

make it about the first of May? A Yes sir, about the first of May.

THE SIXTH JUROR: I would like to have the Stenographer refer to that part of the testimony as to what this paper contained and read it out loud.

(The Stenographer reads as follows: The paper in question was written in German, in English letters. On the first line was the word in German "declaration". It then went on to state that "I hereby declare that I have misappropriated moneys belonging to William Schwartz to the amount of \$450. which I promise to repay to him in weekly installments of \$10., signed Max Blaustein")

BY THE SIXTH JUROR:

Q Where is the translation of that word unfaithful in this statement. Why did you leave that out? A I did not leave that out. The word faithful in this sense means embezzlement, misappropriation, defalcation, stealing, and anything you please. It means I have been disloyal ^{for} in that amount of money, and the only translation is misappropriation, embezzlement or stealing.

Q Well is the word embezzlement or stealing in there? A No sir, I have used the word misappropriation as conveying to the jury the best meaning of the word.

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NATHANIEL B. OETTINGER, a witness called on behalf of the people, testified as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q What is your business? A Superintendent of the Manufacturing Department of Heidelberg Wulf Company.

Q How long have you been in that employ? A Twelve years.

Q During that time have you made contracts with William Schwartz the complaining witness in this case? A Yes sir.

Q Can you state of your own knowledge---did you make the contract with him? A Yes sir.

Q Was your contract with William Schwartz at any time during those 12 years based in any way, shape or manner upon his pay rolls? A No sir.

MR. WEINBERGER: I object to that question and I move to strike out the evidence as being incompetent, immaterial and irrelevant.

MR. MAYNARD: I called this witness to meet the suggestion of the defendant's counsel that this pay roll was padded for the purpose of the contract with Heidelberg Wulf & Company.

THE COURT: Of course this evidence at this time is not competent---isn't that true? You might be able,

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later in the case, to recall this witness.

MR. MAYNARD. Well I hoped I could do it at this time.

THE COURT: I will be obliged to strike out the evidence at this time.

MR. MAYNARD I am sorry Mr. Oettinger.
Stricken out.

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BERTHA SCHWARTZ, a witness for the People,
recalled:

BY MR. MAYNARD:

Q Now, Mrs. Schwartz, I will ask you to speak up loud
this time so that every juryman can understand what you say.
I will call your attention once more to this book, People's
Exhibit 2 in this case, at page 235 thereof, and to the entry
on that page No. 61, L. Sivirski, \$61.97. I ask you if you
know in whose handwriting that entry is? A Mr. Blaustein,
the defendant.

Q Blaustein, the defendant? A Yes.

BY A JUROR:

Q Can you read and write English? A Yes, sir.

Q And write too? A Yes, sir.

BY MR. MAYNARD:

Q Both in the English and the German? A Yes, sir.

Q Now, Mrs. Schwartz, on the occasion of the pay day in
your husband's establishment at 65 Bleecker street, did you
usually attend and assist this defendant Blaustein, in making
up the payroll and filling the envelopes? A I came up to
help.

Q Did you usually do that? A Yes, sir, every Tuesday.

Q Every Tuesday? A Yes, sir.

Q Now, I will ask you to tell the jury just how you did
that work with this defendant on the 5th day of February, 1909.

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A Well, I came up on that day and there was the money already from the bank. Mr. Blaustein took out the money from the satchel and put it on the desk, and put the money in rotation. I had a copy of the payroll and Mr. Blaustein had the payroll open before him, being No. 1, he called out the amount and the number of the employee. I looked at my copy and I counted out the money and I put on the envelope and handed it to Mr. Blaustein. When it was a check it was a cross mark on the copy I knew it was a check, and when there was no cross mark I knew it was cash.

Q One question. Did you have in addition to the cash a bundle of checks signed by your husband? A Yes, sir.

Q To cover that payroll? A Yes, sir.

Q When a check was called for you gave a check to Mr. Blaustein? A Yes.

Q When cash was called for you counted out the cash? A Yes, sir.

Q Did you on that occasion count out and deliver to this defendant when he called out 61, L. Sivirski, \$61.97? A Yes.

Q Did you deliver \$61.97 to this defendant? A Yes, sir.

Q What did he do with it? A I gave it to him, Mr. Blaustein, hand it over on the envelope, he counted it over and he told me, "I think it is a mistake"; I said, "No, \$61.97 on my copy" and he held the money in his hand and the envelope and he said, "I will go out and see", and in a few

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moments he came back and said --

Q Did he go out? A Yes, sir. In a few moments he came back and said, "It's all right." I did not ask him anything more.

Q Did he put the money in the envelope then? A Yes, sir; he sealed it, he wet it with the sponge and sealed it.

Q Now, after the envelopes were wet with the sponge and sealed they were put in this box, this is the very box that you used? A Yes, sir; this is the very box, and there were envelopes in it.

Q This little box is for pay envelopes? A Yes, sir.

Q You had a box of those pay envelopes, did you? A Yes.

Q When you turned that money over to him he himself put it in the envelope? A Yes, sir.

Q Wet it, sealed it and put it in this box? A Yes, sir.

Q After the money was delivered by you to him did it ever come back into your hands again? A No, sir.

Q It did not? A No, sir.

Q Now, at the close of your work with him on that day did he give you any money on account of your husband's household expenses? A \$50.

Q Was your husband's name on the payroll? A No, sir.

Q Under what item was the \$50 paid? A Well, it was figured out of the payroll money.

Q Under expenses -- all expenses? A Yes.

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Q Now, is that item \$50? A Well, this is \$100, but I only received 50.

Q The item, "All expenses" on this payroll is for \$100?

A Yes, sir.

Q All you received that day was 50? A Yes, sir.

Q Did you deliver to this defendant on that day all the money that was in the satchel and all the checks with your husband's signature on that he placed in your hands that day?

A Yes, sir.

Q All that you got back was \$50? A Yes, sir.

Q Now, on prior occasions, Mrs. Schwartz, was the same custom followed by you when you made up the payroll? You don't understand my question. On the prior days when you came there to do this work was the same custom followed that you have described? A (No response).

Q I will ask it in this way: Week by week did you do the same thing in your husband's office? A Yes, sir.

Q You always filled the envelopes in the same way? A Yes.

Q How much money did you receive week by week? A \$50.

Q Was there any item on the copy of the payroll which you had which showed this "All expenses"? A I really don't know what you mean.

Q I have called your attention to the exhibit, the payroll for February 5th, 1909, and to the last entry on that payroll, which reads, "All expenses, \$100", and you say that you re-

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ceived that day \$50, and that your husband's name was not on the payroll, but that week by week you received \$50. Now, I ask you this question: On the copy of the payroll which this defendant gave you to work with him on, were the words "All expenses" on it? A No, sir.

Q They were not?

MR. WEINBERGER: Objected to.

THE COURT: Where is that copy?

THE WITNESS: Well, I left it on the desk when I went home.

Q You never saw it again? A No, sir, I never saw it again.

Q Did you always leave the copies there? A Always I left them in that box on the desk, and I went home, left the copy and I went home; I never bothered any more about it.

Q Did you when you went home on this occasion tell your Husband about this defendant and the \$61.97 and his going out of the room? A Yes, sir.

Q You did? A Yes, sir.

THE COURT: That may be stricken out as hearsay.

MR. MAYNARD: It has already been testified to.

MR. WEINBERGER: I did not object to any one of these questions.

BY THE COURT:

Q One question, Mrs. Schwartz, were you present when the

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defendant delivered the pay envelopes to the employees?

A No, sir.

Q You were not present? A No, sir.

BY MR. MAYNARD:

Q Not on February 5th, 1909, or on any other occasion?

A No, sir, I was never by paying out.

Q As soon as you completed your work -- A I went home.

Q Of counting out the change you went home? A Yes, sir.

Q When you went home on each occasion you left this box?

A Yes, sir.

Q On the desk with the envelopes and the money on the desk?

A Yes, sir.

Q You never took any more than the \$50 that was paid over to you? A That is all.

BY THE ELEVENTH JUROR:

Q Only one time in your presence, counting out the money to fix up the payroll -- was it only once, the 5th of February, that the defendant left the room and came back again?

A Yes, sir, February 5th.

Q Not before? A No, sir.

BY THE SIXTH JUROR:

Q Are you familiar with the books, are you not? A Well, with this handwriting.

Q You knew the different items in the books, you just referred to some there as being in the defendant's handwriting.

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ing? A Yes, sir.

Q This item of \$100 existed in those books? A Yes, sir.

Q All you received was \$50? A Yes, sir.

Q When did you discover the item was wrong? A Well, by the \$61.97 of Mr. Siviraki.

Q That is not the item -- the item of \$50 that you received for household expenses was charged in the book, total amount \$100. When did you first know about that? A Well, when the expert bookkeeper looked through the book.

BY MR. MAYNARD:

Q That is the first you knew anything about that? A Yes.

BY THE COURT:

Q That item of \$100 appeared in the book every week?

MR. MAYNARD: Almost every payroll. The entire book is in evidence and the jury can see for themselves. I have looked back as far as I could and I see that it appeared every time.

BY THE SIXTH JUROR:

Q I want to have this clear in my mind. Mrs. Schwartz, you had a copy of these items in the book in the form of a payroll that you were checking when you arranged the envelopes and checks? A Yes.

Q What did it say on your paper? A The same as on the payroll.

Q \$100? A It wasn't on the copy, it was not \$100.

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Q What was it? A It was nothing only \$50 brought from the bank.

Q \$50? A Yes, sir.

Q It should not be a hundred in your opinion? A It looked so.

BY MR. MAYNARD:

Q Who made the copy that you used? A Mr. Blaustein.

