmar	37
Highlands	25
Keansburg	37
Leonardo	3
Mansasquan	2
Port Monmouth	5
Sea Bright	5
Long Branch	32
	453

HUNTERDON COUNTY

Annandale	18
Bloomsbury	8
Califon	32
High Bridge	59
Clinton	36
Flemington	70
Glen Gardner	45
Hampton	30
Jutland	10
Lansdown	3
Lebanon	22
Ludlow	20
Pittstown	13
Readington	2
Three Bridges	8
Whitehouse	42
New Germantown	12
Vernoy	10
	440

MIDDLESEX COUNTY

Carteret	30
Perth Amboy	44
South Amboy	18
Woodbridge	50
Port Reading	2
Morgan Station	7
Metuchen	30
New Brunswick	75
Spotswood	3
Dunellen	31
Lincoln	12
South Plainfield	17
Helmetta	3
Jamesburg	12
	334
Total	79,815
Miscellaneous	445
Total	80,260

Net Daily Average 80,260 Copies

State of New Jersey, }
County of Essex, } ss:

CHARLES L. STASSE, being duly sworn, on his oath says that he is Circulation Manager of the Newark Evening News, and that the foregoing statement of the net daily average circulation of the Newark Evening News for the year Nineteen Hundred and Sixteen is in all things correct and true

CHARLES L. STASSE.

Sworn and subscribed to before me this 3d day of January, A. D. 1917.

CHARLES F. DODD,
Notary Public.

Exhibit C-155

1915

TOTAL CIRCULATION

TOWNS AND NUMBER OF COPIES SOLD

Allamuchy	26		Califon	13	10
Aldene	5		Chatham	170	
Ampere	254		Carteret	33	
Avon	4		Cranford	38	
Asbury Park and Ocean Grove	75		Cary	1	
Annandale	10		Caldwell & North Caldwell, Essex Fells and Roseland	537	
Augusta	10		Cedar Grove and Verona	330	
Allenhurst	2		Clinton	23	
Andover	25		Dover	273	
Alantic City	30		Dunellen	29	
Atlantic Higlands	26		East Orange	2563	20
Arlington	580		Eatontown	5	
Brookside	17		Englishtown	9	
Belmar	6		Englewood	14	
Brick Church	696		Elizabeth, Elizabethport, North Elizabeth	259	
Bordentown	4		Forest Hill	351	
Broadway	8		Frenchtown	4	
Basking Ridge	90		Freehold	55	
Boonton	179		Franklin Furnace	77	
Bernardsville	135		Franklin, Avondale and Nutley	393	
Bayonne	32		Far Hills	26	30
Butler	2		Flemington	60	
Branchville	35		Flanders	25	
Bartley	20		Great Meadows	30	
Belvidere	42		German Valley	35	
Bedminster	13		Gladstone	35	
Blairstown	35		Garwood	18	
Belleville	1012		Green Village	34	
Branchport	3		Great Notch	8	
Buttzville	10		Glen Gardner	30	
Bloomingdale	35		Harrison, E. Newark and Kearny	3012	
Brookdale	70		Hackensack	13	
Bound Brook	59				
Bloomfield & Glen Ridge	1226				
Bloomsbury	3				
Crestmoor	5				
Chester	42				

Exhibit C-155

Hamburg	70
Helmetta	2
Hasbr'k Heights	6
Hackettstown	171
High Bridge	60
Hoboken	213
Irvington and Lyons Farms	2152
Ironia	6
Jutland	6
Jersey City	232
Jamesburg	13
Junction	17
Keyport	27
Kenvil	76
Keansburg	1
Lafayette	25
Landing	10
Linden	6
Lyndhurst	90
Little Ferry	6
Little Falls	17
Lorraine	14
Long Branch	23
Lansdowne	4
Ledgewood	8
Lambertville	3
Lakewood	22
Lincoln	6
Lincoln Park	8
Lebanon	13
Liberty Corners	12
Lakehurst	4
Millington	20
Midvale	21
Monroe	16
Mendham	81
Mt. Tabor	20
Montville	27
Morristown	546
Marlboro	5
Middletown	3
Madison	246
Mountain View	6
Middle Valley	5
Metuchen	12
Millburn, Springfield, Short Hills and Wyoming	500
Maplewood and Union Township	208
Marksboro	8
McAfee	18
Morris Plains	72
Matawan	25
Middlebush	6
Montclair & Upper Montclair	1240
New Germantown	11
Netcong	75
Neshanic	20
New Brunswick	60
New Orange	5
New Providence	87
North Newark	193
North Branch	15
Newton	300
Newfoundland	2
N. Y. City Ferries to Jersey City	1113
Orange Valley	797
Orange	3616
Ogdensburg	21
Oxford Furnace	10
Port Murray	17
Pomton Plains	17
Point Pleasant	2
Perth Amboy	46
Princeton	19
Pittstown	5
Peapack	34
Pottersville	17
Philadelphia	11
Pompton Lake	32
Paterson	80
Passaic	57
Phillipsburg	24
Port Morris	33
Pine Brook	30
Plainfield	145

Exhibit C-155

Pequannock	17	Tranquility	11
Rahway	241	Three Bridges	6
Rockaway	170	Towaco	13
Raritan	23	Trenton	81
Red Bank	55	West Orange	723
Rutherford	24	Watsessing	662
Ralston	9	Westfield	88
Roselle	37	Washington	220
Readington	2	Whippany	34
Ridgewood	5	Woodbridge	42
Suffern, N. Y.	4	Wickatunk	8
Summit	502	Whitehouse	48
Somerville	125	Wayne	7
South Amboy	10	Warwick, N. Y.	32
Spotswood	2	Wharton	47
So. Plainfield	14	Washington, D. C.	10
Stewartsville	8	Vernoy	10
Sparta	30	Vernon	30
South Orange	630	By mail	1708
Stirling	28		
Sussex	65	Total out of town	32489
Spring Lake	4	City of Newark	39020
Silver Lake	65		
Seabright	10	**NET DAILY AVERAGE**	71509

Exhibit C-157

PASSAIC DAILY HERALD, FRIDAY, SEPTEMBER 8, 1916

The Clothes Endorsed by Congress!

Tomorrow at 9 o'Clock the Doors Swing Open

OF

PATERSON'S SMARTEST CLOTHES SHOP

Revealing for the First Time in New Jersey the Clothing O. K.'d by Uncle Sam at the Epochal Wool Tariff Discussion.



Men of Paterson and vicinity. You are cordially invited to attend the opening of this new store. We want you to see with your own eyes and pass judgment on the self-same suits that Congress selected as examples of MAXIMUM VALUE in American made clothing.

When you see the magnificent assortment of superlatively smart clothing assembled in this new store you will understand the preference for Hilton's Clothes by MEN who KNOW!

When you examine the superb fabrics--the unfinished Worsteds, the Cassimeres, Cheviots, Serges, Flannels and Homespuns--when you see how beautifully they are tailored with full, half and quarter linings, you will be splendidly impressed. When you note the amazingly low prices you will realize what the tailor's bench to back plan of selling will do for you. You will appreciate the extraordinary strength of Hilton value. You will know beyond all question that Hilton offers vastly better clothing at a vastly lower price than you have ever before been offered.

