

START
618
CASE

-: INDEX :-

DIRECT CROSS RE-D. RE-C.

| | | |
|----------------------|----|----|
| Samuel Hotkof | 2 | 8 |
| Ida Hotkof | 15 | |
| David N. Carvalhe | 20 | |
| Henry Schleisner | 22 | 22 |
| Jacob Goldberg | 25 | 32 |
| Yetta Goldberg | 41 | 41 |
| Samuel Hotkof (Rcld) | 42 | |

COURT OF GENERAL SESSIONS, Part I.
TO PEOPLE OF THE STATE OF NEW YORK

against

JACOB GOLDBERG.

Before:

HON. WARREN W. FOSTER, J., and a Jury.

Indictment filed July 19th, 1906.

Indicted for grand larceny in the second degree.

New York, January 10th, 1907.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY JOSEPH E. CORRIGAN.

For the Defendant, MR. MEYER LONDON.

Peter P. McLoughlin, Official Stenographer.

SAMUEL HOTKOF, a witness for the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CORRIGAN:

Q Where do you live?

A 98 Henry street.

Q What is your occupation, what do you do for a living?

A Tailor.

Q A tailor?

A Yes, sir.

Q Do you know the defendant, Goldberg?

A Yes, sir.

Q How long have you known him?

A More than three years.

Q About three years?

A Yes, sir.

Q Did you see him in October, 1905?

MR. LONDON: I object to that. This larceny was committed in January, 1906.

THE COURT: I overrule the objection.

Exception.

Q Did you see him then?

A Yes, sir.

Q Did you have a conversation with him with reference to passenger tickets?

A Yes, sir.

Q What was that conversation?

A I took two tickets by him.

Q Tell the jury what he said to you and what you said to him?

A The first time I took tickets by him I gave him \$30.

Q That was in October, 1905?

A Yes, sir.

3

Q Where did that conversation take place, where was this you talked to him?

A In my house.

Q 98 Henry street?

A No, sir; I used to live by Division street.

Q In Division street?

A Yes, sir.

Q In this city and county?

A Yes, sir.

Q What did you say to him and what did he say to you?

A He said, "You give me \$30, I will give you tickets."

Q Tickets?

A Yes, sir.

Q Where from?

A From Russia to here.

Q From Russia to here?

A Yes, sir.

Q How many tickets?

A Three.

Q Did you give him the \$30?

A Yes, sir; and then I gave him every week three dollars.

Q How much were the three tickets to cost altogether?

A \$48 a ticket.

Q That would be \$144, wouldn't it?

A Yes, sir.

Q What did he give you when you gave him the \$30?

A He gave me that piece of paper (indicating).

Q These two papers (indicating two papers)?

A Yes, sir.

MR. CORRIGAN: I offer these in evidence.

THE WITNESS: Yes; that piece of paper he gave me when I gave him the \$30, and then I pay him weekly, three dollars a week

Q What did you do with these papers?

A Sent them away

to Russia, to My father and mother.

Q After you sent these to Russia to your father and mother, did you get a letter from your mother?

A Yes, sir; I got a letter from my mother.

Q Don't tell what was in the letter--

MR. CORRIGAN: Is there any objection to these papers?

MR. LONDON: I object to the admission of these papers, and also to the admission of the conversations in October.

MR. CORRIGAN: That is merely a matter of inducement. It is all part of the one transaction. There were several payments made.

THE COURT: I will receive it subject to a motion to strike it out if it is not connected.

Exception.

(The two papers referred to are marked People's Exhibits A and B.)

Q After you received that letter from your mother did you see the defendant, Goldberg again?

A Yes, sir; I was by Goldberg, and I said, "The tickets are no good"; he said, "You give me money, advance money, and I will give you two tickets", and I gave him the money, \$30, and he gave me the other piece of paper.

Q When was that?

A He said, "Them tickets, the

5

new tickets, in as good as gold."

Q When was it you had the second conversation with him?

A Yes, sir.

Q What date?

A I guess that it was about--I don't remember the date.

Q Was it in January?

A Yes, sir; it was in that month.

Q Was it the date that these tickets are dated?

A Yes, sir.

Q That was January 31st, 1906?

A Yes, sir.

Q Where did you have that conversation with him?

A That was in Madison street, 72 Madison street.

Q In the city and county of New York?

A Yes, sir.

Q Did you give him \$30 then?

A Yes, sir; I gave him \$30 then.

Q Did he give you these two tickets?

A Yes, sir; and then in four or five weeks he came to me--

Q Now, look at these papers and say if he gave you these two?

A Yes, sir; that is the papers.

MR. CORRIGAN: I offer these two papers in evidence.

(The papers referred to are admitted in evidence and marked People's Exhibit C and D.)

Q When he gave you these two tickets what did he say they were?

A He said, "They are regular tickets."

Q That these were regular tickets (referring to People's Exhibits C and D)?

A Yes, sir.

6

Q Where from?

A From Germany to New York.

Q Did you believe him when he said that?

A Yes, sir; I believed him.

Q Was that the reason you gave him the \$30?

A Yes, sir; gave him another \$30.

Q Were you to continue to give him the \$30 more later?

A Yes, sir; in five or six weeks later I gave him another \$30.

Q Did he say these papers were good or were not good?

MR. LONDON: I object to that as leading.

Q Tell me anything he said about these tickets?

A He said that the tickets are as good as gold. "Second away these tickets and your father and mother then can come here to New York without tickets."

Q You mean these tickets?

A Yes, sir; and I did it that way.

Q That is what he told you?

A Yes, sir.

Q You believed him?

A Yes, sir.

Q Did you then send the tickets away?

A Yes, sir.

Q Did you receive any letter from your mother?

A Yes, sir.

Q Did you have any conversation with Goldberg then?

A No, sir.

Q When did you have him arrested?

A I don't remember the date it was.

7

Q Did you mother come over on these tickets, if you know?

MR. LONDON: I object to that.

A My mother and father came.

Q Did you ever see Goldberg write?

A Ever soon him write?