Q He made the copy? A Yes, sir.

BY THE SIXTH JUROR:

Q Did you have a copy of the total amount of cash paid out? A On the copy.

Q The same as it is here? A The copy was made from the payroll.

Q Could you tell the difference --

BY MR. MAYNARD:

Q On your copy was it totalled up? A No, sir.

Q It was not? A No, sir.

MR. MAYNARD: In the book it is.

BY THE COURT:

Q Why was it necessary to have a duplicate payroll; could you not have used the book? A Well, what do you mean?

Q Why was it necessary to have the payroll on a sheet of paper as you say you had? A A copy.

Q Why was the copy necessary? A It was for me because I counted out the money, I should know how much money I should

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count out.

Q He gave you a copy? A Yes, sir, it was prepared on the desk, made by the defendant Blaustein.

Q Did it ever occur to you that you could have used the book for that purpose? A No, sir.

Q This defendant is related to you? A Yes, sir, a cousin.

Q He is a cousin of yours? A Yes, sir.

Q He did the bookkeeping work there? A Yes, sir.

Q You relied upon him? A Yes, sir, trusted him.

Q Did he devise this system of having a copy of the payroll? A Yes, sir.

Q Prepared by him? A Yes, sir.

Q And the book? A Yes, sir.

Q So that you held a copied payroll and he would read from the book? A Yes, sir.

Q How far was this book away from the payroll? A Well, about like your Honor sitting here and the defendant was sitting here.

Q It never occurred to you to examine his book? A No.

BY FIRST JUROR:

Q You could read and write English? A Yes, sir.

Q When ~~he~~ ^{you} checked up from the copied payroll -- ~~the~~ ^{would} the defendant Blaustein call off any names or numbers to you?

A I crossed it.

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Q The number and the name? A Yes, sir.

Q When he called you No. 48 you knew it was 48? A Yes.

Q Then you knew pretty well the number 50, which was the installment man, was on the payroll? A I knew it was on the payroll after he was called.

Q Why, you say every week he was paid \$30 weekly?

A Yes, sir.

Q He was on the payroll? A Yes, sir; Mr. Schwartz told him to pay him every week.

Q I asked you whether you checked it by number and name and you said yes. A Yes, sir.

Q Struck it out? A Yes, sir.

Q You knew that No. 50 was with his name right adjoining it, wasn't it? A Yes, sir.

Q Did you call that to Mr. Schwartz's attention?

A Yes, sir.

Q That Mr. Neworth was on the payroll? A Yes, sir.

Q That Mr. Neworth was on the payroll? A Yes, sir.

MR. MAYNARD: He was there by his consent.

MR. WEINBERGER: Mr. Schwartz says he never knew it.

MR. MAYNARD: That is the reason I wanted to ask Mrs. Schwartz.

THE COURT: Mr. Schwartz never handled the books; he can neither read or write.

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A JUROR: I asked Mrs. Schwartz whether she could read or write and she said yes.

THE COURT: Yes.

A JUROR: She knew No. 50 was this name. I asked her and she said that she knew that No. 50 was that of Mr. Neworth.

THE COURT: Did you understand the juror's question? The juror would like to know if No. 50, being the jeweller, Mr. Neworth, whether the payroll had an entry of the amount you paid to him.

THE WITNESS: I didn't know it was on the payroll. I had an envelope among the employees' envelopes and his check was amongst the employees' check, and it was on the copy of the payroll.

BY THE COURT:

Q You knew of the purchase of jewelry from Neworth by your husband? A Yes, sir.

Q You knew by the week he was paid \$30? A Yes, sir.
that in

Q You knew week by week the payroll checks there was a check for Neworth? A Yes.

Q You received the Neworth check with the payroll checks, didn't you? A Yes, sir.

Q You turned that check over to Blaustein just as you did the other payroll checks? A Yes, sir.

Q Did you ever discuss it with your husband? A I told

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Mr. Schwartz, and he asked me whether the man is paid off.

Q Whether he was paid off? A Yes, sir.

Q Did you tell Mr. Schwartz when the bill was fully paid?

A It was --

Q Did you tell him? A I did.

BY THE FIRST JUROR:

Q What I asked with the permission of his Honor is whether she knew that No. 50 was Mr. Neworth, and whether she ever told him that Mr. Neworth was on the payroll. A No, 50 I seen on the slip, but who it was I didn't know.

Q How did you check it? You said you strike off every one by the number or name, you said you checked every one by the number or name? A Yes, sir.

Q When the \$100 expenses is put there on the book is there any other amount included in that except the \$50 you were to draw weekly? A \$50.

Q Did you have other expenses? A No, sir.

Q You mean that he appropriated that other \$50 for him himself? A Well, it looked so.

THE COURT: Strike out that answer. It will be for you, gentlemen of the jury, to find the facts in this case, whether in making a false entry, if it was a false entry, it was made with the intent to defraud someone. You may find that as a fact.

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BY THE TENTH JUROR:

Q How near a relative is the defendant to you? A What kind of a relative he is?

Q He is a first cousin, did you say? A Yes, sir.

Q How long have you known him? A About five or six years.

Q He is a first cousin? A Yes, sir.

Q You have only known him five or six years? A Yes.

BY THE SIXTH JUROR:

Q How long has the defendant been married? A I don't know.

Q You have no idea when he became your first cousin?

A No, sir.

Q Is he a cousin by marriage? A He is my mother's nephew.

Q Your mother's nephew? A Yes, sir.

BY MR. MAYNARD:

Q Now, he came from Russia, didn't he, some years ago?

A From Europe.

Q Did you ever know him in Europe? A No, sir.

Q You never knew him until he came here? A Yes, sir.

Q And entered your husband's employ? A Yes, sir.

Q Did you get your husband to put him on his staff? A My mother came to my house and begged me that we should give him work.

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BY TENTH BUROR:

Q Did you ever keep track of the petty expenses of the business? A I don't know.

CROSS EXAMINATION BY MR. WEINBERGER:

Q You knew the defendant only five years? A Since he was in this country.

Q You never knew him in Europe? A No, sir.

Q Isn't it a fact you came from the same town? A Well, I was a girl when I came to this country.

Q But you saw him as a little girl, you saw the defendant? A I don't remember that.

Q How old were you when you came to America? A About 14 or 15.

Q How old did you say? A 12 to 14.

Q You don't remember whether you saw the defendant at any time over there? A No, sir, I don't remember.

Q You had a slip before you in paying out? A Yes.

Q You mean a copy? A Yes, sir.

Q A copy slip? A Yes, sir.

Q On that slip was what -- were there any names there? Names and numbers? A No names, only numbers.

Q Only numbers and the amounts? A Yes.

Q Did the defendant have a slip too? A Yes, sir, he had the payroll book No. 1 open before him, in front of him.

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Q This book here, People's Exhibit? A Yes, sir.

Q He called out the names and the numbers? A Yes, sir.

Q Didn't you testify in the Police Court that all the names came from slips? A I had a slip, I had a copy, but the defendant had the payroll open before him.

Q Didn't you testify in the Police Court that there were two slips? A Well, two slips were from payroll book No. 1.

BY MR. MAYNARD:

Q You had two books? A Yes, we had two books -- the 400 -- he had the payroll before him, he had a copy of it.

Q So he had a copy too? A Not from No. 1 book.

Q The difference arose over Moscatelli's envelope?

A Sivirski's.

Q Only Sivirski's? A Yes, sir.

Q You are quite positive of the amount that was against Sivirski's number? A \$61.97.

Q Do you remember that? A Yes, sir, I remember that very good.

Q Are you sure it was 61.97? A No, sir, it was 61.97.

Q On that slip? A Yes, sir, on that slip.

Q There was 61.97? A Yes, 61.97.

Q You say that when you came in on that afternoon the money was already out? A Yes, sir.

Q How was it on the other days? A Well, if I was not

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there the money was in the satchel and if I came there he unpacked the money.

Q But as a rule were you there when the money came?

A Sometimes I was in time, sometimes I wasn't in time.

Q Can you remember testifying like this in the Police Court? A Well, I --

Q Wait a minute. "Who went with him to help carry the satchel? A A porter. Q The porter came home with him? A Yes, and the porter carried the satchel. Q Were you there when they came into the office? A Yes. Q What did they do then? A He put down the satchel on the desk and we unpacked the money on the desk." A Well, that is right.

Q Who was "we"? A Me and Mr. Blaustein.

Q It was he alone that unpacked the money? A No, sir, I helped him.

Q You helped him unpack it? A Yes, sir.

Q Then that testimony you gave a minute ago that he unpacked it alone was erroneous? A I didn't say he unpacked it alone; I said when he brought the money he put it on the desk and we opened the satchel, we took it out and sorted it.

Q Now, I was under the impression that you testified that the defendant alone was there. Do you remember testifying to this: "Q Who counted the money? A I counted it out,"

A I counted it out, that is right.

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Q That is true? A Yes, sir, I counted it out.

Q You were always in there when he put the money in the envelopes? A Yes, sir.

Q You were also there when this check for Newirth was put into the envelope too? A Yes, sir.

Q You know for what purpose that \$30 went? A Yes, sir.

Q Did you ever tell your husband that that name is on the payroll? A If I didn't see it I didn't remember it.

Q Do you know that he had the number 50? A I seen 50 on the envelope.

Q Do you know who gave him that number? A Mr. Blaustein.

Q Do you remember testifying in the Police Court: "Q Why is it that there is the No. 50 in front of Newirth? A They gave him the number. Q Who is 'they'?" A The bookkeeper

and Mr. Schwartz. Q Mr. Schwartz gave him the number 50?

A Yes. Q Then Mr. Schwartz knew that he was on the list?