SEEING IS BELIEVING!

We have made elaborate preparations to receive you. So join the procession of men who will visit this store tomorrow. We've got just the summer suit you want--at the price you want to pay all the way from

$12.50 to $40.00

We promise you a saving of from $5.00 to $15.00 on every suit you buy. Our maker to customer plan cuts out the middleman's profits. You POCKET them.

HILTON'S

Cor. Main and Ellison Streets

PATERSON, N. J.

Congress Enthused Over Them!

It Was at the Height of the Debate on the Wool Tariff Question

The 60th U. S. Congress was deciding a momentous issue. As a clinching argument of the tremendous value represented in American Clothing a Hilton $12.50 Suit was exhibited. The Members were astonished! One Congressman exclaimed:

"You'd Never Know It From a $60 Suit Designed by a Fifth Avenue Tailor"---And His Statement Was Vociferously Applauded.



TODAY

Come and See the Clothes Sponsored by Uncle Sam

Today at 9 o'clock the doors of the new Hilton Shop for men will swing open, revealing the grandest exhibition of clothing for discriminating dressers ever shown in this city.

We offer the greatest money's worth ever known in high grade clothing. We can do it because we manufacture every garment we retail. By selling direct from the tailor's bench to your back we lop off the inbetween profits charged up to you in other stores—and YOU pocket the saving.

Paterson has never had a store just like Hilton's The men of Paterson never have known such an opportunity to secure supremely smart, correctly cut clothing at such low prices. At

$12.50 to $50.00

A visit to our opening will introduce to you the snappiest, sprightliest models in up-to-the-minute season's fashions. Every smart fabric, every popular pattern and coloring, you'll find at this newest and nobbiest clothes shop. So be sure to attend the opening today.

HILTON'S

MAIN AND ELLISON STREETS, PATERSON, N. J.

687

Exhibit C-158

Exhibit C-159

HILTON'S

MAKERS OF DISTINCTIVE CLOTHES FOR MEN

MAIN STREET CORNER ELLISON

Our Guarantee

Our willingness to return your money if you are not entirely pleased is prompted by the very fact that we make all our own clothes and know how they are made

OUR PRICES
$12.50
$15.00
$18.00
$20.00
$25.00
$30.00
$35.00
$40.00



"THE PINCHBACK"

A Young Man's Overcoat

You'll like this coat, even though its price is only Fifteen Dollars, because it fits as well as a high grade custom made coat fits; and its fabric is an all wool, pre-shrunk piece of material that will wear and wear. It has that touch of style that expresses youthfulness. It is a garment that exemplifies distictiveness, to say the least. That you cannot duplicate this coat for less than Twenty-Five Dollars, we know positively. Self interest should prompt you to at least; come and see --- we'll not ask you to buy.

Suits and Overcoats

$12.50 $15.00

The Suits and Overcoats that we sell at $12.50 and $15.00 are not $12.50 and $15.00 suits. If we were not manufacturers and had to buy our clothes the same as the average merchant must buy, we couldn't sell these suits for less than $18.00, $20.00 and even $25.00. If you'll go to all the stores in Paterson and see the kind of clothes you can buy at these prices, and then come to Hilton's, it's a safe bet that your choice will be Hilton Clothes.

It isn't the element of price alone that should prompt you to buy Hilton Clothes, though a saving is of great importance; it is chiefly because Hilton Clothes are designed by one of the country's foremost designers and because they express the last word in style.

Our success in the clothing business is the result of our method —the method of manufacturing ourselves and selling direct to you, the ultimate consumer; instead of acting as a middleman, as the average merchant does. And remember this—that the clothes we sell in our Paterson store is the same as we sell in our Fifth Avenue store in New York, and in all of our other stores.

HILTON'S

MAKERS OF DISTINCTIVE CLOTHES FOR MEN

MAIN STREET CORNER ELLISON

MONEY CHEERFULLY REFUNDED

Exhibit C-160

HILTON'S

MAKERS OF DISTINCTIVE CLOTHES FOR MEN

MAIN STREET CORNER ELLISON

Our New York Store.
Fifth Avenue
Corner 33rd Street.

OUR GUARANTEE

Anything we might say about our clothes or our prices may be subject to your belief or doubt. But when we say that we GUARANTEE to give your money back to you if you are not entirely pleased, we state our sales argument, to which we expect to be held, and which should convince you that what we say in our ads IS SO.

The Man AND His Clothes

To Be Well Dressed Doesn't Mean Paying High Prices



If you are willing to pay $25.00 for a suit or overcoat that you can buy from us at $15.00, all well and good. But why should you do it? Isn't the $10.00 worth as much to you as it is to the merchant who must make a profit in addition to the profit that the manufacturer must make from whom he buys his clothes. Why shouldn't you take advantage of our method of doing business—the method of selling direct to the consumer—you. When we say that we sell suits at $15.00 that cost $25.00 elsewhere, we mean what we say, and shall be only too glad to prove it. You've bought clothes elsewhere; then come and see what WE can offer. We'll not ask you to buy—we'll let you decide.

Suits and Overcoats

$12.50 $15.00

Our idea in selling our clothes at these moderate prices is to build up a large business. The more clothes we sell the less our overhead cost of manufacturing and the greater our earnings, even though our actual profit on each garment is very small. We maintain our own chain of clothing stores simply as a means to give us an outlet for the clothes we make, instead of selling to dealers, as the average manufacturer does. Its an idea that promises to make us the largest dealers in the country.

If you have been accustomed to paying $25.00 or $30.00 for your suits or overcoats we want a chance to show you what we can and do sell for eight or ten dollars less. We also want you to see the style and the kind of work embodied in our clothes. In short—we want you to know the kind of clothes we make and the prices at which we sell. If you're a judge of good snappy "stuff" it's a safe bet that you'll buy your clothes from us.

That we know the kind of clothes to design and make is evidenced by the fact that we sell to some of the best dressed men in New York. Our store on Fifth Avenue, corner Thirty-third—just opposite the Waldorf Astoria, is one of the smartest clothes shops in the country, catering to a class of men who will wear nothing else but the very latest. The clothes that we sell in our Paterson store are the same as we show in our New York store.

PRICES:
OUR
$12.50
15.00
18.00
20.00
25.00
30.00
35.00
40.00

MONEY CHEERFULLY REFUNDED

HILTON'S

MAKERS OF DISTINCTIVE CLOTHES FOR MEN

MAIN STREET CORNER ELLISON

MONEY CHEERFULLY REFUNDED

MONEY CHEERFULLY REFUNDED

Exhibit C-167

IN CHANCERY OF NEW JERSEY

Between PHILIP HILTON, Complainant, and JOSEPH HILTON, Defendant.	Affidavit On Bill, etc.

State of New Jersey, County of Essex. } ss:

Margaret S. Walling (born Loy) 263 Chadwick Ave., Newark, N. J. of full age, being duly sworn on her oath according to law, deposes and says:

I was employed by The Hilton Company as clerk for the period from August 1913 to October, 1915 and as a part of my regular duties would examine the newspapers in which the advertisements of The Hilton Company appeared in order to check the bills for such advertising. I cut out and pasted in a scrap book all such advertisements and marked them with the date of publication. I have recently examined scrapbooks covering the period from August 1, 1913 to October, 1915 and know that the advertisements pasted therein and appearing on the list hereto attached appeared in the newspapers noted on such advertisements and on the days noted on such clippings.