Q Do you know if that is his signature there at the bottom of that paper (showing witness the Polios Court paper)?

A I don't know what that is, what is it?

Q Can you read?

A Yes, sir, "Jacob Goldberg", that is his name.

Q Did you see him write that in the Police Court?

A Yes, sir.

MR. CORRIGAN: I offer this in evidence as a standard. Is there any objection to that?

MR. LONDON: I object to that.

Objection overruled. Exception.

(The paper referred to is marked People's Exhibit E.)

MR. CORRIGAN: Now, gentlemen, I will show you these Exhibits C and D. Can any of you read German? If you cannot read them I will have them translated for you.

BY MR. CORRIGAN

Q Now, did you see Goldberg after January 31st?

A Yes, sir.

Q When did you see him after that?

A Four weeks later,

8

four or five.

Q Did you have any talk with him then?

A Yes, sir.

Q What did you spy then?

A I said, "Mr Goldberg, what is going to be now, I want my money back, give me the new tickets." Then after I came to him I said, "Mr. Goldberg, what is going to be now."

Q And you said what else?

A And I said, "You give me the money or the new tickets."

Q You said, "Give me the money or the new tickets"?

A Yes, sir; he said, "I will give you nothing, new tickets for money," He said, "Get the money from the office then I will give it to you." I went to the office, and I found out in the office---they said he get the money in the office.

MR. LONDON: I object to that.

Q Don't say that they said in the office, unless Goldberg was there. Now, I show you this paper and ask you if that is Goldberg's signature?

A I don't know anything about it.

CROSS-EXAMINATION BY MR. LONDON:

Q What was your first transaction with Goldberg, the first business you had with him?

A I took a ticket by him.

Q When?

A About two and a half years ago.

Q What is that ticket, to Europe?

A Yes, sir.

Q The ticket was good?

A Yes, sir; the first ticket

9

was good.

Q Now, what was the second transaction?

A Then I took by him three tickets.

Q That is the three tickets which you mentioned before. Then you took of him three tickets?

A Yes.

Q Now, these tickets were to be paid for on the instalment plan, in instalments?

A Yes, sir.

Q You knew that Goldberg was a custom pedler, didn't you?

A Yes, sir; I knew he was a pedler.

Q You knew that the tickets did not belong to him, did you?

A I don't know to whom belonged the tickets; he gave them to me.

Q Did you know that he was buying these tickets at the ticket office?

A Yes, sir.

Q Did you know the name of the owner of the ticket office?

A No, sir; I did not know it.

Q Did he tell you the name?

A No, sir; he did not tell me.

Q You knew, however, that he was not in the business of selling tickets; he was not selling his own tickets?

A Well, I don't know.

Q Did you know that he was not selling his own tickets?

A I did not know; he gave to me and I bought; how did I know about the office? I didn't know the office at all he didn't

10

tell me about the office.

Q Did he tell you anything about the ticket office?

A No, sir.

Q Not a word?

A No, sir.

Q You mean to tell this jury you did not know he was acting as agent for a ticket office; did you know that he was an agent for a ticket office?

A I know he is an agent.

Q And that the tickets that he would deliver to you were the tickets of another man, belonging to another man?

A Yes, sir; but he did not tell me who the man is or what the office is.

Q Now, when you paid him the first \$30 you received from him a statement, a paper?

A Yes, sir.

Q Where is that paper?

A Here.

Q Didn't, you receive any slip of paper?

A Yes, sir.

Q You did?

A Yes, sir.

Q Where is the other slip?

A Here.

Q You were supposed to pay three dollars, every week, is that right?

A Yes, sir.

Q You kept on paying how long?

A What?

Q You kept on paying for how long. For how long did you keep on these payments?

A I paid three dollars a week.

Q How many weeks did you pay him?

A \$24.

Q Twenty-four besides the thirty?

A Yes, sir.

11

Q You say you paid him \$64?

A Yes, sir; before the sixty.

Q What is that?

A Then I gave him thirty and thirty.

Q Then you gave him thirty and thirty?

A Yes, sir.

Q When you gave him the second time \$30, what conversation took place between you and him?

A He gave me these two pieces of paper--the second time he gave me these two papers.

Q Did he tell you that Grossman and Ruelich were the persons of whom he would obtain the tickets for you?

A No, sir; he did not tell me nothing.

Q Do you know the name of that firm, Grossman & Ruelich before?

A No, sir; I did not know it.

Q Were you ever in their office?

A No, sir.

Q You were never there?

A There was here a trial, and when I was in the Essex Market Court he was in the court, the office man, but before I didn't know them.

Q Now, is it not a fact that you told Mr Goldberg that you had heard that Brown & Herman were bankrupt and that the tickets would be bad?

A (No answer.)

Q Did Mr Goldberg tell you that the tickets he gave you were bad because Brown & Hermann, of whom he got them, failed?

A Yes, sir; he told me that.

Q He told you that?

A Yes, sir.

Q When he told you that didn't he ask you to stop those

tickets and take new ones?

A He said the office was failed and the tickets were no good any more. "You got to take new tickets".

Q You knew that Hermann & Brown had failed?

A Yes, sir; I heard it.

Q You knew that Hermann & Brown ran away from this country?

MR. CORRIGAN: I object to that.

A I don't know that office either; I don't know who took them tickets; I don't know who took out those tickets.

Q You knew that Brown absconded?

A Is there any name on the ticket from the office?

Q I asked you whether you knew Brown ran away from the city?

A That is what I heard about two tickets.

Q You told Mr Goldberg you heard these tickets were bad and you wanted him to give you new tickets, is that right?

A Yes, sir.

Q Then he gave you these new tickets?

A Yes, sir.

Q The yellow tickets?

A Yes, sir.

Q That is People's Exhibits C and D?

A Yes, sir.

Q It was these yellow tickets that you sent to your mother?

A Yes, sir; then my father and mother came to Germany with them tickets.

Q Now, for whom was it sent, for Moise Hotkof, forty-three years old?

A Yes, sir.

13

Q And Haie Hotkof, forty-one years old?

A Yes, sir.