A Yes." Do you remember testifying like this in the Police Court? A I cannot remember it.

Q But you are not sure that you did not testify like that? A How is that?

Q You are not sure you didn't testify like that? A I am sure.

Q That you didn't testify like that? A I don't remember what I testified at that time.

THE COURT: Read it again.

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Q I will read it over again, and will you just listen carefully: "Q" -- by me -- I asked you this question: "Q Why is it that there is number 50 in front of Neworth? A They gave him the number. Q Who is 'they'? A The bookkeeper and Mr. Schwartz." A Excuse me one moment.

Q Let me finish the question. "Q Mr. Schwartz gave him the number 50? A Yes. Q Then Mr. Schwartz knew he was on the list here too? A Yes." Do you remember giving that testimony? A I remember when they asked me who gave him the number and I said Mr. Blaustein -- and Mr. Schwartz ^{must} ~~might~~ have been from the stenographer a mistake at that time, they put in Mr. Schwartz.

Q Well, then, the stenographer made a mistake? A Yes, sir, to put in his name, I remember I said the defendant.

Q Now, you are quite sure that there were only \$50 left every week? A Yes, sir.

Q This \$50 Mr. Blaustein handed to you? A Yes, sir.

Q Is that your testimony? A Yes, sir. \$50 I had every week.

Q You testified here that Mr. Blaustein handed you \$50? A Yes, sir.

Q Now, isn't it a fact that you took the money yourself? A No, sir.

Q Why you handed the money to Blaustein to pay off the other employees? A Yes, sir.

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Q This one item of \$50 belonging to you or to your husband, this is the item that he handed to you, I suppose? A That was at last; that was remaining at last, \$50, we counted all the money out and \$50 remained.

Q He handed that money to you? A Well, it was on the desk.

Q All the money was on the desk, you mean that was left? A Yes, sir, that was left, \$50.

Q Were there any petty expenses during that week, small expenses? A I don't know about any expenses which was in the place going on.

BY THE COURT:

Q Now, madam, as I understand it, you counted the money? A Yes, sir.

Q He got the money from the bank -- would you find out whether the amount he received from the bank corresponded to the amount as stated in the check? A I did not count the money after when the money was brought from the bank.

Q You did not? A No, sir.

THE COURT: The witness says she did not count the money from the bank.

BY THE TWELFTH JUROR:

Q The witness states that she counted out the money for each man on the payroll that Blaustein gave her, she would turn it over to Blaustein, who would then count it and if it

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correct put it in the corresponding envelope. When the \$50 was left over she turned that over to Mr. Blaustein for him to count before she took it away with her? A He counted it over.

BY THE COURT:

Q Now, madam, let me ask you this question: Assume that the payroll was \$1,000 and you counted \$950, so the \$950 of that amount was distributed in envelopes, put in envelopes, now you would have \$50 balance, isn't that so? A Yes, sir.

Q You would give that to Blaustein and he would put that in an envelope? A \$50?

Q Yes. A My \$50 he didn't put in an envelope.

Q He would give it to you? A Yes, sir, loose.

Q You would take that? A Yes, sir, I handed it over to Mr. Schwartz.

Q Would there be any money left after you got the \$50? A No, sir.

Q There would be no money left? A No, sir.

Q To whom were the checks given? A To the employees.

Q Did you give them the checks? A No, sir, I didn't pay out.

Q You didn't pay out checks? A No, sir.

Q The item of \$100, was that a cash item or a check item?

MR. MAYNARD: Cash.

Q Now, madam, if the defendant is calling off the payroll

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for a particular week, if the payroll consisted of \$1,000, wouldn't there be more than \$50 left if the defendant called off to you the last item \$100? A Well, it wasn't more than \$50.

Q Did you understand the question I put?

MR. MAYNARD: I did not get the drift of it.

THE COURT: The point is this: If this lady had charge of the cash --

MR. MAYNARD: She came there to assist this man check up and pay off. She wasn't in charge of the cash. Blaustein was at all times in charge of the cash.

Q Who had -- she did not bring it there --

A I did not go to the bank.

MR. MAYNARD: It never was in her hands at all.

MR. WEINBERGER: I ~~xxx~~ wish the District Attorney would leave the witness testify and not himself.

THE COURT: We want to be clear on this subject because if out of the payroll of the \$1,000 \$900 were paid out, there would be \$100 over and not \$50.

MR. WEINBERGER: I want the witness to testify to that.

BY MR. MAYNARD:

Q Did you go to the bank for the money? A No, sir.

Q Who did go to the bank for the money? A The defendant

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a porter.

Q How did they bring the money back? A In a satchel.

Q Now, did that satchel of money ever come into your possession? A No, sir, not in my possession..

Q Now, wait a minute, after you came to the office -- when you came to the office sometimes you found the money all counted out and in rotation, didn't you?

MR. WEINBERGER: I object to that question because the witness has already testified that the two together counted out the money.

Q ~~At~~ Haven't you testified that on the occasions when you were late when you got to your husband's office Blaustein already the money in rotation, isn't that true? A Yes, sir.

Q If you got there on time you helped him put it in rotation? A Yes, sir.

Q That is right? A Yes, sir.

Q Sometimes he did that entirely alone, didn't he?

A Yes, sir.

Q You never were in charge of the entire cash and checks, were you? A No, sir.

Q At any time? A No, sir.

Q They were in his charge when you came to the office?

A Yes, sir.

Q Now, isn't it the fact that the cash was pushed over to you and the bundle of checks, and as he called off the number

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and an amount that you gave him from your pile of cash the amount called for? A Yes, sir.

Q Or the check called for? A Yes.

Q Now, on the copy of the payroll which you had were there any names? A Only the amount and number.

Q On the copy which you had -- now, let the jury understand that -- there was ~~kk~~ just the numbers of the employees and the amount called for? A Yes, sir.

Q When this defendant Blaustein called a number he also called an amount? A Yes, sir.

Q Then you counted out the amount from the money before you? A Yes, sir.

Q When the work was all over on the 5th of February, 1909, how much money was there left on the desk? A \$50.

Q And that was given to you? A Yes, sir.

Q Now, did you know how much money there was in the bag when you came there? A I did not.

BY THE COURT:

Q Did you know how much money was on the table? A No, sir, I do not.

BY MR. MAYNARD:

Q That was not part of your work? A No, sir, it wasn't my work, I never counted over when the defendant brought the money.

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BY THE COURT:

Q You simply took the money as it was on the table?

A Yes, sir.

BY THE TENTH JUROR:

Q You said the porter assisted the defendant to bring the money to the office? A Yes, sir.

Q Now, at any time as soon as they came back to the office, if you were there, ^{would} ~~xxx~~ the porter at any time bring this money to Mr. Blaustein? A Yes, sir.

Q To himself? A Yes, sir.

BY MR. MAYNARD:

Q The porter's sole duty in this respect was to carry the bag? A To carry the satchel.

Q That was all? A Yes, sir.

Q He never handled any money? A No, sir.

Q What sort of a porter was he? A He is here -- an Italian fellow.

Q One of the Moscatellis? A Joe Labori.

Q Does he talk English? A No, sir.

Q Italian or German? A No, sir, only Italian.

BY MR. WEINBERG:

Q Let me understand, Mrs. Schwartz, didn't you already testify that you helped him take out the money out of the satchel? A When I was there I helped.

Q How often did it happen that the defendant brought the

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money before you got there? A I can't remember that, how often.

Q The District Attorney asked you several questions that you always answered "yes". Now, will you repeat in your own words the testimony that the District Attorney asked you about?

MR. MAYNARD: I object to that form of question. It is asking for an absolute impossibility. I could not do it myself.

Q Weren't you there usually when the defendant came home with the money?

MR. MAYNARD: Objected to as already answered.
(Objection overruled).

A Sometimes I was and sometimes I was not.

THE COURT: We will adjourn now. Gentlemen of the jury, you are not to discuss this case among yourselves or let any person talk to you about it, or form or express any opinion as to the guilt or innocence of this defendant until the case is finally submitted to you.

(The Court then adjourned further trial of this case until tomorrow, Thursday, May 12th, 1910, at 1030 o'clock).

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New York May 12, 1910.

TRIAL RESUMED.

BERTHA SCHWARTZ, a witness for the people, resumes the stand and further testifies.

CROSS EXAMINATION CONTINUED BY MR. WEINBERGER:

Q Mrs Schwartz, yesterday you testified that when the payments were made, were the envelopes were made up for the employees you had a slip in front of you and the defendant had the pay roll? A Yes sir.

Q In front of him? A Yes sir.

Q Do you remember that before the Magistrate you testified as follows "When we paid the money we don't have the pay roll in front of us, we have the slip?" A I said I had the copy.

Q Did you in the Magistrate's Court testify as follows: in the following manner. I repeat the answer "When we paid the money we don't have the pay roll in front of us; we have the slips". This is in answer to your own counsel's question? A I don't remember that.

BY THE COURT:

Q Now, if you did give that testimony was it correct, if you did give the testimony? A Yes sir.

Q Was it correct? A Yes sir.

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Q That is you did not have the pay roll before you but you had the slips? A A copy of the pay roll.

BY MR. WEINBERGER:

Q Do you remember having testified as follows: And you answered a question put by your own counsel?

MR. MAYNARD: What page are you reading from?

MR. WEINBERGER: Page 12, the first part of page

12.

Q Page 12 "Q Each slip was made out in duplicate? A Yes sir". A It was the slip from the second pay roll.

Q Do you remember having answered so? A I said there was a duplicate slip from the second pay roll.

Q "Q And each slip was made out in duplicate? A Yes." The first question I put to the witness was on page 9. Do you remember having testified so? A That I had the copy.