MARGARET S. WALLING.

Subscribed and sworn to
before me this 8th day
of March, 1917.
James S. Dennis,
A Notary Public
of New Jersey.

Exhibit C-167

LIST OF PUBLICATIONS

NEWARK EVENING NEWS:

1915 March 12, 19, 26; April 1, 2, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 30; May 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 24, 25, 26, 27, 28; June 1, 2, 4, 11, 18, 25; July 2, 9, 16, 23, 30; August 6.

NEWARK EVENING STAR:

1915 March 26; April 2, 9, 14, 15, 16, 19, 23; May 14; June 26; July 3, 17, 31.

NEWARK MORNING EAGLE:

1915 August 7.

NEWARK MORNING STAR:

1915 April 2, 3, 10, 14, 15, 16, 17, 20, 22, 24, 27, 28, 29; May 4, 5, 6, 7, 8; June 25; July 2, 16, 23, 30; August 6.

BROOKLYN DAILY EAGLE:

1913 September 10, 12, 19.
1915 May 7.

BROOKLYN TIMES:

1913 September 12.
1915 May 7.

BROOKLYN DAILY STANDARD UNION:

1913 September 12, 19.

BROOKLYN CITIZEN:

1913 September 19.
1915 May 7.

Exhibit C-167

NASSAU POST (Freeport, N. Y.):

1915 August 6, 13.

CHICAGO DAILY NEWS:

1913 August 1, 4, 5, 6; September 10, 12, 19; October 2, 22, 29; November 4, 7, 12, 14, 19, 21; December 12, 17.

1914 January 14, 16, 23; February 20; May 6, 7, 8, 14, 15, 20, 21, 22; June 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30; July 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 31; August 4, 5, 6, 7, 10, 11, 12, 13, 14, 21, 24, 26, 28; September 4, 9, 16; October 10, 26, 27, 28, 29, 30; November 2, 3, 6, 10, 11, 12, 13, 19, 20; December 4, 16.

CHICAGO EVENING AMERICAN:

1913 August 1; November 21, 28; December 12, 19.

1914 January 14, 15, 23; December 16, 18.

CHICAGO DAILY TRIBUNE:

1913 August 1, 4, 5, 6; September 11, 12; October 2, 29, 31; November 5, 7, 12, 14.

1914 February 20.

PITTSBURG PRESS:

1913 August 1, 4, 6, 8, 20, 22, 27, 29; September 3, 5, 10, 12, 19; October 2, 10, 17, 24, 29, 31; November 5, 7, 12, 14, 19, 21, 28; December 3, 5, 10, 12.

1914 January 9, 14, 16, 22, 23; February 19, 20; April 1, 3, 30; May 1, 6, 8; June 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30; July 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 27, 30, 31; August 11, 13, 14, 19, 20, 21, 26, 28; September 2, 4, 9, 11, 24, 25, 30;

Exhibit C-167

October 2, 27, 28, 29, 30; November 4, 6, 11, 12, 13; December 3, 4.

PITTSBURG TIMES:

1913 August 1, 4, 5, 6.

1914 January 16, 17, 22, 23, 24.

PITTSBURG CHRONICLE TELEGRAPH:

1913 August 1, 4, 6, 8, 14, 15, 20, 22, 27, 29; September 3, 5, 10, 12, 19, October 2, 10, 17, 22, 24, 29, 31; November 5, 7, 12, 14, 19, 21, 28; December 3, 5, 10, 12.

1914 January 9, 14, 16, 21, 23; February 19, 20; April 3; May 1, 6, 8; June 3, 2, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30; July 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 27, 29, 30, 31; August 11, 13, 14, 20, 21, 19, 26, 28; September 2, 4, 9, 11, 24, 25, 30; October 2, 27, 28, 29; November 4, 6, 11, 12, 13, 16, 20, 27; December 3, 4.

PITTSBURG DESPATCH:

1913 August 4, 5, 6, 11, 15, 18, 19, 20, 21, 22, 25, 27, 28, 29, September 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14; October 24, 29, 31; November 5, 7, 12, 14, 19, 21; December 3, 5.

1914 January 23.

PITTSBURG LEADER:

1913 Aug. 8.

1914 July 23, 24, 30, 31; August 11, 13, 14, 20, 21, 26, 28; September 2, 4, 9, 11, 24, 25, 30; October 2, 27, 28, 29, 30; November 6.

New Jersey State Library

Exhibit C-167

PITTSBURG GAZETTE:

1914 October 28, 30; November 20.

PHILADELPHIA BULLETIN:

1915 January 22, 29; February 5, 12, 19; March 5, 12, 24, 26, 31; April 2, 7, 9, 16, 23, 30; May 7, 14, 21, 28; June 4, 11, 18, 25; July 2, 8, 15, 23, 30; August 6, 27.

PHILADELPHIA RECORD:

1915 January 15, 29.

PHILADELPHIA TELEGRAPH:

1915 January 8, 15, 29.

PHILADELPHIA INQUIRER:

1915 January 9.

NORTH AMERICAN:

1915 January 15, 29.

PITTSBURGH CHRONICAL TELEGRAPH:

1915 January 7, 8, 11, 13, 15, 22, 29; February 10, 12, 16, 17, 18, 19, 25, 26; March 4, 5, 9, 10, 11, 12, 25, 26; April 23, 30; July 2.

PITTSBURGH PRESS:

1915 January 7, 8, 11, 13, 15, 17, 22, 24, 29, 31; February 10, 12, 16, 18, 19, 25, 26; March 5, 9, 11, 25, 26; April 5, 6, 7, 8, 9, 23; May 7, 14; July 7, 8, 9.

PITTSBURGH LEADER:

1915 January 7, 11, 13, 15, 22, 24, 29, 31; February 10, 12, 16, 18, 19; March 5, 9, 12, 26.

Exhibit C-167

PITTSBURGH TIMES:

1915 February 19, 26, 27; March 10; May 1.

BOSTON POST:

1915 April 28, 29, 30; May 1, 3, 5, 8, 15, 18, 21, 25, 27, 29, 31; June 2, 4, 8, 10, 12.

CHICAGO DAILY NEWS:

1915 January 15, 28, 29; February 4, 5, 8, 9, 11, 12, 18, 19, 25, 26; March 4, 8, 9, 11, 25, 26; April 1.

CHICAGO EVENING AMERICAN:

1915 February 4, 5, 8, 9, 11, 12, 18, 19, 25, 26; March 4, 5, 8, 9, 10, 11, 12, 25, 26.

CHICAGO TRIBUNE:

1915 February 13.

Exhibit C-168

July 13, 1916.

Mr. Joseph Hilton,
29 Kingman Road,
So. Orange, N. J.

Dear Joe:—

I wish to thank you for the order for insurance which you had Mr. Wolf place for you with me yesterday. As per Mr. Wolf's directions I understand you desire me to place at once Seven Thousand ($7000.) Dollars on stock and One Thousand ($1000.) Dollars on furniture and fixtures at the loft at 841 Broad Street, Newark, N. J.