Q Now here you have it in English, "Via Rotterdam to New York. Prepaid steerage, Moise Hotkof and Haie, 43 and 41 yeon, respectively, via Slabodky, Russia, Gorod Kovna, Rotterdam to New York." Now, when you got those new tickets you owed Goldberg \$30, is that right?

A Yes, sir; I gave him \$30.

Q But you owed him \$30?

A I was owing him the rest from 114.

Q You owed him \$30 on the first transaction, didn't you, on the first business you had with him?

A Yes, sir; on the first business I gave him \$30 and \$24.

Q But you owed him thirty?

A Yes, sir.

BY THE FIRST JUROR:

Q On the very first transaction?

A On the first tickets I gave him \$54.

Q You owed him \$30 more on the first tickets?

A Yes, sir; I had three tickets.

Q The first transaction you had previous to this was a transaction two and a half years ago, the purchase of tickets?

MR. CORRIGAN: That has nothing to do with this case.

Q Did you owe him thirty on the first tickets you bought two and a half years ago?

A Yes, sir; I gave him \$30 and

on the three tickets \$10, and he says, "You got to give me, first off, \$10." After that I gave him on the tickets, the three tickets, \$30, and then paid him every week three dollars a week, and I gave him about \$24.

Q That was for these tickets?

A Yes, sir.

Q For your mother and father?

A Yes, sir.

Q What was the first ticket you bought from this man?

A Long ago.

Q Those tickets were paid for?

A Yes, sir.

Q That is all paid?

A Yes, sir.

Q You didn't owe him anything for that first ticket?

A No, sir.

BY MR. LONDON:

Q You also bought of him a bracelet for your sister?

A (No answer.)

Q Did you buy a bracelet for your sister?

A I didn't bought anything.

Q Did you buy a scarf?

A No, sir.

Q Did your sister and you together buy it?

A No, sir; I bought only tickets by him and nothing else.

Q You never bought of him a bracelet or a scarf?

A No, sir; nothing else but tickets.

Q Now, the firm of Grossman & Ruelich is the firm to whom these two tickets belong, is that right?

A Well, I guess so, I don't know.

15

Q Has the firm of Grossman & Ruelich failed?

A I don't know.

Q You don't know?

A No, sir; not for sure.

Q As a matter of fact, don't you know that they have given up their office and run away?

MR. CORRIGAN: I object to that.

A Well, it is not my fault; I don't know the office at all.

MR. CORRIGAN: Objected to.

THE COURT: It is already answered.

Q Well, you know, as a matter of fact, that Grossman & Ruelich have given up their office and gone away from New York?

Objected to. Objection sustained. Exception.

IDA HOTKOFF, a witness for the people, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CORRIGAN:

Q What is your name?

A Ida Hotkoff.

Q Are you the mother of Samuel Hotkoff, the last witness?

A Yes, sir.

Q Now, did you receive a letter from him after January 31st, 1906, enclosing these papers People's Exhibits C and D?

Objected to. Objection sustained.

Q Did you receive a letter from your son, Samuel Hotkof,

at any time after January 31st, 1904?

A Yes, sir; we received it.

MR. LONDON: I object to that an incompetent.

THE COURT: It is too late; the question is already answered.

Q Where were you at the time you received the letter?

A It was brought to my home.

Q Where were you living?

A In Europe; we were in Europe; yet.

Q Whereabouts in Europe yet?

A Slabodky, in Russia Poland, that is the name of the place, near Kovna.

Q Anyway, you were somewhere in Europe?

A In Kovna; but it is a suburb of Kovna called Slabodky.

Q All right. Now, was there anything in that letter which you received from your son?

A Yes, sir; in the letter he said, "You shall come".

MR. LONDON: I object to that.

THE WITNESS: (Continuing:) "We should come to America."

MR. LONDON: I move to strike that out.

MR. CORRIGAN: I consent.

BY MR. CORRIGAN:

Q Did you receive these two papers, People's Exhibits C and D, in that letter?

A Those papers they were included in the letter, and the letter says that everything is

paid and we should come to America.

Q Never mind what the letter said.

(Stricken out.)

Q After receiving these papers, People's Exhibits C and D, what did you do with them?

A We started.

Q How far did you get?

A Well, we started, and we passed the frontier, and coming into Germany from Russia--into Germany, we were informed that the tickets were no good, and we had to go back.

MR. LONDON: I move to strike out all that part of the answer which begins "we were informed".

THE COURT: Strike it out.

Q Did you present these tickets for passage?

MR. LONDON: Objected to unless it is shown where and when.

Objection overruled. Exception.

A Yes, sir. We went into the office, the agent's office, I don't know what it is, and there they told us that the tickets were no good, and we had to go back.

(Stricken out.)

THE WITNESS: They did not receive the tickets.

MR. LONDON: I move to strike that out.

THE COURT: Strike it out.

MR. CORRIGAN: I think I may show that she presented the tickets and that the tickets were refused. These

alleged tickets were ones that the line would not accept.

THE COURT: Now, you are calling for the opinion of the man to whom she presented them, that the tickets were not genuine. That certainly would not be competent.

MR. CORRIGAN: I understand that she presented them to the company.

THE COURT: Precisely so. It is the same as if a person presents tickets to a railroad company and the company rejects them because, in the opinion of the person to whom they are presented, they are not genuine tickets. Now, you want to introduce that opinion indirectly. You may show that the tickets were not genuine by some one who knows.

MR. CORRIGAN: May I show this, your Honor, that she presented them for passage and that passage was not granted to her upon the presentation of that paper.

THE COURT: I question whether you can do that, because it is indirectly calling for the opinion of the passenger agent.

MR. CORRIGAN: The fact is that she was not allowed to travel on that paper.

THE COURT: You are trying to introduce the opinion of a competent witness by hearsay. Get your witness. There is nothing now before me.

BY MR. CORRIGAN:

Q You finally came to this country anyhow, didn't you?

A Well, I got money from other relations of ours that were there and then we came here.

MR. LONDON: I move to strike that out.

THE COURT: Strike it out.