Q Listen Mrs. Schwartz, the question is "And each slip was made out in duplicate? A Yes"? A The slip---

BY MR. MAYNARD:

Q Now, the question is do you remember, that is all, if you do or don't? A Yes sir.

Q You do? A Yes sir, I do.

BY MR. WEINBERGER:

Q And that was the truth then? A Yes sir; certainly.

Q Didn't you testify yesterday that there was only one

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slip that was in front of you?

MR. MAYNARD: I submit she never testified about a slip. She testified about a copy of the pay roll. I don't know what you are talking about when you say the slip.

MR. WEINBERGER: She testified yesterday that at the time the envelopes were made up that there was in front of her a slip?

MR. MAYNARD: A copy of the pay roll.

MR. WEINBERGER: Not a copy. She said only it was a slip with the numbers of the employees and the amounts paid.

MR. MAYNARD: The jurors will remember.

MR. WEINBERGER: I want to hear it from the witness.

THE WITNESS: I testified I had a copy of the pay-roll.

BY MR. WEINBERGER:

Q Do you know what I mean by slips, don't you? A I call a copy a slip and a slip a copy.

Q Which was it? A A copy, it was a copy of the pay roll the amount on the copy.

Q And the numbers? A Yes sir.

Q There were no names on it? A Well some it was names, but they didn't have no numbers, there was a few

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names and the amounts.

Q But you never compared that slip with the pay roll to see whether it is the same copy? A I did not compare it.

Q You know then that a slips means just a piece of paper? A A slip---like that (Illustrating).

MR. MAYNARD: I object to the question. He asked the witness whether she knows what it is. It is not for him to say "Just a slip of paper".

THE COURT: Strike out "Just a slip of paper".

Q Have you got that piece of paper? A Like that. (Producing a piece of paper).

MR. WEINBERGER: The witness is showing a piece of paper. I did not ask for it, but he showed it.

MR. MAYNARD: Do you want that blank slip of paper for any purpose.

MR. WEINBERGER: The Jury may want to know what this paper is for.

BY MR. WEINBERGER:

Q Now then your testimony yesterday that the defendant had the pay roll book in front of him is not true? A I said it isn't true? I said that the copy and the pay roll was the amounts alike.

Q Mrs. Schwartz, you testified in the police court that the slip was made out in duplicate, and also that you

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didn't have before you the pay roll but you had the slips before you? A Well I didn't have the pay roll; the defendant had the pay roll before him.

Q You also testified in the police court that the pay roll was not in front of you both? A I don't remember that.

MR. MAYNARD: No such testimony as that.

Q Just a minute ago I asked her and she said yes, she testified so here yesterday. Now you also testified ---

MR. MAYNARD: I think we have a right to leave that to the jury.

Q "When we pay money we don't have the pay roll in front of us". Mrs. Schwartz, just one more question. Did you ever see the defendant work as your residence? A No sir.

Q Never at no time at all? A No sir.

Q Did you ever call him over from his house, you saw him working in his house at books, did you ever call him over to your house? A No sir; never.

Q Did your husband, or did Mr. Schwartz ever give you any other money but this \$50. that was left every week? A \$50.

Q That is all he gave you? A Yes sir; that is all he gave me.

Q And from this \$50. you bought the third mortgage for

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\$3750.

Objected to; objection sustained.

MR. MAYNARD: That is all.

R U D O L P H H O L D E a witness for the people.

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Holde, where do you reside? A 964 Grant Avenue.

Q What is your business? Mr. Holde? A Certified Public Accountant.

Q Have you ever been employed by William Schwartz in that capacity? A Yes sir.

Q Do you remember about when you were employed? A Not the exact date, about March 1909.

Q 1909? A Yes sir.

Q State to the jury what you did for him at that time?

A I made an examination of his books, such books as were presented to me for examination.

Q Did you particularly examine the pay roll book of Mr. Schwartz at that time? A I did.

Q Did you examine two small books of the Moscatelli's?
A I did.

THE COURT: Just a moment. It seems to me that this case may be considerably shortened in view of the claim made by the defense. As I understand counsel

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it is his contention that if any entries were made in the books of Mr. Schwartz by this defendant showing increases in the amounts paid to certain persons that they were made at the solicitation of the complaining witness. Is that your defense?

MR. WEINBERGER: In the pay roll book.

THE COURT: Well then all the testimony is really unnecessary.

MR. MAYNARD: I am meeting that very point, your Honor, in the testimony I am about to adduce, as your Honor will see as soon as I have asked a few questions.

BY MR. MAYNARD:

Q Did you particularly examine the books of the Moscetellis, Frank and Louis, numbers 48 and 49? A I did.

Q Now, will you state to the jury whether you took those books and fotted up the charges, that are entered in them, by each of the Moscetellis, and then added the columns, totaling the columns week by week throughout each of these books, exhibits 3 and 4? A I calculated the extensions by multiplying with the price and quantity delivered. I fotted the columns and compared the entries, the total entry, with the entry in the pay roll book under the same number.

Q With what result?

MR. WEINBERGER: Objected to as incompetent, immaterial and irrelevant.

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Objection overruled; exception.

MR. WEINBERGER: There is no proof that the book was in the same condition ~~xx~~ when this witness examined it as when the defendant had it in charge.

THE COURT: It might well be that that is a good ground of objection.

MR. MAYNARD: I have already proven by the witness who produced the book that he made no changes whatever in the book.

THE COURT: But you must prove by that witness in what condition the books were when he gave them to the accountant.

MR. MAYNARD: Well I have already proven that by Mr. Schwartz, in what condition the books were when he gave them to the accountant. I have already proven, if your Honor please, Mr. Schwartz testified that he got these books immediately after his lunch, and made a comparison with the pay roll books. He kept them for three quarters of an hour to an hour; then turned them back to the Moscatellis and I will show presently where they were after that for a while. Then on the Sunday following he got the books back again and he testified also that when he got them again they were in the condition that they now are; that he made no change in any way shape or manner in those books. Now

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if changes have been made it follows they were made during the time between when he returned the books to the Mascetellis and got them again.

BY THE COURT:

Q Let me ask you Mr. Witness. Will you kindly examine these books and state whether, as a result of your examination, you are prepared to state that these books are now in the same condition as they were when you examined them, at the time Mr. Schwartz gave them to you? A Yes sir.

BY MR. MAYNARD:

Q Haven't you already done that? A Yes sir.

Q While waiting to testify? A Yes sir.

Q Haven't you already examined the books in connection with your original paper--- A His Honor asked me whether I found the books now in the same condition that they were in when they were delivered to me, and I want to see whether they are.

MR. MAYNARD: I thought you had already done it.

THE WITNESS: They are, your Honor.

BY MR. MAYNARD:

Q They are? A Yes sir.

THE COURT: Objection overruled.

MR. WEINBERGER: My objection was not to this question. The witness answered that they are in the same condition that they were at the time he received

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them, but he did not testify that they are in the same condition as when they were---at the time---in the same condition he received them, as they were when they were in the defendant's possession.

THE COURT: That would be a question of fact for the jury. It will be for the Jury to determine whether the testimony given by Mr. Schwartz is true or not.

MR. WEINBERGER: Well Mr. Schwartz only testified that he made no alterations.

THE COURT: Mr. Schwartz testified he made no alterations when the small books of the Messetellis were shown him. On December 11th, 1908 when he first examined them he found an item of \$41.72 and when he subsequently examined them it was \$51.72. The accountant is merely giving an answer as to the condition of the books after the alleged alteration.

MR. WEINBERGER: How is that alteration to be connected with the defendant?

MR. MAYNARD: Just wait a few minutes and we will show you? A

MR. WEINBERGER: Your Honor rules and I take an exception.

BY MR. MAYNARD:

Q Now if you will please take book 49 for a moment and if you will turn to the entry in that book for December 11th

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1908, which is well towards the end of the book, almost the end? A Yes sir.

Q Now, state to the Jury what you did in respect of the entries contained in that book for December 11? A May I use my memoranda?

Q Why can't you tell us that? A Because I would have to figure that out, all over.

THE COURT: Do you object to his using the memorandum? If you do we will take an adjournment and let the accountant go through these books.

MR. MAYNARD: He has already done that and he has a memorandum which covers every bit of it.

MR. WEINBERGER: Unless he shows what he used the memorandum for.

MR. MAYNARD: I will tell you what he wants to use it for?

MR. WEINBERGER: If it is to refresh his recollection I haven't any objection.

THE COURT: I assume it is for that purpose.

THE WITNESS: That is all.

BY MR. MAYNARD:

Q Refresh your recollection from your memorandum for December 11, 1908, what do you find with respect to the entries on that date? A The third item on that page is changed from 13 to 14, which would amount to \$1.82--13 to 14---\$11.82, and the footing is accordingly changed. The total

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on that page is changed from \$41.72 to \$51.72 and is so entered on the pay roll of that date in the total of \$656.22, on page 204.

Q Page 204 of the pay roll? A Yes sir.

Q Now if you will turn to November 27th.

MR. WEINBERGER: I object and I move to strike out the answer because this witness is testifying as an accountant and not as a handwriting expert.

THE COURT: It is a conclusion of fact, strike out the words "Changed".

BY THE COURT:

Q What did you first find on that page---what page is it? A No answer.

Q The page representing the work done the week ending December 11, what entry do you find as a total? A The total entry is \$51.72 of which the first figure had been erased---easily to be seen.

BY MR. MAYNARD:

Q Will you read to the Jury the entire entry, all of the entries on that page, and direct attention to the change in the one just above that total. A (No answer)

THE COURT: Do the items on that page added amount to \$51.72 or \$41.72?