I have accordingly placed this insurance but placed Six Thousand ($6000.) Dollars on stock and One Thousand ($1000.) Dollars on furniture and fixtures and both policies will carry the eighty per cent (80%) co-insurance clause which will mean a saving to you of twenty-five percent (25%) on the premiums. I explained this to Mr. Wolf. I have had the policies written for one year and will receive them in a few days at which time I will send them to you.

If your stock is moved you can return the policies to me and I can have them changed to the new location.

Thanking you and wishing you success, I am,

Very truly yours,

FJM/HB

P.S.—I enclose receipt for your Personal Income Tax.

Exhibit C-169

August 2nd, 6.

Mr. J. Hilton,
841 Broad St.,
Newark, N. J.

Dear Joe:—

The premium on your policy at 841 Broad St., Newark, from July 12th to September 1st will be $23.73. It would not cost you any more to have the policy written to September 12th instead of September 1st as the company does not charge for the fraction of a month. The short rate premium charge on a policy for two months is 30% of the annual premium.

If the policy is written for a year it will save you money as you can have the policy transferred to cover at a new location as soon as you remove the goods.

Please let me know just what you desire me to do, and oblidge,

Very truly yours,

FJM/HB

Exhibit C-170

To Whom it may Concern:

I, Philip Hilton

hereby make the following statement in pursuance of the provisions of Chapter 241 of the Laws of 1916, entitled "An Act to regulate the use of business names"

1. The name under which I am transacting and intend to transact business hereafter is The Hilton Company.

2. The business so conducted and to be conducted by me is that of Clothing Merchant and Manufacturer.

3. The place where the said business is now being conducted and is intended to be conducted is 793 Broad St., Newark, N. J.; 1375 Broadway, 853 Broadway and 85 Nassau St., New York City; 408 Fulton St., Brooklyn, N. Y.; 327 Westminster St., Providence, R. I.; 53 Summer St., Boston, Mass.; 449 Smithfield St., Pittsburgh, Pa.; Cor. State and Quincy Streets, Chicago, Ill. and 1230 Chestnut St., Philadelphia, Pa.

4. The full name and post office address of the person connected with the said business as owner is Philip Hilton, No. 793 Broad Street, City of Newark, County of Essex, State of New Jersey.

Dated June 26, 1916.

PHILIP HILTON.

Exhibit C-170

STATE OF NEW JERSEY
ESSEX COUNTY } ss:

Philip Hilton *being duly sworn says that the statements contained in the foregoing certificate are true*

PHILIP HILTON.

Sworn and subscribed before me this
seventh day of July A. D., 1916
Frank J. Murray,
Master in Chancery
of New Jersey. Cancelled War Stamp.

STATE OF NEW JERSEY
ESSEX COUNTY } ss:

Filed, County Clerk's Office,
July 11th, 1916.

being duly sworn say that the person named in the foregoing certificate and that the statements therein are true

Sworn and subscribed before me this
.....day of .....A. D., 191....

A TRUE COPY

JOSEPH McDONOUGH,
County Clerk.

Exhibit C-171

TEL. 8530 CORTLANDT.

TUNNEL ADVERTISING COMPANY

HUDSON TERMINAL

30 Church Street

K. B. Conger,
President.
P. C. Miller,
General Manager.

EXCLUSIVE ADVERTISING RIGHTS IN HUDSON RIVER TUNNELS.

New York, Mar. 9, 1917.

Pitney, Hardin & Skinner,
Prudential Bldg.,
Newark, N. J.

Gentlemen:

Your letter of March 6th would have been answered earlier but I have been at home sick in bed since last Tuesday, having returned to the office only this morning.

I will answer your correspondence as, nearly as possible from records given me by the Accounting Dept. of the Hudson & Manhattan Railroad Co.

(1). Number of passengers daily on Concourse of Hudson Terminal, 96,396, plus several thousands uncounted people who go down on the Concourse from the Hudson Terminal Building and from the street (without having to buy railroad ticket) to patronize the booths, restaurants, soda fountains and various lines of business on that floor.

(2). Number of passengers daily on 33d St. Concourse, 34,856.

(3). Number of passengers daily through other Tube Stations in New York, 28,513.

Exhibit C-171

(4). Number of passengers annually between Newark and New York both directions, 14,549,107. We cannot segregate those who get off at Grove St. and transfer to an uptown New York Hudson Tube Station.

(5). We cannot state as to the number of passengers originating at Paterson, or whose destination is Paterson. The ticket sales at the Hudson Tubes Erie R. R. Station, Jersey City to downtown New York may be considered as approximately 2,703,468 per annum, and to uptown New York 2,217,226. The only way to arrive at any division of the traffic is to assume that those who buy the extra 2% fares are going up on the Sixth Avenue Division. In addition there is an item of 690,145 Hudson Tubes Tickets sold in the year 1916 by the Erie R. R. at stations on their line, these tickets being offered for sale by the Erie R. R. merely for the convenience of their passengers, to save them from having to stand in line at the Hudson Tubes ticket windows.

(6). The number of passengers annually (in both directions) of stations in Jersey City (Summit Ave., Grove St., Erie, and Exchange Place), 32,671,334. My answer to No. 5 answers the last paragraph of your No. 6, with reference to traffic at Hudson & Manhattan Erie Station.

(7). Total ticket sales of stations for the year 1916, 66,184,128.

In No. 5 I mentioned that Hudson & Manhattan Railroad tickets are sold at some of the Erie R. R. Stations. In the year 1915 the number of such sales of Hudson & Manhattan R. R. tickets

Exhibit C-171

at the Erie Station, Paterson, N. J. was 121,-336. In 1916 those sales at Paterson were 135,-509.

As I have been delayed in answering your letter on account of sickness and am trying to get this reply to you immediately, I have not sought the figures for year 1915 except in sales of Hudson & Manhattan R. R. tickets at the Erie Station in Paterson, for the reason that it would take some little time to obtain the information for 1915 and would delay my reply. However, the traffic of 1916 was about 10% in excesss of the traffic for the year of 1915, and this information I presume will be close enough for the purpose which it is intended to serve.

Very truly yours,

P. COMPTON MILLER,
General Manager.

Exhibit D-2

PHILIP HILTON,
Proprietor

FRANK J. MURRAY,
General Manager

THE HILTON COMPANY

MAKERS OF MEN'S CLOTHES

New York
Brooklyn
Newark
Philadelphia

Executive Offices & Factories

Newark, N. J.

Providence
Boston
Pittsburgh
Chicago

July 3, 1917.

Mr. Miller,
New York City.

Dear Sir:

Following our usual custom, we shall begin our JULY CLEARANCE SALE at our down-town New York store—85 Nassau St., on Friday, July 6th.

For years this sale has been one of the biggest events on our business calendar, and with war prices now prevailing, it offers greater values than ever.

Every one of these Suits is a HILTON Stylebilt Creation—manufactured by us in its entirety—and sold only in our own stores—direct to the wearer.