Q Did you say your fare to this country?

MR. LONDON: I object to that question as immaterial and irrelevant.

A Yes, sir; paid to come here.

THE COURT: Strike that out. If you want to prove that these tickets were not good tickets you can prove it.

MR. CORRIGAN: I shall be obliged to call the representative of the railroad company. I thought that counsel on the other side would concede the fact. I understood that the defence in this case was not to be a technical one.

THE COURT: That is all from this witness?

MR. CORRIGAN: Yes, sir. I must ask your Honor for a continuance to get the agent of the line.

THE COURT: Gentlemen of the jury, do not talk about this case or permit anyone to talk with you about it, and do not form or express any opinion on it until it is finally submitted to you.

The Court then adjourned the further trial of the case until Friday morning, January 11th, 1907, at 10:30.

New York, January 11th, 1907.

TRIAL RESUMED.

DAVID N. CARVALHO, a witness for the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CORRIGAN:

Q Mr Carvalho--

MR. CORRIGAN: Do you concede that he is an expert?

MR. LONDON: Yes.

MR. CORRIGAN: The defence concedes that Mr Carvalho is qualified as an expert in handwriting.

Q Mr Carvalho, I show you this paper, People's Exhibit E and I call your attention to the signature "J. Goldberg" which I wish to use as a standard, and I show you this paper also, calling your attention to the signature "J. Goldberg", and ask you if, in your opinion as an expert, they were written by the same hand?

A In my opinion they were written by the same hand.

MR. CORRIGAN: I offer in evidence, the paper just identified by Mr Carvalho.

(The paper just referred to is admitted in evidence and marked People's Exhibit F.)

BY MR. CORRIGAN:

Q Now, I show you this other paper and ask you if that was written by the same J. Goldberg who signed his name to the standard?

A In my opinion it was written by the same hand.

MR. CORRIGAN: I offer that in evidence.

(The paper last referred to is marked People's Exhibit G.)

MR. CORRIGAN: The first of these papers which I will read you is the receipt signed by the defendant J. Goldberg, and reads as follows:

New York, March 26, 1906.

"I hereby authorise Messrs. Grossman & Ruelich to cancel the steamship tickets 3410 Mendel Michaels and 3411 Moise and Haie Hotkof, and also state that I have received my note for \$102, which, if in force, would fall due on the 11th day of April, 1906."

The other paper is the note dated January 31st, 1906, signed by the defendant, and says:

"Seventy days after date I promise to pay to the order of Grossman & Ruelich \$102 at 363 Madison street. Value received. J. Goldberg."

HENRY SCHLKISNER, a witness for the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CORRIGAN:

Q Where do you live?

A 761 East 139th street.

Q What is your occupation?

A I am chief clerk of the Holland-American Line.

Q Does that line run to Rotterdam?

A Yes, sir.

Q How long have you been in the Atlantic steamship business?

A Sixteen years.

Q I show you this paper People's Exhibit C, and I ask you if that is a passage ticket on your line?

MR. LONDON: I object to that question, if it please the Court, on the ground that there was no evidence that it was a passage ticket of the Hamburg-American Line.

Q Is it a passage ticket on any line?

A No, sir.

Q It is not?

A No, sir.

Q I show you People's Exhibit D, and I ask you the same question?

A No, sir; this is not a regular ticket.

Q Is it not a regular ticket?

A No, sir; it is not a regular ticket.

CROSS EXAMINATION BY MR. LONDON:

Q What do you mean by saying, "Not a regular ticket"?

A Well, I mean it is not a ticket issued by any of the steamship companies.

Q Now, you were employed by the Hamburg-American Line?

A The Holland-American Line.

Q Is this an order for a passage?

A We don't issue any orders.

Q Does the Rotterdam Line issue any orders?

A No, sir; you get regular tickets only.

Q Are you familiar with the custom prevailing on the East Side of selling orders on the instalment plan?

Objected to. Question allowed.

Q Are you familiar with the custom of selling orders for passage tickets on the instalment plan?

A Yes, sir.

Q Now, is this paper an order for such a passage ticket?

A This is not.

Q You will admit that this is one of the papers from the office of the company?

MR. CORRIGAN: I object to that. The gentleman does not know anything about it.

Q Do you know whether it is or not, have you similar blanks in your office?

A No, sir.

Q Has the Rotterdam Company, if you know?

A No, sir; I know it.

Q You know it?

A Yes, sir.

MR. CORRIGAN: The People rest.

MR. LONDON: I move to dismiss the complaint and

discharge the defendant upon the ground that the People have failed to make out a case against the defendant. Motion denied. Exception.

THE DEFENCE.

JACOB GOLDBERG, the defendant, being duly sworn in his own behalf, testified as follows:

DIRECT-EXAMINATION BY MR. LONDON:

Q Do you know the complainant, Hotkof?

A Yes, sir.

Q How long have you known him?

A About two and a half or three years.

Q What was your first transaction with him?

A He bought from me a golden bracelet for \$37.50 for his sister.

MR. CORRIGAN: I object to that and ask that it be stricken out on the ground that it has nothing to do with this case.

MR. LONDON: This is important because he owed a balance on this transaction.

THE COURT: We will receive it subject to a motion to strike it out unless it is connected.

Q Well, what else?

MR. CORRIGAN: I object to that question on the ground that it does not mean anything.

Q What else did he buy?

A A ticket.

Q For what?

A He bought a ticket for a cousin of his from Europe.

Q Now, what was the second transaction?

A And a scarf for his sister.

26

Q What was your second transaction?

A Then he bought tickets.

Q How many?

A Three tickets.

Q Where did you see him at the time you sold him the tickets?

A He wanted to buy three tickets off me, and I gave him the three tickets.

Q Now, did you have an office, Mr Goldberg?

A No, sir; I had no office; I am an agent.

Q What was your business?

A Pedling.

Q You would sell the tickets on the instalment plan?

A Yes, sir.

Q Did you say anything to the complainant as to who was the owner of the tickets?

A Yes, sir.

Q What did you tell him?