MR. MAYNARD: Answer the question.

THE WITNESS: At present they amount to \$51.72.

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Q \$51.72 when added? A Yes sir.

Q But you say that there was a figure there \$41.72.

MR. MAYNARD: 13 is changed to 113.

Q Is four changed to five? A There is an erasure there and five.

Q What was there before you don't know? A No sir.

BY MR. MAYNARD:

Q Is there a corresponding change above that? A There is a corresponding change.

Q In connection with what item? A Of the item 13---14---there is a one placed in front of the 182.

Q Was there a new computation made?

MR. WEINBERGER: I move to strike out this answer.

BY THE COURT:

Q You mean 1182. A Yes sir.

Q In front of the 182 there is another one, is that right? A Yes sir.

THE WITNESS: May I draw your Honor's attention to the fact that 113 at 14 cents would be \$1582. and not 1182.

MR. MAYNARD: That is what I want to get before the Jury clearly.

BY MR MAYNARD:

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Q Will you state then to the Jury, in your own way, Mr. Holde, and perhaps that is easier than asking questions.

A Figuring the extensions of each item, there is an item entered here "113"---113 at 14 cents would not be as entered here \$11.82, but would be \$15.82. The original figuring if I am correct, 13 and 14 cents would be \$1.82.

Q That is in book 48? A Yes sir, I beg pardon, book 49.

Q Book 49. Turn to November 27th in the same book, 1908? A Yes sir.

Q Now, tell the jury in the same way about the entries made on that page? A The first item on that page calls for checks.

Q Read it? A "Checks \$1.68". The mf footing of that page is \$40/28 and the 4 is over an erasure. There is a very faint one added before the \$1.68 for checks and made thereby \$11. and the footing changed to include it---an addition of \$10.

MR. WEINBERGER: I move to strike this testimony out as calling for a conclusion of this witness. If your Honor please if I am right---

THE COURT: Strike out the word "changed". Don't state any conclusions of fact. Simply state to the jury what you find. For example "I find under the date of November 27 12 at 14 cents, which would amount to so

and so much, the amount set opposite this item is so much, and I find the totals so much, I find a mark on the books which appears to be an erasure. But do not give a conclusion of fact because it will be for the jury to find from your evidence whether there was a wilful and intentional erasure and a false entry made with intent to defraud. You see you have got to leave that to the jury to find. You simply state no conclusion of fact, but the fact itself and when the fact is stated it will be for the jury to infer whether that fact shows a change wilfully made or not? Do you understand me.

THE WITNESS: I do, sir.

BY MR. MAYNARD:

Q Now turn to November 30, 1908, book 49? A The page reads "Checks \$13.19". The following item is 215 at 7 1/2 cents. The next item is 124 at 7 cents amounting to \$8.68. The total of that page is \$42.67---the 4 is written over an erasure.

Q The change above is carrying out the extension of 7 time 24, is it? A Yes sir.

Q What does it appear in the book to be? A 7 times 124.

Q Is there \$1.68 on that extension? A There is \$8.68.

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MR. WEINBERGER: I object to this question.

MR. MAYNARD: I withdraw the question.

BY MR. MAYNARD:

Q Turn to November 13. A Yes sir.

Q Now state to the jury what changes you find there as speedily as possible. A The first item "checks" is charged as \$14.06. I understand that no such amount was ever paid for checks.

THE COURT: Strike that out.

Q Do not indulge in such remarks. The court has told you not to. Tell us what you find from your examination of these figures. Now, on the top line ~~is~~ has a figure 1 been put in front of the 4 and 06 cents.

THE COURT: That is clearly objectionable.

Q Carrying out the computations tell us what you find there? A The total of \$47. the 4 is an erasure, written over an erasure.

Q In the top line what is the computation, the extension, when you multiply the number of articles by the price, does it represent \$14.06 or \$4.06? A No price given.

Objected to. Objection overruled; exception.

Q Turn to November 6? A Yes sir.

Q Tell the jury once more what you found from your work on that page? A The checks are changed \$16.57, and the 4 again in the total of \$47.54 is written over an erasure.

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Q Turn now to October 23rd? A The same case.

THE COURT: Strike that out.

Q Tell the jury what you found from your examination?

A "Checks \$12.28" total \$41.55, the 4 written over an erasure.

Q Is there an item of \$2.38 on that page? A Yes sir; \$12.38.

Q How is that obtained? A No prices given.

Q October 16th. A Pardon me a moment. On October 16 an addition of the figures amounts to \$32.35, as the figures stand in that book now. There is an addition \$42.35 and the 4 is written over an erasure.

Q \$10. is added? A In other words there are no changes in the extension but it is in the addition, there is a mistake of \$10.

Q Then \$10. is added? A Yes sir, in the additions.

BY THE COURT:

Q The figures show \$10. less? A Yes sir.

BY MR. MAYNARD:

Q The actual figures show \$10. less? A Yes sir.

Q Turn to October 9th. A The item "checks" read \$13.68.

Q Was there anything to indicate what it originally was? A I couldn't say, no sir.

Q Have you footed up the column? A Yes sir, the foot-

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ing is \$25.38.

Q \$25.38? A Yes sir.

Q Any change made in that? A It looks---

Q Show it to the jury when there was a change made in that line or not? A Yes sir at the top.

Q What is the meaning of that entry "checks"? A I have no idea.

Q If you know? A I do not.

Q Didn't you just make an explanation to me of what "checks" were? A Small items, Mr. Schwartz informed me.

MR. WEINBERGER: I object to the witness stating what he does not know, what somebody else may know.

THE COURT: Strike it out.

Q October 2nd? A October 2nd the third item---

Q Tell the jury what it is? A The third item reads "113 at 9 cents, carried out \$11.17, the total is figured as \$42.83, and the 4 is written over an erasure.

Q Take September 25th now? A The third item of September 25 is totaled on the page \$44.87, the 4 written over an erasure. The third item of 377 at 7 and 1/2 cents \$28.26; and the second item 12 at 9 is \$1.08---112 at 9 is \$11.08, the \$11. is contained in the footing of \$44.87.

Q Making an additional \$10. in the footing? A Yes sir.

Q You say line 3, was that line 3? A 112 at 9

cents.

Q Carried out it amounted to how much? A \$11.08.

Q Is that what it is on the extension? A It is and the proper figuring is ---

Q Is that what it is on the extension? A It says on the book \$11.08.

Q Is there any change on that line? A There are two changes.

Q Tell the jury what they were? A The item is now 112 but was figured as 12 \$1.08 and is now \$11.08.

Q Where is the evidence that it was 12 times 9 originally? A \$1.08.

Q Is that still there \$1.08? A 112 at 9 cents would be \$10.08.

Q Is the \$1.08 there? A \$11.08.

Q Is there any change to accomplish that? A One placed in front of the 12 would make it 112, yes sir.

Q 1 placed in front of 128 would make it 1108? A Yes sir.

Q Are those changes made there? A I think they are.

Q Turn to the page September 18th. We have not the books and the jurors and myself want to get at the facts. A The Court told me I should not.

Q September 18? A The third item on this book reads not

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116 at 7 cents \$11.12, and 16 at 7 cents would be \$1.12---

116 at 7 cents would be \$8.12, not \$11.12.

Q So that the extension in the case was not carried out? A The extension in that case is changed, and the total figuring is changed and the addition is \$38.16, and the 38 in that addition is written over an erasure.

Q Is that \$38.16 a correct summary of the items above it, foot it up and see? A Just as that stands now.

Q Just as it stands now? A Yes sir.

Q That is an addition of \$10. A Yes sir.

Q Turn to September 11th? A The third item under September 11 reads 117 at 7 cents, carried out is \$15.39, 177 at 7 cents would be \$12.39. 77 at 7 cents would be \$5.39, so that a 1 is added in front of 77 and a 1 in front of the price, the extension.

Q Which makes \$10. addition in the footing? A Yes sir.

Q But doesn't give the correct extension, is that right? A Yes sir; the footing has the 5 of the amount--- \$50.91 written over the erasure.

Q Now turn to September 4th. A September 4th the 5th item 11 at 9 cents would be \$1.99---would be 99 cents and is now 111 at 9 cents and is extended as \$1.99. \$53.82 is the total on that book, the 5 written over an erasure, the \$1. in that item that I have just explained has been

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added in as \$10.

Q Added in as \$10.? A Yes sir.

Q In the addition? A Yes sir.

Q Now August 27th? A 77 at 7 cents.

Q Which line? A The 4th line. 77 at 7 cents would be \$5.39. It appears on the books as 177 at 7 cents \$15.39.

Q What would be the correct extension? A 177 at 7 cents would be \$12.39. The addition is fotted at \$51.89 the 5 is written over an erasure of the figures 51.

Q A \$10. addition is made in the total and there is a correct extension? A Yes sir.

Q August 21st? A August 21st is the third item 129 at 7 cents. Carried out as \$11.40. The total \$48.32 129 at 7 cents would be 9.03 and not \$11.40, the 1 has been added to the 129.

Q If it was 20 items at 8 how much would it be? A \$1.40

Q It would be \$1.40? A Yes sir.

Q Has that \$1.40 been increased to \$11.40? A Yes sir. Q 7 times 129 would be \$9.03 instead of \$11.40? A Yes sir.

Q So the extensions are not correct while the \$10. is added to the total, is that right? A Yes sir.

Q Take the book 48 of Frank Moscatelli, February 12? A February 12 the 4th item on the page reads now "411

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at 7 1/2 cents" and is carried out, the extension is \$30.82. 211 at 7 1/2 cents would be \$15.82. 411 at 7 1/2 cents---411 at 7 1/2---this item of \$30.82 is included in the total, the footing of it is \$49.51 written over an erasure.