The $20.00 Suits are reduced to $14.50
The $25.00 Suits are reduced to $17.50
The $30.00 Suits are reduced to $20.50
The $35.00 Suits are reduced to $23.50
The $40.00 Suits are reduced to $26.50
The $45.00 Suits are reduced to $29.50

We must caution you against confusing our stores with those of a new concern which has re-

cently opened stores in New York City under a name very similar to ours. All our stores use the full original name of "The Hilton Company," and we have no connection with any other stores. Our only stores in New York City are as follows:

Cor. 37th St. & Broadway,
Cor. 14th St. & Broadway,
85 Nassau Street.

We have been obliged to institute legal proceedings to prevent this unfair competition in New York City and elsewhere, and until this litigation is settled, we are taking this means of warning our customers.

To guard against mistake, may we suggest that you bring this letter with you when you call, and refer to it before purchasing?

Very respectfully yours,

THE HILTON COMPANY,
FRANK J. MURRAY,
Gen'l Mgr.

FJM:TN

Exhibit D-3

WARNING!

(CREST)

THIS LABEL IS YOUR PROTECTION

We have been forced to institute legal proceedings to compel other concerns from using our name, or a name similar to ours, and until that litigation is settled we must take this means of warning and protecting our customers and friends against this unfair competition. As an extra precaution against deception, look for the above Shield on the label of every Suit or Overcoat before you buy. It is your only protection.

Note Particularly Our New York Locations:

85 Nassau Street

14th St., Cor. Broadway

37th St., Cor. Broadway

NOTE OUR FULL NAME

THE HILTON COMPANY

SOLE MAKERS OF "Stylebilt" CLOTHES FOR MEN

Exhibit D-4

THE HILTON CO.

Makers of Smart
Clothes for Men

(CUT) (CU) (CUT)

791 BROAD ST., NEWARK

June 15, '08.

Received from Haas, Schachter & Kaas 2 Fur coats.

HILTON CO.,
B. YOUNG.

Exhibit D-5

Main Store Telephone Connection
791 Broad Street, Newark, N. J.
Branch Store
1327-29 Chestnut St., Phila., Pa.

(Design)

THE HILTON

(Design) COMPANY

Smart Clothes

217-219 Broadway

New York, Jan. 21, 1909.

Messrs. Haas Schachter & Kass,
4 E. 14th St., City.

Gentlemen:—

Enclosed you will find bill for goods which we are returning to you today. Kindly send credit bill, and oblige,

THE HILTON CO.
Astor House, N. Y.

P. S. Not same as ordered.

Exhibit D-6

Branch Stores
217-219 Broadway, New York
1327-29 Chestnut St., Philadelphia, Pa.

Telephone Connections

(Design)

THE HILTON COMPANY

SMART CLOTHES

Number Seven Ninety One Broad Street

Newark, N. J., Nov. 5, 1908.

Mr. Haas,
New York City.

Dear Sir:—
Kindly call over to see me as soon as possible in reference to fur coats, and oblige,

Yours very truly,

JOSEPH HILTON.

Exhibit D-7

(*Same letterhead as Exhibit D-6*)

Newark, N. J., Octo. 30, 1908.

Mr. Haas,
New York City.

Dear Mr. Haas:—

I will be over Sunday to look at your pony coats and if I find anything to suit me will buy one. I told you yesterday my coat was 36 inch but I found out from my mother that it is a fifty inch coat but I do not want a fifty inch I only want a 36 inch. Mr. Joseph Hilton told me to tell you to pick me out a nice coat. He told me to tell you something else which I will tell you Sunday. Will be over about 11 o'clock.

Yours truly,

B. YOUNG.

Exhibit D-8

(*Same letterhead as Exhibit D-6*)

Newark, N. J., Aug. 17, 1908.

Haas, Schachter & Kass,
New York City.

Gentlemen:—

Enclosed find note for $600.00. We have made an exception in your case in giving you this note, as it is contrary to our rules, to give notes.

Yours very truly,

THE HILTON COMPANY.

Exhibit D-9

(*Same letterhead as Exhibit D-6*)

Newark, N. J., 3/15/09.

Haas, Schachter & Kass,
4 East 14th Str.,
N. Y. C.

Gentlemen:—

We would kindly ask you to send us by return mail for comparison, to our Newark Office, an itemized statement of our account to date, and oblige,

Yours very truly,
THE HILTON COMPANY,
M. H. C.

Exhibit D-10

(*Same letterhead as Exhibit D-6*)

Newark, N. J., July 25, 1908.

Messrs. Haas, Schachter & Kass,
New York City.

Gentlemen:—

Enclosed find report which your Mr. Haas asked for. We would kindly ask you to return same as soon as possible.

Yours truly,
The Hilton Co.

B. Y.

Exhibit D-11

NEW YORK,
14th St. & Broadway
85 Nassau St.
1375 Broadway

BROOKLYN,
Fulton St., Cor. Smith

PHILADELPHIA,
13th & Chestnut St.

PROVIDENCE,
327-329 Westminster St.

CHICAGO,
State St. & Quincy

PITTSBURGH,
Fifth Ave. & Smithfield St.

BOSTON,
Summer St. Cor. Chauncey

THE HILTON COMPANY

DESIGNERS AND MAKERS OF
MENS HIGH GRADE CLOTHES

Home Office, 793 Broad Street, Newark, N. J.

May 17, 1916.

Messrs. R. G. Dun & Co.,
665 Broad St.,
Newark, N. J.
ATTENTION OF Mr. Brady.

Gentlemen:—

We are informed that the report has reached you that The Hilton Company business has been incorporated, and that you desire to hear from us concerning reported changes in The Hilton Company business.

In response to same, would say that The Hilton Company business has not been incorporated; no steps have been either taken or contemplated in that direction.

The report that has come to you is doubtless due to the fact that Mr. Joseph Hilton's son, Charles Hilton, is about to start a clothing store in Paterson, and he caused to be incorporated a N. J. corporation of the name of "Hilton's, Inc.," with a capital stock of $10,000., $1,000. of which has been subscribed.

Exhibit D-11

While the papers were filed with the the County Clerk, they were, we are informed, withdrawn from the Secretary of State's office before they were legally filed and recorded there. It is our understanding, therefore, that this corporation has now no legal existence, and that the parties who caused it to be formed have since changed their minds about it.

However, that corporation did not in any way affect The Hilton Company business, and The Hilton Company business was in no way interested or concerned therein and had nothing whatever to do with the formation thereof.

We take this opportunity of advising you that there is an agreement in force between Messrs. Philip and Joseph Hilton, by the terms of which Mr. Philip Hilton would acquire the interest of Mr. Joseph Hilton in The Hilton Company business by the end of this year. In talking over the subject yesterday and today, it was decided by both parties to close the matter within the next few weeks, at which time Mr. Joseph Hilton will withdraw from the business.

Until that time the business will remain unchanged, and when the change occurs all interested parties will be fully and promptly informed. Upon Mr. Joseph Hilton's retirement, Mr. Philip Hilton who shall then have acquired the whole business, will continue to conduct it as heretofore. It is not expected that Mr. Joseph Hilton's withdrawal will lessen the assets of The Hilton Company business.

Trusting this will satisfactorily answer your inquiries, we are

Very truly yours,

HILTON CO.,

Philip Hilton.