A I told him the owner from the office was in Madison street, 253, Grossman & Ruelich.

Q Did you ever buy these tickets at the office of the company, at the principal office of the company?

Objected to.

A No, sir.

Q Where were you in the habit of buying tickets?

MR. CORRIGAN: I object to that question.

THE COURT: Objection sustained.

Exception.

Q Of whom did you buy the tickets?

A From Grossman &

Ruelich.

Q Where were Grossman & Ruelich, where did they have their office?

A In 253 and 885 Madison street, and one in 104 Fourth street.

Q During the three years that you were a custom pedler you would buy your tickets there?

MR. CORRIGAN: I object to that question on the same ground.

MR. LONDON: I withdraw it.

BY MR. LONDON:

Q Now, what other firm did you buy your tickets from?

MR. CORRIGAN: I object to that question as incompetent.

THE COURT: Objection sustained. You cannot show matters of habit; you can show what he did in this case.

MR. LONDON: Yes, I am referring to this case.

Q Now, where did you buy these tickets?

A By Grossman & Ruelich; the first ticket I bought by Hermann, No. 144 Rivington street, and the others from Grossman & Ruelich.

Q How did you case to change the first tickets, Exhibits A and B for Exhibits C and D, how did you come to change them?

A I heard after eight weeks that the man who had the office underneath had failed; I went away to the complainant, my customer,

and immediately I told him to write to his parents not to leave their place as they will have trouble.

Q What else?

A And he says, "What shall I do, I have paid eight weeks three dollars, \$24," and I replied, "What will I do, I have paid more than you, \$38"; I told him, "To wait a moment, maybe I can get ay money back, and then I will know what to do." Then I stopped the tickets so that I should receive my money and told mo that in a period of six weeks, after six weeks, I should receive money by Hermann; Hermann was not in the office any more, but his daughter was there.

BY MR. CORRIGAN:

Q Who is this conversation with, with the complainant?

A I spoke that in the office.

Q With Hermann?

A Yes, sir, it was a party by the name of Brown and a daughter of Hermann's.

MR. CORRIGAN: I object to any conversation with third parties, and ask that it be stricken out on the ground that it is hearsay.

THE COURT: Objection sustained.

Exception.

MR. LONDON: I desire to explain the object of this conversation. The defendant testified that he told the complaining witness that he would see Hermann & Brown and speak to them with reference to the tickets, and we hold this conversation is part of the substance of the case.

THE COURT: There is nothing before me upon which you may properly make a speech at this time.

Q What did the complainant say to you, or what did you say to the complainant with reference to Brown & Hermann, give us that part of the conversation?

A The complainant told me he wanted other tickets, and I told him that I may be able to get back the \$57.50 which I had paid, and then "I will give you other tickets".

Q Did you mention to him the name of Brown & Hermann?

A Yes, sir.

Q What did you tell him about Brown & Hermann?

A I told him that the party in the office, Brown & Hermann had failed, that I am a poor man, and then Hotkof said to me, "If you will give to me other tickets I will not ask the money which I have paid already, I will put the difference to it."

Q Now, that is, he would let that go on the new tickets. State what he said?

A No, sir; he says, "I will not ask for all of it that I have paid. I know that you are a poor man, and I will do what I can."

Q Now, did you then go to Hermann & Brown?

A Yes, sir, I went to Hermann, but Hermann wasn't there any more there was a girl there.

Q What happened to Hermann?

A (No answer.)

Q Had Hermann & Brown failed?

A Yes, sir.

Q Did Brown escape from New York State?

Objected to.

Q Did Brown run away from New York?

THE COURT: Who is Brown?

MR. CORRIGAN: I don't know, sir.

MR. LONDON: He is the person of whom the defendant purchased the tickets.

THE COURT: What is the difference whether Brown ran away or walked away?

MR. LONDON: The difference is this, that it was Brown who sold to him these tickets.

THE COURT: I do not see that it has any possible bearing upon this case. I am bound to sustain the objection.

Objection sustained. Exception.

Q Did you take these tickets from Grossman & Ruelich?

A Yes, sir.

Q What did you get from Grossman & Ruelich?

A The tickets.

Q Which tickets?

A These now on the table.

Q Exhibits C and D?

A Yes, sir.

Q Grossman & Ruelich were a firm engaged in the selling of passage tickets?

A Yes, sir.

Q Did you give Grossman & Ruelich any other papers?

A No, sir.

Q And the papers which you received from Grossman & Ruelich purported to be the tickets which you gave to this complainant?

A Yes, sir; I took those tickets and gave them to Hotkof.

Q Do you personally know whether those papers are good tickets or bad passage tickets?

A I can't tell; I can't read; the man gave me the order in the office, and I go to the office and I give the name, and he says, "This is an order on Rotterdam."

Q Did you during the last three years receive the same kind of papers from that office?

MR. CORRIGAN: I object to that question.

Objection sustained. Exception.

Q Did you say you could not read?

A No, sir.

Q You cannot read?

A No, sir.

Q Did you pay Grossman & Ruelich for these tickets?

A Yes, sir.

Q After Grossman and Ruelich disappeared--

A I tried to get my own money from Grossman & Ruelich, but they disappeared.

Q That was after you were indicted they disappeared?

A No, sir; before.

Q Before?

A Yes, sir.

Q Did you commence an action against Grossman & Ruelich

58

in the 13th District Municipal Court?

MR. CORRIGAN: I object to that question.

THE COURT: I don't think it has any bearing upon this case, but I am bound to give the defendant an opportunity to connect it. I will allow the question.

A Yes, sir.

Q Did you commence an action in 13th District Municipal Court?

A Yes, sir.

Q You sued Grossman & Ruelich?

A Yes, sir.

Q That was before any proceeding was commenced against you by the complaining witness?

A Yes, sir.

Q Did you appropriate any money of this complaining witness?

A No, sir; I took the money and paid it in the office.

Q Paid it in the office?

A Yes, sir.

Q Whatever money you received from the complaining witness you turned over to Grossman & Ruelich?

A Yes, sir.