Q And a change is made in that page with respect to the last line 211 by 7 1/2? A Yes sir.

Q Which should be \$15.82? A Yes sir.

Q Has been changed to 411 at 7 1/2 which makes it \$30.82? A Yes sir.

Q Then more than \$10. was added at that time? A \$15.

Q Now turn away back to October 23rd, 1908 ? A Yes sir.

Q And tell the jury what you find on that page? A The total of that page is over an erasure \$58.31, and the first item is check \$14.39, the addition of the totals is over an erasure.

Q But as it stands the addition is correct? A As it stands it is correct.

Q October 2nd? A The second line reads "161 at 9 cents \$15.49" 61 at 9 cents would be \$5.49. The footing of that page includes \$10. The second line includes a 1 in front of the 61 at 9 cents, and a 1 in front of the \$5.49.

Q How about 9 times 161? A Well that calculation would

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be entirely wrong.

Q How much is 9 times 161? A \$14.49.

Q \$14.49? A Yes sir.

Q While a change has been made the extension is wrong

A Yes sir.

Q It adds \$10. to the total of that page? A Yes sir.

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Q September 25th? A September 25th, the first line is -- the second line "635" and over the 635 is written a 7, making it 735 at 10 cents . \$63.50 the extension, and over the 6 is written a 7, making it \$73.50.

Q Adding \$10.00 to the total of that page? A Yes, sir, adding \$10.00 to the total.

Q Is there something more? A No, sir.

Q September 18th? A The item of checks is again "\$12.76. The total of the page is written over an erasure , made \$70.47

Q \$10.00 has been added, making \$2.76 , \$12.76? A Yes, sir.

Q Now, September 11th? A September 11th, the fourth line reads now "217 at 7-1/2¢, \$18.77". 217 at 7-1/2 would be \$16.27. The total is \$83.15, which amounts -- it amounts to exactly \$73.15 as it is on the book now?

Q As it stands now? A Yes, sir.

Q Although the footing you show there is \$83.00?

A Yes, sir.

Q September 4th? A The third line "201 at 9 ¢", carried out is \$19.09. The total is footed at \$94.65, the 9 written over an erasure. 101 would be \$9.09 -- 201 at 9 would be \$18.09 in place of which it is \$19.09.

Q So the extension in that case is not correct? A No, sir.

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Q Now finally, August 21st? A The 21st?

Q August 21st, that is the last one. A The second item is 207 at 9, carried out is \$9.63. The total, the footing, is \$89.01, the 8 written over an erasure.

Q What is the correct footing of the figures that you get on the book right there? A \$79.01.

Q \$10.00 has been added although the footing does not warrant it, and doesn't show it? A Yes sir, the figures are \$79.01.

Q Now, Mr. Holde, did you, in each instance, compare the footing of each page that I have referred to with the entry in the pay rolls for that day, for each of these men?

A I did.

Q What did you find? A I found that the footings which are shown in this book and also in the other book --

Q Are changed as you have described? A Yes, sir.

Q They correspond now with the entries in the book?

A Yes, sir.

CROSS EXAMINATION BY MR. WEINBERGER:

Q When did you go there -- when were you retained by Mr. Schwartz? A I could not tell you the exact date.

Q About? A Either the end of February or the beginning of March, I think it was the end of February.

Q Do you remember when you were in Jefferson Market Court,

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Mr. Holde? A I do.

Q Can you fix about that time, about that date, how many weeks before that was? A Possibly a week or ten days.

Q A week or ten days? A Yes, sir.

Q Are you positive of this? A A week or ten days, well I think I had finished the work about a week when the case was in the Jefferson Market Court.

Q How long had you been working at this, Brother Holde? A About a week.

Q Working about a week? A Yes, sir,

Q About a week or ten days before you were at the Jefferson Market Court, you had finished the examination?

A To the best of my recollection, I could not really say.

Q That is all. I only wanted to know the best of your recollection.

~~EXHIBIT~~:

Q You exhibited to the jury the page of October 9th, and you called the jury's attention to that one on top there and the word "checks"? A I did.

Q You said the addition would be correct as it is now there with one added? A Yes, sir.

Q Do you think that the same man wrote that one that wrote the other one? A I am not an expert in handwriting, Counsel.

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Q I call the jury's attention to these two 1's. You can take these along for yourselves. At the time Mr. Schwartz engaged you, did he tell you anything about the changes that he found, did he call your attention to any particular item? A No, sir; no particular items, no, sir, I don't believe that Mr. Schwartz had very much to say. I was introduced --

Q What was that? A I don't think that Mr. Schwartz told me very much about the books. I was in his office with the counsel.

Q With whom? A Mr. Schapp, and Mr. Schapp told me generally that there were mistakes in the books and that he wanted me to make an examination of the books and state to him my findings.

Q Did Mr. Schwartz tell you anything about the books? A He said that they were in some disorder, that he wanted them looked after and a short statement given to him of what it was.

Q Did he mention to you that he found some mistakes or some mistakes somewhere? A Yes, sir; I think he said he found one or two that made them suspect that there was something wrong.

Q Did you ever have any conversation with Mr. Gintzler and Mr. Schwartz together? A No, sir.

Q You know Mr. Gintzler, don't you? A Yes, sir. I do.

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Q Did you ever have any conversation with Mr. Gintaler and Mr. Schwartz together? A No, sir.

Q Only with Mr. Schapp? A Yes, sir.

BY THE SIXTH JUROR:

Q You have been in the court room most of the time. Do you remember my asking Mr. Schwartz yesterday if he had discovered nearly all of the mistakes before he brought the expert bookkeeper into this matter? A Well, I have not been able to --

Q I did ask him that question, is that true? A I don't know, sir.

Q You just said he only pointed out one or two. Are you an expert accountant? A Yes, sir.

Q What are the two mystical numbers known to expert accountants in books. Don't you know that 3 and 7 are the two mystical numbers? A Pardon me? Am I under examination?

THE COURT: The juror has a right to test your qualifications as an expert.

BY THE SIXTH JUROR:

Q What is the most practical number that is known among arithmeticians? A 9.

Q How much is 9 times 37? A 333.

Q Correct. Now everything in this bookkeeping is written in lead pencil, isn't it? A Yes, sir.

Q Various kinds, indelible and otherwise? A Yes, sir.

Q From your experience as an accountant, and your experience with pencil work, do you know what a kneaded rubber is? A Yes, sir.

Q Any change, anything that you couldn't see in any erasure -- you would not be able to find the erasure. You spoke of erasures you found here? A Yes, sir.

Q I really could take anything I wanted do, make any change, and you couldn't tell whether there was any change or not? A Yes, sir.

Q What kind of an adding machine did you extend your figures to? A I didn't extend them to --

Q That is why it took you ten days to do the work? It would have been much quicker the other way. You haven't proved up your work mechanically at all? A My examination included somewhat more than you have heard me testify to.

MR. MAYNARD: I have gone as far as I could in this case with your examination.

LOUIS MOSCATELLI, a witness for the people being duly sworn, testified as follows:-

BY MR. MAYNARD:

Q You understand English? A I want to talk Italian.

The witness was examined through an official

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interpreter Villamena.

Q What is your business, Mr. Moscatelli? A Tailor.

Q Where were you employed in February, 1909? A With Mr. Schwartz.

Q How long have you been employed by Mr. Schwartz?

A Seven years.

Q How many people do you employ yourself, if any?

A Two or three, three or four.

Q And you are a sub-contractor? A Yes, sir.

Q What kind of business, or what kind of work did you do for Mr. Schwartz? A Lining baster.

Q Do you remember what you received for basting linings in 1909?

MR. WEINBERGER: I object to that question, as to its form.

Objection overruled; exception.

A Different prices.

Q Different prices? A Yes, sir.

Q Do you know this defendant, Max Blaustein? A Yes, sir.

Q How long have you known him? A He is the book-keeper.

Q How long have you known him? A I believe nearly five years.

Q During that time was he bookkeeper for Mr. Schwartz?

A Yes, sir.

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Q Tell the jury whether you had any personal dealings with him in connection with your business? A No, sir.

Q Is this your book, Mr. Moscetelli? A Yes, sir.

Q Whose handwriting is this in the book?

MR. WEINBERGER: Objected to as incompetent.

THE COURT: If he knows.

A The bookkeeper.

Q Mr. Blaustein? A Yes, sir.

Q Did you see him write in that book? A Why certainly, sure.

Q Every week? A Every week, yes, sir.

Q What did he write in your book? A Writing up the accounts of the whole week.

Q Did the entries in the book show the amount of work which you did for Mr. Schwartz week by week? A Yes, sir.

Q Each page represents a week's work, does it? A Yes, sir.

Q Does any of the writing on those pages appear in your writing? A No, sir; all is the bookkeepers.

Q All in the bookkeepers? A Yes, sir.

Q Didn't the bookkeeper, Mr. Blaustein, take that book from you week by week to make up the pay roll? A Every Friday.

Q What day of the week did you receive your pay, Mr. Moscetelli? A Tuesday.

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Q In what form did you receive your pay? A In United States money.

Q Always money? A Yes, sir.

Q Did you never receive checks? A No, sir.

Q In what shape did you receive the money? A In an envelope.

Q Was the envelope sealed? A Sometimes it was open.

Q Sometimes it was open? A Yes, sir.

Q It was generally closed? A Yes, sir, generally it was closed, and sometimes it was open.

Q Do you remember the time when Mr. Blaustein left the employ of Mr. Schwartz? A Well, when Mr. Schwartz sent him away.

Q Do you remember about when? A It was last February.