Exhibit D-12

COHN & COHN,
COUNSELLORS AT LAW
112 Ellison Street,
Paterson, N. J.

DAVID COHN MAURICE COHN

2 Rector Street, New York

June 23, 1917.

Mr. Joseph Hilton,
243 Broadway,
New York.

Dear Sir:—

Replying to your favors of the 16th and 20th, inst., wherein you request the consent of the Estate of Marcus Cohn, dec'd to sublet your Paterson store to Mr. Jacob Pollack of New York, we desire to advise you that the Estate of Marcus Cohn, dec'd, hereby consents to your subletting the premises rented to you under Lease dated May 2, 1916, to Mr. Jacob Pollack of New York, upon the following terms and conditions and provided written assent thereto is delivered to us by yourself no later than the 28th instant:—

1. The consent of the Landlord to the subletting shall not be constructed as a waiver or relinquishment for the future of the 4th provision of the said Lease, (which restricts the right to sublet, etc.) or of the other covenants, terms or conditions thereof but the same shall be and remain in full force and virtue.

2. All payments of rent specified in said Lease, are to be made by you on the *first* day of

each and every month in advance and all the other terms, covenants and conditions of the said Lease are to be faithfully observed by you.

3. The balance now due the Estate under the accounting of Nov. 1, 1916, amounting to the sum of $148.94, shall be paid to the Estate no later than the 28th instant.

Yours respectfully,

COHN & COHN,
Attorneys—Estate of Marcus Cohn, dec'd.
Cohn & Cohn
2 Rector St., New York.

Exhibit D-13

Book of Photographs

Exhibits D-14 to D-26

Photographs

Exhibit D-27, for identification

From The Newark Star-Eagle, Monday Evening, June 26, 1916

HILTON BROTHERS
END PARTNERSHIP

Joseph Sells His Interest to Start Another Business for His Sons.

Announcement was made Monday that Philip Hilton and Joseph Hilton, trading under the name of the Hilton Company, with a chain of ten clothing stores and a factory, had dissolved partnership. Joseph Hilton has withdrawn from the business. The former intends to embark in the same business with his sons.

The firm has achieved success as manufacturers and retailers of men's clothing. From a small beginning fifteen years ago in a small store here it has grown to be one of the most prominent manufacturing and retail clothing concerns in the country. During the famous tariff on wool discussions in the House of Representatives the product of this house was brought into the limelight by having several of its men's suits used by the government in its deliberations for comparative purposes with garments purchased abroad.

The firm outgrew its Newark store and purchased a large property in the center of the city for manufacturing and retail purposes. Another store was opened shortly afterwards in Philadelphia and stores in New York, Brooklyn, Boston, Providence, Pittsburgh and Chicago followed.

The business will be conducted in the future by Philip Hilton personally under the name of the Hilton Company.

Exhibit D-28 for Identification

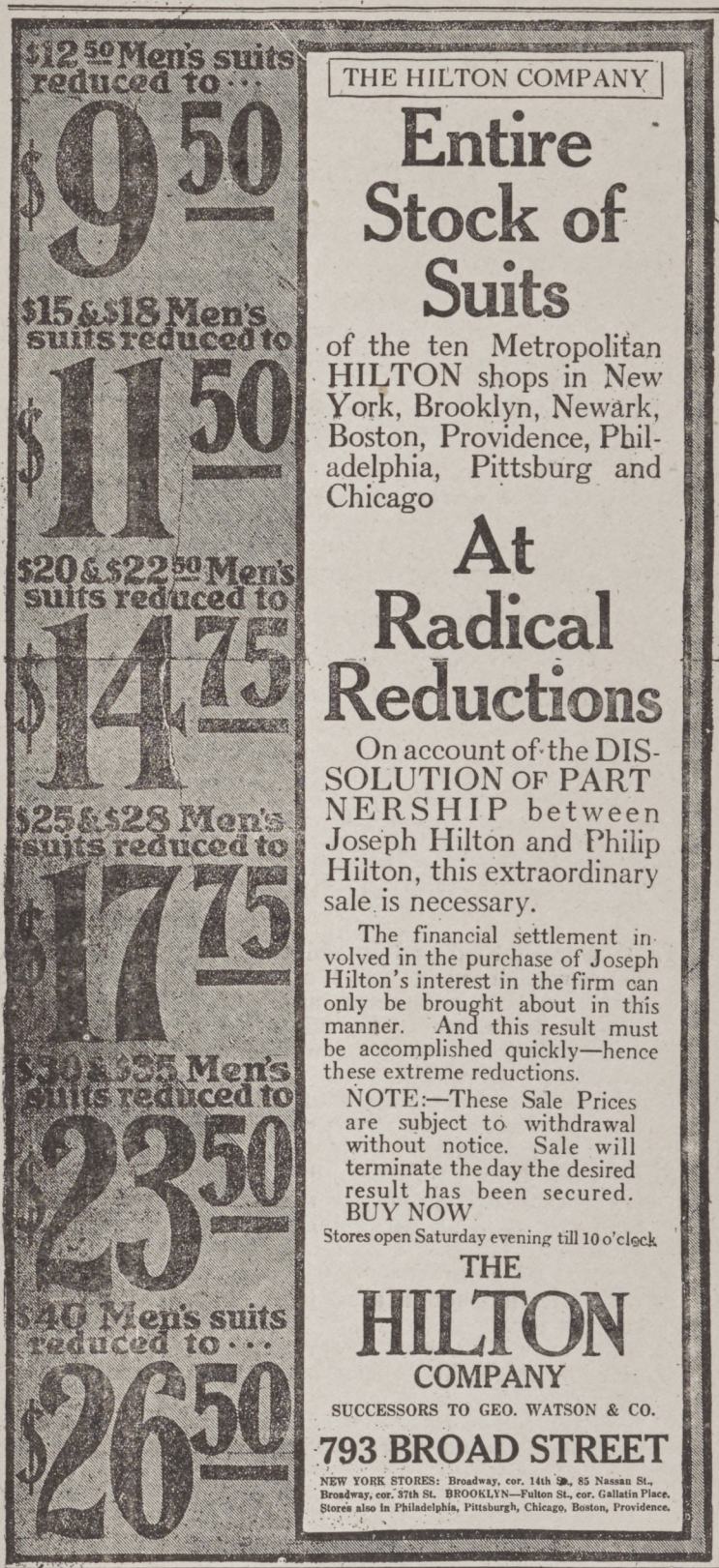


Exhibit D-29

(DESIGN)

SHERMAN & BRYAN

Incorporated

ADVERTISING

NEW YORK CHICAGO

New York, Sept. 6th, 1916.

Order No. 2637

Please enter our order for advertising, as follows:

Publication Paterson News

Advertiser Hilton's

Space 2000 L. within 1 year from date of first insertion as copy furnished Time Total Space

Issues

Classify Position

Copy Cuts

Price $ 2—½¢ L. Total, Sub to 15% Commission and 2% Cash Discount or $ NET.