CROSS-EXAMINATION BY MR. CORRIGAN:

Q Now, Mr Goldberg, do you remember the 31st of January, 1906, when you got \$30 from the complainant?

A Yes, sir.

Q That was on account of these three tickets, wasn't it?

A Yes, sir.

Q What did you do with that \$30?

A I paid it to Grossman & Ruelich.

Q Did you pay it all to them?

A No, sir.

33

Q How much did you pay them?

A \$10.50.

Q Then you did not pay them \$30, did you?

A No, sir.

Q Why did you say you did?

A I paid \$10.50, and I gave my note for \$102.

Q And you know that it took about eight weeks, eight or nine weeks, for tickets to be sent abroad and to come back, didn't you?

A I did not.

Q Do you mean to say you don't know how long it takes a letter to go to Russia and back, or an answer to come back?

A I don't know.

Q Where did you come from?

A From Russia.

Q How long did it take you to come?

A Four weeks.

Q Then it would take about eight weeks for a letter to go over and come back?

MR. LONDON: I object to that.

Q You do know something about it, don't you?

A Yes, sir.

Q Now, you gave this note for \$102, didn't you?

A Yes, sir.

Q On the 25th of March, that would be about seven weeks afterwards, and three days to be exact, you went to Grossman & Ruelich again, didn't you?

A Yes, sir.

Q You told them then to cancel the passage tickets, didn't you?

A No, sir; I did not.

Q Didn't you get your note back from them on the 25th of March?

A The customer, Hotkof, owes me \$94. He told me he would pay me in three instalments. On the 31st of January he gave me \$30, and he was to give me \$30 on the 1st of March, and on the 15th of March when he would give me \$34.50. He said, "I have no letters from my parents, I want my money"; he says, "If I will receive a letter I will give you the money", and to come back on the 18th, I asked him for the \$34.50 and he said he would not pay it because he did not receive any letters. Then I came on the 24th in the evening, and he said, "I received a postal card and they had sent a letter of inquiry to a place in Germany and they wrote to Germany to the company and they received word that there was no such company in existence.

Q So you went around on the 25th of March and you got your note back from Grossman & Ruelich without paying a cent, didn't you?

A No, sir.

Q On March 25th you got your note back from Grossman & Ruelich without paying anything, didn't you? Answer that question yes or no.

A I paid and then I received the note.

Q How much did you pay on the note?

A \$102.

Q Do you mean to say that you paid Grossman & Ruelich \$102?

A Yes, sir.

Q Isn't that your signature. Look at it (handing witness a paper); do you mean to say that is not your signature?

A No, sir.

Q Is that your signature (handing witness another paper)?

A That is my signature (witness referring to the note).

Q What is the difference?

A I did not give this.

Q Didn't you sign this paper before you get back the note, that says "Grossman & Ruelich, New York, March 25th, 1906, I hereby authorise Messrs Grossman & Ruelich to cancel steamship tickets 3410 and 3411, Mendel Michaels and Noise and Haie Hotkof, and also state that I have received back my note for \$102, which, if in force, would fall due the 11th day of April"?

A No, sir.

Q Well, why did you pay a note that wasn't due until the 11th of April, why did you pay it on the 25th of March?

A When that postal card came I went to Grossman & Ruelich and told them "There may be more trouble", and rather than have trouble I wanted to pay this note. "If you pay the note now," he says, "I will send a cable to show that they can travel." I had \$82 with me, and as true as God may give me life, I went and borrowed \$20 and I paid the note. He stamped it paid, and he gave me the note, and he says, "Go home, the tickets will be all right."

Q At the same time didn't you sign that receipt there?

A No, sir; he did not hand me any.

Q You mean to say you were out all this money on the

transaction?

A Yes, sir.

Q Grossman & Ruelich did not fall until after you were arrested, did they?

A Yes, sir.

Q They failed after you were arrested?

A Yes, sir.

Q They appeared against you in the Jefferson Market Police Court?

A In the Essex Market Police Court they called him and he said they were strange tickets.

Q Now, how long have you been in New York?

A Seven years.

Q Have you been out of New York in all that time?

A No, sir.

Q Didn't you run away to Texas once?

A No, sir.

Q Were you never in Texas?

A No, sir.

Q Don't, you know Mr Nott, sitting over there?

A No, sir.

Q Didn't you ever see him before?

A I don't know; I don't remember.

Q Do you know a man named S. Stein, or Joseph Stein, I should say; yes or no?

A I don't remember.

Q Didn't Mr Nott try you for stealing \$200 from Joseph Stein in this court?

MR. LONDON: I object to that question, in that form.

Objection overruled. Exception.

A No, sir.

Q What is the answer? Weren't you tried by Mr Nott, here?

A No, sir.

Q And all you ever paid Grossman & Ruelich was \$10.50?

A On the 31st day of January, the time when I took the tickets I paid \$10.90.

Q How much were you to make out of these tickets?

A I made \$20.

Q On all three tickets?

A Yes, sir.

Q How much?

A \$20.

Q Did you ever work for the American Ice Company?

A No, sir.

Q Did you have a transaction about a horse with Stain?

A No, sir.

Q Now, how much did Hotkof pay you altogether?

A \$84.

Q He paid you \$30 three times, didn't he?

A Twice.

Q He paid you \$30 in October, didn't he?

A No, sir.

Q The first time?

A No, sir.

Q Let us see, he paid you how much?

A He paid me eight weeks three dollars a week, \$24.

Q He paid you \$24 in instalments?

A Yes, sir.

Q \$60 in two payments of \$30 each?

A He came up and offered \$30 on the 1st of March, \$30.

Q The 31st of January \$30 and on the 3d of March \$30?

A Yes, sir.

Q You were to pay \$112 altogether for the tickets,

58

weren't you?

A Yes, sir; \$112.50.

Q So that you paid \$10.50 in cash and you gave your note for the balance?

A Yes, sir.

Q You know that at any time you could stop those tickets by going back to Grossman & Ruelich?

A No, sir; if I was not asked to stop them I would not stop them.

Q But you know you could stop them?