Q Did Mr. Schwartz, on the day of the trouble, get this book from you. Talk up loud? A Yes, sir, it was on a Wednesday about 12 o'clock that he took the book away from us.

Q How long did Mr. Schwartz keep the book? A About a half an hour.

Q Half an hour? A Yes, sir.

Q Did anybody else get the book from you that day?

A The bookkeeper.

Q Blaustein? A Yes, sir.

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Q About what time did he get the book from you?

A I could not exactly say, about an hour after, I should think.

Q About an hour after Mr. Schwartz gave you the book back? A Yes, sir.

Q Did you see what he did with the book? A No, sir

Q How long did he keep it in his possession? A I believe a couple of hours.

Q On the following Friday did you get your book back once more? A Yes, sir.

Q Did he give it back to you again? A Yes, sir.

Q How long did he keep it at that time? A I don't remember exactly how long, as long a time that he needed to make up the account.

Q To make up the pay roll? A Yes, sir.

Q He took the book that Friday, didn't he? A Yes, sir.

Q How long did he keep it each Friday? A Well, we would get the book back in the evening.

Q Friday evening? A Yes, sir; sometimes Saturday morning.

Q And sometimes Saturday mornings? A Yes, sir.

Q Turn to the book February 5th -- was that your week?

A Yes, sir.

Q Do you remember how much money you received from the bookkeeper that week?

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MR. WEINBERGER: I object to that question.

Objection overruled. Exception.

A \$31.81.

Q You received \$31.81? A Yes, sir.

Q What is the entry here? A The total is \$31.81.

Q That is what you received? A Yes, sir.

Q That is on February 5th, 1909? A Yes, sir.

Q What was your number on the payroll, Mr. Moscatelli?

A 49.

Q Is that your number, 49? A Yes, sir.

Q And the name -- didn't you receive \$41.81 that day?

A No, sir, \$31.81.

Q In the pay roll it is entered \$41.81.

THE COURT: Strike that out.

Q Tell the jury once more how much you did receive that day.

Objected to.

A \$31.81.

Q \$31.81? A Yes, sir.

Q Have you any independent recollection of prior payments to you aside from the book? A No, sir; I received just as the book calls for every week, what the total is every week.

Q Every week? A Yes, sir.

Q When you got your pay roll envelope did you compare

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the amount of money in the envelope with the entry in your own book? A Yes, sir.

Q Every time when you were paid? A Yes, sir.

Q Did it correspond, did the amount received in the envelope agree with the writing in your book? A Yes, sir.

Q Do you remember when Mr. Schwartz finally got the book from you after Mr. Blaustein had given it back to you?

A It was the next Sunday after.

Q After February 5th? A Yes, sir. he handed it

Q Had anybody after February 5th, written anything further in your book? A No, sir -- the bookkeeper.

Q Mr. Blaustein? A Yes, sir.

Q This rubber stamp on the bottom of each page of your book, who put that stamp there? A The bookkeeper, he has a rubber stamp.

Q Max Blaustein, he stamped it before he returned it?

A Yes, sir.

CROSS EXAMINATION BY MR. WEINBERGER:

Q You say that no more entries were made after the 5th of February?

MR. MAYNARD: He says there were on the 12th.

Q What time did Mr. Schwartz get back this book from you on February 10th? A About 1 o'clock, dinner time.

Q When did he give it back to you? A About half an

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hour after that.

Q He kept it half an hour? A Yes, sir.

Q When did Mr. Blaustein take the book from you?

A About half an hour after, the bookkeeper came and he took the book.

Q When did he give it back to you? A He kept the book about a couple of hours.

Q A couple of hours? A Yes, sir.

Q Now, Mr. Schwartz took it one day and kept it half an hour, that is half past one, and then Mr. Blaustein came and took it for an hour and a half after, and that is three hours and then he kept it for two hours, that is five hours, you got it back at what time? A About half past four or five.

Q Did you see the bookkeeper during the time that he had that book? A No, sir; I was attending to my business; I was working; I was not watching the bookkeeper.

Q Where was the bookkeeper's desk, the bookkeepers place?

A It was far from me, from here to you (pointing to the attorney for the defendant).

Q Didn't you ask him why he wanted the book on a Wednesday? A No, sir.

Q Did you ask him for that book back? A No, sir; he brought it back himself.

Q Who did? A The bookkeeper.

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Q The defendant? A Yes, sir.

Q How long did Mr. Schwartz keep the book when you gave it to him the next Sunday? A On Sunday he took the book and he didn't give me back the book again.

Q He didn't give it to you back again? A No, sir.

Q Are you still employed by Mr. Schwartz? A Yes, sir.

BY THE SIXTH JUROR:

Q Do you run a tailor shop yourself? A No, sir.

Q Do you keep any -- ask him if he keeps any account himself? A No, sir; that is on the book.

Q Can you read? A I can read in Italian.

Q Can you write in Italian? A Yes, sir.

Q Have him write United States of America in modern Latin? A In Italian (he witness does so.)

BY THE ELEVENTH JUROR:

Q Now, when he received the books back from Mr. Schwartz and Mr. Blaustein, did he notice any alteration or changes in the book? A No, sir.

BY THE SIXTH JUROR:

Q Were the accounts always correct every time you were paid? A Yes, sir.

Q Never any argument about the amount coming to him at any time? A No, sir, never.

BY THE TWELFTH JUROR:

Q When you got the book back from Mr. Schwartz and

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from Blaustein, did you look at the book to see whether any changes might have been made? A No, sir I didn't look at the book.

THE COURT: The last question by the Juror is a very important question, and a question which I intended to ask. Ask this witness whether he can read figures.

THE WITNESS: Yes, sir.

BY THE COURT:

Mr. Mascetelli, will you tell this jury how it is that you were paid on February 9th, 1909, the sum of \$31.81?

MR. WEINBERGER: I object to this question on the ground that it calls for a conclusion of the witness.

Objection overruled. Exception.

A I received always the total which shows in the book; that is the reason why I remember.

Q So that you have got to depend upon the entry in the book as to the amount which you were paid? A Why certainly after one year or two years elapsed, I had to look on the book.

Q As to the item November 13th, 1908 -- how much were you paid? A November 13th?

MR. WEINBERGER: I object to the question and I object to the witness looking at the book.

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Objection overruled. Exception.

A \$40.93.

Q Are you sure you were paid \$40.93? A Yes, sir.

Q Why are you sure? A I received always exactly what the total calls for.

Q Now you tell him that the entry in the book, in the other book is \$30.93 -- is \$40.93 and it is claimed by the people he was only paid \$30.93 -- would that alter your testimony? A Well, it is the same writing, the same thing.

Q You don't know? A After one year I couldn't say.

Q You don't know whether you were paid \$30.93 or \$40.93?

A How could I remember that for one year?

THE COURT: You see the important part of this witness's testimony, as I take it, is this: You claim that he was paid in February \$30. and some cents

MR. MAYNARD: February 9th, he was paid, and the entry in the booksys \$10.00 more.

THE COURT: This witness depends upon the entry in the book?

THE COURT:

MR. MAYNARD: Yes, sir. A I have brought particularly to his attention the item to which defendant's counsel objected for the purpose of showing that where the book shows \$40.93 and your claim is that the original entry was \$30.93, the witness says he was paid \$40.93 because of the fact that his recol-

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lection as to the payment depends upon the entry in the book.

MR. MAYNARD: I think that is perfectly proper. It is not surprising that the witness should not remember payments that were made to him a year ago. I have called his attention to an entry in that book which has not been changed.

THE COURT: You have not gone beyond that?

MR. MAYNARD: No, sir. I have called his attention to the fact that the pay roll shows \$10.00 more. I could call the attention of this witness to a half a dozen items, and he will testify that that is the amount he received because he looked at the book. I don't think it is necessary to prolong the case for that.

BY THE TWELFTH JUROR:

Q In some instances here it is shown that the number of pieces done in one day was about 200 -- could we get an opinion from this witness whether or not it is possible for one man working to have done that amount of work?

MR. MAYNARD: I see your point.

THE COURT: The expert called off 182 and then said it was increased to 1182, is that what you mean?

THE TWELFTH JUROR: For instance, he did 11 pieces of work. The original entry states 11 at 9¢ and

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the entry is changed to 111 pieces of work at 9 cents.

MR. MAYNARD: I have one where 16 was changed to 116 on September 18th.

BY MR. MAYNARD:

Q I call your attention to the entry in your book representing work done by you September 18th, for the week ending September 18th, 1908, can you tell what the item on line 3 three was for?

(Question withdrawn.)

Q What kind of work does that page represent, what kind of work? A Basting.

Q Basting what? A Lining; I got in 116 linings at 7 cents each.

Q Was this 203 the day before --and this 116 at 7?

A Yes, sir.

Q And 78? A Yes, sir.

Q How many people would it take to handle 205 linings in a day? A Two days work.

Q Two days' work? A Yes, sir.

BY THE COURT:

Q How many people? A I, another man and a helper and two women.

Q To do that work? A Yes, sir.

Q Now, how many people would it take if it was only 16? A Well, less than two days I couldn't make them.

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Q The item for that day if it was 16, they could do in less than two hours, and if it were 116 they would take two days to do it, the item on that line --how many hours a day?

A Ten hours a day.

BY THE FIRST JUROR:

Q Is every day separately marked there? A Yes, sir.

Q At the close of each day the bookkeeper entered the work? A Yes, sir. Every evening at 5 o'clock we would go over the work and mark it off.

Q And the entry before that was 205? A 205; that is just the quantity of coats that were made there.

Q I mean on the previous day, 205 he did, and could not do on the following day 116?

MR. MAYNARD: That is the number of coats that he made, the lot number.