1. It is understood and agreed that the rate of this order is the minimum trae at which a contract for similar space and conditions can be secured, and that if any time during the life of this contract you make a lower rate for same space and conditions, then this contract is to be completed at such lower rate from that date.
2. We reserve the privilege of using for this advertiser for one year from date at rates named on rate card on which this order is based.
3. Unless otherwise agreed, this order may be cancelled or less space used by the payment of short rate in accordance with rate card on which the rates of this order are based.
4. Short rate bills must be rendered within 60 days after expiration of contract.
5. Any insertion not in accordance with instructions will not be paid for.
6. The advertising must appear in all editions issued on the date of which the advertising is ordered, when received in time for early editions.
7. A copy of each issue in which the advertising appears must be sent to the advertiser and to the office of this agency.

Exhibit D-30

Standard contract adopted by Association of New York Advertising Agents.

This order is given with the understanding that you are to supply upon request, or as soon as possible thereafter, and in any event within two months after requested, a statement showing gross circulation and net paid circulation per issue for such period as may be requested not exceeding a period of one year next preceding the date of request.

SHERMAN & BRYAN, Inc.
Per M. S. Ham.

Exhibit D-30

Order from Sherman & Bryan to Paterson Evening Press.

Exhibit D-31

Chicago Office
305-307 Market Street

Positively no claims allowed after goods are sponged or cut

HERRING BROS.

WOOLENS

215 Fourth Avenue, Cor. 18th St.
NEW YORK,

May 6th, 1916.
R H

Sold to C. M. HILTON c/o HILTON CO.
Address 291 Broad St., Newark, N. J.
Terms Net 4 mos, JUNE 1st, c/o Manhattan SPON WKS City.

Bill #3618 Pkge #31108 Rec #30667

4026	581	61 3/8	61 3/8	1167	1 87½	115 08	
4027	05380	60 4/8	60 4/8	56696	1 50	90 75	
4028	743	56 1/8	56 1/8	7739	1 75	98 22	
4029	05499	42	42	880	2 12½	89 25	
4030	740	52 6/8	52 2/8	6891	1 75	91 44	484 74

Received Payment

Oct. 3, 1916
Herring Bros.
Per H.

Oct. 1. *Net*

O. K. as per
Manhattan Co.

Exhibit D-32

THE HANSER AGENCY
ADVERTISING

C. F. Hanser In Consultation With D. J. Jeidell
KINNEY BUILDING
NEWARK, NEW JERSEY

June
23rd
1916

Mr. Max Younker,
Mgr. The Hilton Co.,
State & Quincy Streets,
Chicago, Ill.

My dear Max:

Attached hereto is legal notice which we wish to have inserted in the Chicago Daily News on Monday. With this is attached is a news item which Philip wishes you to have inserted in all of the papers in your city if possible.

Advise them that this is to be followed by a big campaign. Send copies in which the news item appears to the Newark office.

Sincerely yours,

HANSER.

The big schlamazzle is over—thank heaven's.

Ex C 92.


THE HILTON CO.
NEW YORK, B'WAY & 14th ST. 85 NASSAU ST.
37th ST. & B'WAY
BROOKLYN, FULTON ST. & GALLETIN PL.
NEWARK, BROAD & MARKET STS.
THE HILTON CO.
YOUNG MENS STORES
PHILADELPHIA
PITTSBURGH CHICAGO
BOSTON
PROVIDENCE
40
40
30
25
Hilton
"Stylebilt"
Clothes
Factories
THE HILTON CO.
THE HILTON CO.
Annual
Clearance Sale
Entire remaining stock of fall and winter suits and overcoats substantially reduced in price.
Note the Addresses of Our 3 New York Stores
85 NASSAU STREET
BROADWAY cor 37th ST.
BROADWAY cor 14th ST.
NEWARK STORE
793 Broad St. at Market St.
BROOKLYN STORE
408 12 Fulton St. at Galletin Place

Ex C92.

Ex C 92

The Hilton Co.

H & M Terminal

33rd St.

New York City

This photograph was taken by me March 3, 1917

Wm F. Cone.

Wm. F. CONE
207 MARKET ST., NEWARK, N.J.

Ex C 145


NEW YORK
BROOKLYN
NEWARK
PATERSON
WATERBURY
BRIDGEPORT
HILTON'S
ARTCRAFT CLOTHES
FOR MEN
HILTON'S
HILTONS

Ex C 145

E & C 145

Hilton's

33rd St. & 5th Ave.

New York City

This photograph was taken by me November 22, 1916

Wm F. Carr.

Wm. F. CONE
497 MARKET ST., NEWARK, N.J.





Ex C 127

Ex C 127

Hilton's

Ellison & Main Sts.

Paterson, N. J.

This photograph was taken by me November 21, 1916

Wm F. Carr


HILTON'S
QUALITY
STYLE
PRICE
FIT
HILTON'S
DENTIST
LOANED

Et C-126

Hilton's

Ellison & Main Sts.

Paterson, N. J.

This photograph was taken by me November 21, 1916

Wm F. Cone

Wm. F. CONE
217 MARKET ST., NEWARK, N.J.


THE HILTON CO.
THE HILTON CO.
NEWARK
NEW YORK
BROOKLYN
THE HILTON CO
THE HILTON CO.
THE HILTON CO.
PHOTOGRAPH
AND
GIVE YOU 3 PO
TO SELECT FR
ENTRANCE ON 37
SCHAFFS
PAPER
D.S.C.

Ex C 121

The Hilton Co.

37th St. & Broadway

New York City

This photograph was taken by me November 25, 1916

Wm F. Cone

Wm. F. CONE
217 MARKET ST., NEWARK, N.J.

Ex C 118


Broadway & 37th St. New York
791 Broad St. Newark, N.J.
THE HILTON CO.
1327-1329 Chestnut St., Phila.
219-221-Broadway (Astor House)
THE HILTON CO., CLASSY CLOTHES
BOSTON PHILA. CHICAGO PITTSBURGH
Hilton Stylebilt Clothes
D.S.C. SAND BOX

Ex C118

The Hilton Co

Broadway & 37th St.

New York City

This photograph was taken by me November 22, 1916

Wm F. Cone

Wm. F. CONE
207 MARKET ST., NEWARK, N.J.

Ex C47


THE HILTON CO.
THE HILTON CO.
OTHER STORES
B'WAY & 37TH ST. NEW YORK
FULTON & SMITH STS. BROOKLYN
NEWARK BOSTON
PHILADELPHIA
CHICAGO PITTSBURGH
THE HILTON CO.
THE HILTON CO.
Hiltons Stylebilt Clothes

Ex C 117

Ex C-117

The Hilton Co.