A Yes, sir; I could stop them.

Q So you knew these were not tickets, these were simply orders?

A I did not know anything; I don't know anything.

Q Why, you had been dealing in tickets for a long time, hadn't you?

A I deal in everything; I have customers.

Q You are a pedler?

A Yes, sir.

Q When you get a chance to sell tickets for more than you can buy then for and sell them at a profit, you would go from one agent to another and buy the tickets, wouldn't you?

A Yes, sir.

Q You were not employed by Grossman & Ruelich?

A I went there when I wanted anything and paid for it.

Q You were a customer?

A Yes, sir.

BY MR. LONDON:

Q Did Hotkof ask you to stop those tickets?

A Yes, sir.

Q Where was it that he asked you to stop them?

A In

his own house; I told him, "Come with me to the office and we will stop it." He went with me to the office of Grossman & Ruelich in Madison street, and he asked me to stop the tickets.

BY A JUROR:

Q Why did he ask you?

A Because a postal card had arrived.

BY MR. CORRIGAN:

Q You mean to say that after Hotkof asked you to stop the tickets that you went and paid \$102 on thorn?

A He told me on the 24th the postal had arrived that the tickets were no good, and I went on the 25th and I showed the postal card to Grossman & Ruelich, and he said, "I have no office in Alkola, but I have an office in Rotterdam."

Q (Question repeated.)

A I had paid before I had come to Hotkof; I had paid the money "before Hotkof asked me to stop it.

Q Didn't you testify a few minutes ago that Hotkof asked you to stop the tickets when he had a postal card, and you and he went to the office and stopped them?

A No, sir; when he gave me the postal card I went alone.

Q You went Alone?

A Yes, sir.

Q That was when you stopped the tickets?

A Yes, sir; I was afraid of the money; I had paid it already and I was willing to pay, I say, but I hoped there will be no trouble; I paid Grossman & Ruelich and he stamped the note paid, and in

the evening I went to Hotkof for my \$34.50, and he says, "Do you know it? Stop the tickets." I said, "If I do that the office will take \$5.75 for each ticket," and he says, "I am willing to pay."

Q That was March 25th that you went to see Hotkof?

A Yes, sir; in the evening.

Q After you paid our note?

A Yes, sir; I went for my money.

Q How do you explain it that the stamp on the tickets is dated March 25th?

A I did not have anything to do with this paper.

Q You don't know anything about that?

A No, sir; nothing was shown to me; I know nothing about it.

BY THE TRUTH JUROR:

Q Have you any memorandum to show that you had these dealings about the jewelry that was purchased?

A No, sir; I have nothing; there is the list on the back of the receipt, the customer signed his name on the back of the list.

Q You said before that Hotkof bought a piece of jewelry two and a half years ago?

A Yes, sir.

Q Where did you take Hotkof to go and get that jewelry?

A 118 Bowery, Mr Wolf.

BY MR. LONDON:

Q Now, the action you have commenced against Grossman &

Ruelich, in the Municipal Court, was for the recovery of money which you had paid to them and which they failed to return, for the money which you testified Grossman & Ruelich owed you--have you commenced an action against them?

A Yes, sir.

Objected to. Objection sustained. Exception.

MR. CORRIGAN: At this time I will move to strike out the testimony as to the bracelet. It was not connected. I can see no connection with the bracelet.

THE COURT: Renew your motion at the close of the whole case.

YETTA GOLDBERG, a witness for the defendant, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. LONDON:

Q You are the wife of the defendant?

A Yes, sir.

Q Do you remember having seen Hotkof, the complainant, at your house?

A Yes, sir.

Q What did Hotkof say in reference to stopping the ticket or tickets?

A He told him to stop the ticket.

Q Why, did he say why?

A No, sir; I don't know why.

Q Did he tell him to stop it?

A Yes, sir.

CROSS-EXAMINATION BY MR. CORRIGAN:

Q Whom was that, Mrs. Goldberg?

A I don't remember

the month, it was in the Afternoon.

Q What time in the afternoon?

A About six o'clock.

Q About six o'clock?

A Yes, sir.

Q Do you remember the month?

A I think it was on a Saturday.

Q On a Saturday, but what month?

A I don't remember the month; it is a long time ago.

Q Do you know whether your husband did stop the tickets or not afterwards?

A Sure.

Q After, or when?

A I don't know when.

Q Well, how do you know he did it then?

A The complainant came and asked him to stop it.

Q How do you know that your husband did stop them?

A That I don't know.

SAMUEL HOTKOF, a witness for the People, recalled:

BY MR. CORRIGAN:

Q Now, Hotkof, you remember the first time that you paid the defendant Goldberg?

A In October, I don't remember the date.

Q But you remember the fact that you paid him?

A Yes, sir.

Q You paid him three dollars a week for eight weeks?

43

A Yes, sir.

Q When did he give you these first two tickets?

A The first time I gave him the \$30.

Q The first time you gave him the \$30 or the three dollars?

A The \$30.

Q When was that, in January?

A Yes, sir.

Q When did he give you these dated January 31st?

A Well, when I paid him the \$24 he came to me and said, "The office has failed"; I said, "Mr Goldberg, what will happen now," and he said to me, "You will give me new money and I will give you new tickets." I gave him first \$30 and he gave me these papers.

Q That was in January, wasn't it?

A Yes, sir; then six weeks later he came and said, "Hotkof, I must have more money," and I gave him another \$30.

Q That was the first of March?

A Yes, sir; that was the last time when I gave him \$30--it was January 31st.

Q That was the first time you gave him \$30?

A That was the last time.

Q Didn't you give him \$30 again, and he gave you these yellow tickets on January 31st?

A Yes, sir.

Q Four weeks after that, on the 1st of March, you gave him \$30 more?

A Yes, sir.

Q Didn't you?

A Yes, sir.

Q Did you see him on the 15th of March, or about the 16th of March?

A Yes, sir.

Q Did you have a talk with him then?

A Yes, sir; I told him I received a letter from my parents in which they informed me that the tickets are no good.

Q When was that?