Q What do you mean by the lot number, what item refers to the lot number? A That calls for the number of the coat that I put lining on, the number of the coat -- no lot number here.

Q 203 calls for the lot number? A This is the quantity of the coats, 203 coats.

Q 203 coats? A Yes, sir.

Q And here it says 116 coats? A Yes, sir.

Q If he could have done in the day before, 203, why couldn't he do the next day 116, where he claims 116 would

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take two days? A Well, we did it this way --sometimes we don't present these little checks that I have got in my pocket the same day;; some times I keep these checks for a couple of days before I give them to the bookkeeper.

Q So there is no identification then that those 116 would have been made in one day, they could have been made in two or three days, and you would save the checks from one day to another.

The INTERPRETER: That is what he said.

Q Put that question again. You have stated before that when the book was given back to you that you did not look in it? A No, sir.

Q What is the reason that this book is taken from you if it isn't to mark in your work? A I don't know, I heard that the boss quarrelled with the bookkeeper, and then the boss came to me and he said "give me the book" and I gave it to him.

Q The bookkeeper usually takes your book, don't he take it for the purpose of marking in the work? A Sometimes he would call on us and get the book and mark the work that I have done, just to close up the week; sometimes we would hand him the book, give it to him, or show him the check and he would mark the work in the book.

Q You also turned in the checks, handed him the checks?

A Yes, sir.

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Q How is it possible that you don't look it over? Suppose you delivered a man 500 checks and he only marked 300. How is it you give a man checks and a book to mark in when you can read figures and write figures, and you don't want to take it to see whether they were marked right or wrong?

A Well I wasn't looking at the figures, because I know just exactly what I make in the end of the week, the end of the week, if I wouldn't get my money right, it is time for me to look.

BY THE COURT:

Q How would you ascertain the amount of work performed by you? A Why certainly, you see those little checks I got in my pocket, those are the checks.

BY MR. MAYNARD:

Q One more question. At the time that Mr. Blaustein made the entries in the book did you surrender to him the little checks which you had torn off from the garments?

A We would leave the checks with the bookkeeper.

Q When an entry was made in the book, you turned over the checks to the bookkeeper and then the book is returned to you? (No answer)

BY MR. WEINBERGER:

Q When you surrendered the checks and still you didn't look to see whether he had entered them correctly, although you have nothing to show thereafter how much work you got and

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checks? A Why, certainly, sure I would give him the checks, but I got a memorandum of my own, in my book where I would mark everything in I gave to him.

THE SIXTH JUROR: I was thinking about that too, your Honor.

BY THE COURT:

Q Did you have a book during 1908? A No, sir.

Q When did you begin to use this book? A Five or six months ago, about the first, you can see it.

Q During 1909 did you use a book similar to the one which you have exhibited? A Why certainly, I had a little book.

Q What did you do with that book? A I threw it away, and I will do the same thing with this one, when this book is through, I will throw it away. I have no use for it.

FRANK MOSCETELLI, a witness for the people being duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. MAYNARD:

Q Where do you reside? A 526 Cleveland Street, East New York.

Q What is your business, Mr. Moscetelli? A Tailor.

Q For whom do you work? A Mr. Schwartz?

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Q How long have you worked for Mr. Schwartz? A Seven years.

Q How long have you known this defendant, Mr. Blaustein?

A About five years.

Q Was he employed by Mr. Schwartz when you were employed by him? A Yes.

Q Did you have any dealings with Mr. Blaustein? A No, sir.

Q Is this your book, Mr. Moscatelli? A Yes, sir.

Q Whose handwriting is this in? A The bookkeeper.

Q Did you see him write in this book? A Yes, sir.

Q I call your attention to the entry representing February 5th, 1909 and ask you if you saw him write that?

A Yes, sir; I didn't have the book in my time that day -- that week I got this slip of paper.

Q He gave you a slip instead of entering it in the book did he? A Yes, sir.

Q How much was due that week to you for work from Mr. Schwartz?

MR. WEINBERGER: Objected to as calling for a conclusion.

Objection overruled. Exception.

Q Look at the book, and see? A \$35.52.

THE COURT: What week was that?

MR. MAYNARD: February 5th.

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Q How much money did you receive that week from Mr. Blaustein? A Just as it is here, \$35.52.

Q What was your number? A 48.

Q 48? A Yes, sir.

Q That is your number? A Yes, sir.

Q Didn't you receive \$45.52? A No, sir; I never saw that book before; I received the money according to this book.

Q What kind of work did you do, Mr. Moscatelli?

A Edges, basting edges.

Q How many people have you employed with you? A I keep as far as twelve, always depending upon the work that was there.

Q Do you remember the day when there was trouble between Mr. Schwartz and Mr. Blaustein? A I remember the day when they were talking, loud talking in the Hebrew language, I don't understand what they said because I was attending to my business.

Q On that day did Mr. Schwartz ask you for your book? A Yes, sir.

Q About what time? A It must be about 1 o'clock when the bell rings for lunch.

Q Did you let him have it? A Yes, sir.

Q How long did he keep it? A Well, not long.

Q About how long? A Well, half an hour.

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Q About half an hour? A Yes, sir.

Q Did he give the book back to you then? A Yes, sir.

Q Did Max Blaustein, this defendant, afterwards get it from you that day? A Yes, sir.

Q Do you remember what day of the week it was? A I don't recollect the date, it must have been in the middle of the week, Tuesday or Wednesday, but I believe Wednesday.

Q What day of the week did Mr. Blaustein, this defendant, regularly get that book from you? A Friday.

Q Did he ever ask you for your book at any other time in the middle of the week? A No, sir, never.

Q Have you any independent recollection of the payments made to you by Mr. Schwartz, week by week? A No, sir.

Q You have to rely upon -- what do you rely upon for the amounts? A I rely upon the total that is on this book.

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Q I will ask this witness to turn to January 29 for the amount that he received? A I received \$66.60.

MR. WEINBERGER: I object to this question on the same grounds as I objected to the previous testimony.

THE COURT: What is the amount.

THE WITNESS: \$66.60.

Objection overruled; exception.

Q Your number was then 48, was it not? A Yes sir.

Q Didn't you receive \$76.60 that week? A No sir; I never saw that book before.

Q You are sure that that is all you got? A Yes, why certainly sure.

Q January 15th, how much did you receive in the week of January 15th? A \$49.25.

Q I show you, and call your attention to the pay roll of January 15th, #48, didn't you receive \$59.25? A No sir; I received according to this book; I never saw this book before.

CROSS EXAMINATION BY MR. WEINBERGER:

Q The defendant never took these small books in the middle of the week from you? A No sir.

Q Excepting this time? A Only at that time.

Q Did you ask him why he needed that book? A No sir.

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LOUIS SIVIRSKI a witness for the people.

DIRECT EXAMINATION BY MR. MAYNARD:

Q Now, Mr. Sivirski, I will ask you to talk loud so that every one of the jurors can hear every word you say. A I will try.

Q What is your business? A Clothing, tailor man.

Q For whom do you work? A For Mr. Schwartz.

Q How long did you work for Mr. Schwartz? A Going on seven years, October will be seven years.

Q How long have you know n this defendant Max Blaustein?

A Five years.

Q What kind of work did you perform for Mr. Schwartz?

A Well, I got all the coats what Mr. Schwartz makes in his place, I got to make all the pockets in the coats.

Q You make the pockets in the coats? A Yes sir.

Q Were you making pockets for Mr. Schwartz in February 1909? A Yes sir.

Q Do you remember how many pockets you made for Mr. Schwartz for the week ending February 5th 1909? A No, sir, I remember the amount, but I don't remember how many coats I made.

Q You don't remember how many coats? A No sir.

Q What was the amount of money you earned from Mr. Schwartz that week.

MR. WEINBERGER: Objected to as incompetent,

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immaterial and irrelevant.

Objection overruled. Exception.

Q How much money did you earn that week by doing work for Mr. Schwartz? A What date?

Q For February 5th, the week ending February 5th?

A \$53.88.

Q On what date were you paid? A On Tuesday.

Q By whom were you paid? A By Mr. Blaustein.

Q Now, you were paid on February 9th, were you not, for the preceding week? A Yes sir.

Q Now, was that the last payment that was made to you by Max Blaustein? A Yes sir.

Q How much was that last payment that he made to you? A I had \$51.97.

Q \$51.97? A Yes sir.

Q What was your number, Mr. Sivirski? A 61 all the time.

Q Do you read and write? A No sir, not much.

Q Do you know numbers? A Yes sir, I can tell my name there all right.

Q Numbers and figures? A Yes sir.

Q I call your attention to your number on the pay roll for the week ending February 5th? A That is "L. Sivirski \$61.97".

Q Now didn't you receive \$61.97? A No sir.

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Q How much did you receive? A \$51.97. I had 495 coats.

Q That was at what? A 10 1/2 cents.

Q 495 coats at 10 1/2 cents. A Yes sir.

Q \$51.97? A Yes sir.

Q Do you remember what amount was due you from Mr. Schwartz for the week preceding that? A No sir, I could not tell you.

Q Do you remember that, Mr. Sivirski? A I only remember for two weeks, that is all.

Q Well one week was \$61.97? A Yes sir; \$51.97 I received.

Q What did you receive the week before that? A \$53.88.

Q Are you sure about that? A Yes sir.

Q Was your number 61?

MR. WEINBERGER: I object to that.

A 61 L Sivirski.

MR. WEINBERGER: He is showing him that book. He cannot testify from the book.

THE COURT: Objection overruled because this book, as I understand it, is in the handwriting of this defendant. This book shows an entry of \$61.97 and the witness claims that he received only \$51.97.

MR. WEINBERGER: How does that book refresh the

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