14th St. & Broadway

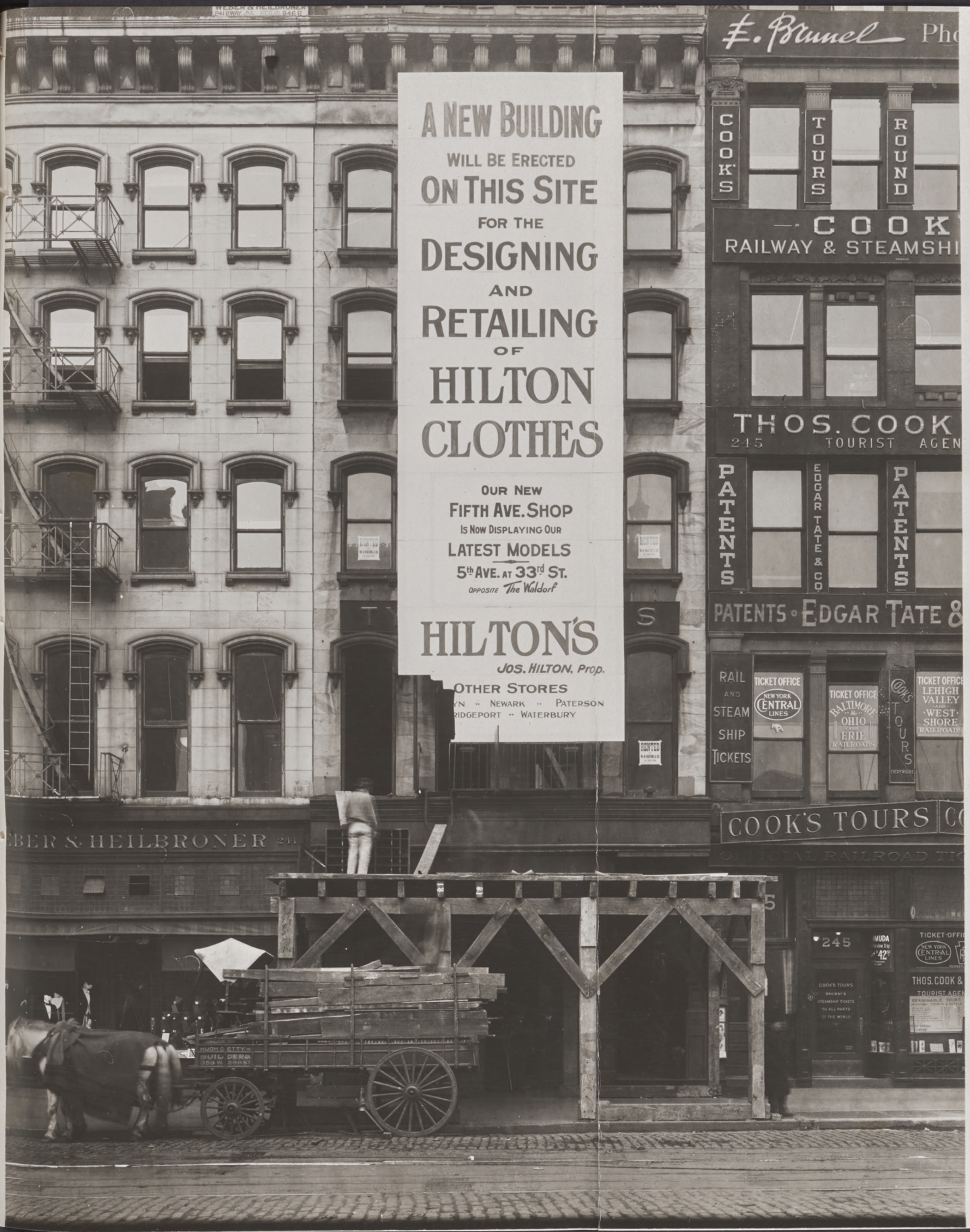
New York City

This photograph was taken by me November 20, 1916

Wm F. Cone

Wm. F. CONE
207 MARKET ST., NEWARK, N.J.




A NEW BUILDING
WILL BE ERECTED
ON THIS SITE
FOR THE
DESIGNING
AND
RETAILING
OF
HILTON
CLOTHES
OUR NEW
FIFTH AVE. SHOP
IS NOW DISPLAYING OUR
LATEST MODELS
5th AVE. AT 33rd ST.
OPPOSITE The Waldorf
HILTON'S
JOS. HILTON, Prop.
OTHER STORES
NEWARK · PATERSON
WATERBURY
E. Brunel
COOK'S TOURS ROUND
COOK
RAILWAY & STEAMSHI
THOS. COOK
245 TOURIST AGEN
PATENTS EDGAR TATE & CO PATENTS
PATENTS · EDGAR TATE &
RAIL AND STEAM SHIP TICKETS
TICKET OFFICE NEW YORK CENTRAL LINES
TICKET OFFICE BALTIMORE & OHIO AND ERIE RAILROADS
COOK'S TOURS
TICKET OFFICE LEHIGH VALLEY AND WEST SHORE RAILROADS
COOK'S TOURS
245
THOS. COOK &
TOURIST AGEN

E & C 116

Hilton's

243 Broadway

New York City

This photograph was taken by me November 22, 1916

Wm F. Carr.

Wm. F. CONE
207 MARKET ST., NEWARK, N.J.


ARTCRAFT
CLOTHES
HILTON'S
NEW YORK BROOKLYN NEWARK PATERSON WATERBURY BRIDGEPORT
ARTCRAF
CLOTHES
HILTON'S
HILTON'S

Ex C 115

Hilton's

33rd St. & 5th Ave.

New York City

This photograph was taken by me November 22, 1916

Wm F. Cone.

Wm. F. CONE
417 MARKET ST., NEWARK, N.J.




62
J. HILTON
62
MAN'F'R OF
MENS CLOTHES
NEW YORK - NEWARK - PATERSON
WATERBURY - BRIDGEPORT
DR. KLEIN'S
CLINIC
SPRUCH & EISENBERG
CASH BUYERS OF ALL KINDS OF
MERCHANDISE
Store & Office Fixtures Bought
WESTERN UNION
Telegraph and Cable
Messages accepted Here
DRUGS
Belle Mead
Sweets
USE B.L.L.
WARRANTY
B.L.L.
EVERY
WEDNESDAY
GUARANTEE
B.L.L.
EVERY
THURSDAY

Et C 114

J. Hilton

62 Springfield Ave.

Newark, N.J.

This photograph was taken by me November 25, 1916

Wm F. Cone

Wm. F. CONE
917 MARKET ST., NEWARK, N.J.


ARTCRAFT CLOTHES
HILTON'S
ARTCRAFT CLOTHES
NEW YORK BROOKLYN NEWARK PATERSON WATERBURY BRIDGEPORT
1/2 PRICE SALE on Overcoats
1/2 PRICE SALE on Overcoats
HILTON'S
HILTON'S
HILTON'S

Ex C113

Hilton's

36th St. & Broadway

New York City

This photograph was taken by me March 3, 1917

Wm F. Cone

Wm. F. CONE
207 MARKET ST., NEWARK, N. J.


HERZOG'S
CLOAK
& SUIT
CO. INC.
Samuel Herzog Pres
COATS AND SUITS
FOR IMMEDIATE DELIVERY
Park-Taylor
$25 Clothes at $15
Park-Taylor $15 for $25 Clothes
$15.00
Park-Taylor
Clothes
NEW YORK
BROOKLYN
NEWARK
PATERSON
WATERBURY
BRIDGEPORT
HILTON'S
ARTCRAFT CLOTHES
FOR MEN
HILTON'S
1/2 PRICE SALE

Vol 22
on back of Hilton Case

E & C 112

Hilton's

36th St. & Broadway

New York City

This photograph was taken by me March 3, 1917

Wm F. Cone.

Wm. F. CONE
217 MARKET ST., NEWARK, N.J.

BOUND