A It was two months before the Jewish holiday, that is about March, it was two months before the Hebrew Easter holiday.

Q Is that as near as you can fix the date?

A Yes, sir; I did not put it down; that is the best I can do.

Q Did you ask him to stop the tickets?

A No, sir.

Q Did you ever ask him to stop the tickets?

A No, sir; how could I have asked him to stop the tickets, whom my parents were already in Germany, and I had already paid \$114.

Q How much did you pay altogether?

A \$114.

Q Did you ever get any of it back?

A No, sir; never.

Q Did you ever ask the defendant for any of it back?

A Yes, sir.

Q What did he say?

A He said, "I would not give it to you"; I said, "Mr Goldberg, I will pay the balance of the money and get the new tickets," and he said, "I will get you nothing, sue me."

Q Sue him?

A Yes, sir.

Q Did you owe him any money on a bracelet or on anything else?

A No, sir; I did not buy anything from him, only

45

tickets.

Q That is all you ever bought from him?

A Nothing else.

BY MR. LONDON:

Q Didn't he tell you he was suing Grossman & Ruelich for the money?

MR. CORRIGAN: I object to that.

A He said--he told me about it, but I did not know anything at all about the office.

THE COURT: Is that the case?

MR. LONDON: Yes, sir.

TESTIMONY CLOSED.

THE COURT: Now will you submit it.

MR. LONDON: Yes, sir, I will submit it.

THE COURT'S CHARGE.

FOSTER, J.:

Gentlemen of the jury:

The charge against the defendant is that of grand larceny in its second degree. Larceny to the law is what, in common parlance, is known as stealing.

The defendant is charged with obtaining the money in question by false representations. It is said that he got \$30 in money from the complaining witness, Samuel Hotkof, by falsely presented and representing that a paper which he gave him was a passenger ticket.

This charge is grand larceny in the second degree, and, first of all, I want to bring to your attention the difference between the kinds of larceny. Larceny, I repeat, is what we commonly term stealing. If the amount stolen is less than \$25 it is petit larceny. If it is more than \$25 it is grand larceny. So that if the defendant here stole \$30 he is guilty of grand larceny in the second degree. If he stole less than 25 it is petit larceny. That point, however, need not trouble you very much, for I understand there is no substantial dispute here the defendant. The gist of this case is whether or not

the defendant stole that money.

The law says that if a person falsely represents as true something that is not, and this representation relates to an existing fact, and that the defendant made it with intent to induce a person to part with his money, then that representation constitutes a false representation, and if a person gets such money pursuant to false representations and because of them he steals it just the same as though he put his hand in the pocket of a person and took out \$30.

Ordinarily larceny is accomplished by taking from the possession of the owner the property in question. Here the complainant only parted with his money, but why did he part with it? Because of this false representation? You must take this evidence as a whole and determine whether or not the defendant did falsely represent that these were genuine passenger tickets. If he did, did he do so with intent to deceive the complaining witness? Did the complaining witness believe him and did he part with his \$30? If you find those facts in the affirmative convict the defendant of grand larceny in the second degree, giving to the defendant the benefit of any reasonable doubt you may entertain.

"You are the judge of the facts, gentlemen, but you must accept the law as I lay it down to you. You have

nothing to do with the question of punishment. You are only to determine whether or not the defendant is guilty. You may retire and answer that question.

A JUROR: I desire to know if an agreement is gone into by two people, and as I understand in this case, one party of the two does not deliver his agreement, whether that party has the privilege to withdraw, that is, the other side has the privilege to withdraw whatever he has given the man?

THE COURT: That question is clearly not in this case. The charge against this defendant is larceny, or stealing. He did steal if he represented that this paper was a good and valid passenger ticket and lied about it when he received the complainant's money. If it is an inchoate contract, or something else, that need not trouble you. You are only here to answer the question: Did this defendant steal the complaining witness' money by giving him a bogus ticket? That is the substance of the charge. The question is, Was that ticket bogus after he stopped it, or was it bogus at the time he got it? The Court: You must determine that for yourselves from the evidence.

MR. LONDON: I ask your Honor to charge that if the jury find that the defendant obtained these tickets from Grossman & Ruelich and believed them to be good passenger

tickets--if the jury find that to be so, they must find for the defendant.

THE COURT: If the defendant's intention was pure and honest, if they find it was a bona fide transaction in selling the complaining witness a good and valid ticket, then, of course, he is not guilty of any crime; but if he falsely represented this to be a ticket in order to get the complaining witness' money, then he may be convicted.

A JUROR: Will you let me ask you a question?

THE COURT: Yes.

A JUROR: If he took the tickets in good faith at the beginning and then afterwards, after paying the \$10.50 and giving a note for the balance, and afterwards received back his note and found that the tickets were no good and refused to refund the money, would that alter the case any?

THE COURT: Well, you, gentlemen, must determine from the evidence in the case all the facts. I have told you the law very briefly that applies to the fact. If this paper, in its inception, was a contract for a ticket, then it was not a ticket. If the defendant falsely represented that it was a ticket and he knew it was not a ticket, and he did it intending to get the complaining

witness' money and did get it thereby, then the elements of grand larceny in the second degree are made out, if the money amount to \$30.

MR. LONDON: I take an exception.

THE COURT: It is for you to determine on all the facts in the case. If I have not given you full instructions, gentlemen, you may return for further instructions, but I believe the question is now fully before you. You must use your own common sense in determining this question. Was it an honest transaction or was it a swindling transaction?

MR. LONDON: I ask your Honor to charge the jury that if they find that the tickets, People's Exhibits C and D, were good and valid tickets, and were given to the defendant by Grossman & Ruelich, then they must acquit the defendant.

THE COURT: Of course, if you believe that the defendant was honest in all his dealings, you will acquit him.

(The jury retired.)

(The jury returned a verdict of guilty of grand larceny in the second degree.)

MR. LONDON: I will make a motion for a new trial and I will ask your Honor to set it down for next Tuesday

51
for that purpose.
(The defendant was remanded until Tuesday, January 15th.)