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BY THE COURT:

Q Is that the language he used? A Yes, sir, about that.

Q What did he say? A Well he said I may have overdrawn my account, and I will see the checks are made good. There will be no trouble on your part at all.

BY MR. HOLBERT:

Q What did you say to him in answer to that? A I felt kind of sore giving me the bad checks.

MR. HOLBERT: I object to that and move to strike it out.

THE COURT: Strike it out.

BY MR. HOLBERT:

Q What did you say to him? A I told him if he made good it would be all right, as near as I can remember.

Q As matter of fact he did afterwards make the payments on those checks?

Objected to. Objection sustained.

Q You and Julian at that time did agree between yourselves to make the checks goods to you?

Objected to. Objection sustained. Exception.

Q Julian said to you that he would make them good?

A Yes.

Q You told him if he did it was all right? A I told him it would be up to Mr. Battersey, and Mr. Battersey came

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up and saw him and he agreed to make them good -- he said as long as you make them good it will be all right.

Q Then he did pay you on those checks practically the full amount, didn't he?

Objected to. Sustained. Exception.

FRANCIS BATTERSBY, called as a witness on behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 351 West 122nd.

Q What is your business? A Liquor business.

Q Where is your place of business? A 133 Washington street.

Q Were you in the same business in the month of July?

A Yes, sir.

Q I show you People's Exhibits 8, 9 and 10 and I ask you if you recognize them? A Yes.

Q Are you the Mr. Battersby mentioned by the last witness Mr. Curry as having cashed these checks? A Yes.

Q After the checks were cashed did you have a talk with the defendant Julian about them? A Yes, sir, a couple of days after the check came back.

Q And what talk did you have, what did you say and what did he say?

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Objected to as incompetent, irrelevant and immaterial.

THE COURT: It may have some bearing on the intent.

I do not know. I will recelt it.

Q What did you say and what did he say -- what did you say first? A I told him that the checks came back and he said he thought he had enough money in the cuba Supply company to cover the checks.

Q Speak a little louder -- these gentlemen cannot hear you?

A Then he said his eyes were sore and he was treating them and as soon as his eyes would be a little better he would make good the money to me. That was the words he told me.

CROSS EXAMINATION BY MR. HOLBERT:

Q He told you he thought there was enough money there to cover them? A Mr. Julian himself, yes.

Q Told you that? A Julian.

Q Told you he thought there was enough money in the Cuba Supply Company to cover your checks? A Yes.

Q But his eyes being sore now, as soon as he got around to it he would make it good, as long as they had turned them down?

A Yes, sir.

Q You advanced the money on these checks yourself? A No, not myself? A No, not myself personally, my man bartender.

Q As matter of fact you have received sixty-five or seventy dollars on account of these checks?

Objected to. Sustained. Exception.

Q Before the time of the starting of this prosecution is it not true that Julian had voluntarily paid to you between \$65 and \$70 against these three checks?

Objected to. Sustained. Exception.

AUGUST LUDEMAN, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 23 Spencer place, Brooklyn.

Q What is your business? A Brewery.

Q Your place of business? A Brooklyn, Franklin avenue.

Q Do you know this defendant Louis Julian? A Yes.

Q I show you a paper dated August 2, 1905 and I ask you if you recognize it? A Yes.

THE COURT: What is the date?

MR. WASSERVOGEL: August 2nd.

BY MR. WASSERVOGEL:

Q Did you have a conversation with the defendant regarding this paper? A At the time of cashing?

MR. HOLBERT: I object as incompetent, irrelevant and immaterial, to the issues in this case.

Objection overruled. Exception.

THE WITNESS: What was the question.

(The question is repeated.)

A At the time of cashing the check?

Q Yes, that is the time? A Yes.

Q What was it? A He asked me to cash the check for him.

Q What did you do? A I did.

Q How much did you give him? A Twenty-one dollars.

MR. WASSERVOGEL: I offer the check in evidence .

Objected to as incompetent, irrelevant and immaterial
and long subsequent to the giving of this check.

THE COURT: Sometime in August ?

MR. WASSERVOGEL: The 2nd day of August, within a
week.

THE COURT: Inside of two weeks -- it may have some
bearing upon the intention with which the Hotel Imperial
check was given, and I will receive it and limit it to
that.

Exception.

The check is received in evidence and marked
People's Exhibit 11.

BY MR. WASSERVOGEL:

Q What did you do with the check? A Deposited it
the next day in my bank. It came back "No account".

Q After it came back "no account" as you say, did you have
a talk with the defendant? A Yes, sir.

Same objection.

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BY THE COURT:

Q How soon after? A I wrote Mr. Julian a short time after and he called and he promised to make good --

BY THE COURT:

Q How soon after did he come to see you? A Well, within a week or so.

BY MR. WASSERVOGEL:

Q What did you say and what did he say? A I said he would have to make it good otherwise I would turn it over to the counsel.

Q What did you say to him about the check first before you said he would have to make it good? A That the check came back no account.

Q What did he say? A Must be some error about it.

CROSS EXAMINATION:

Q You first brought him a letter and he came up to see you when he got the letter A yes.

Q And have you given all the conversation that occurred at that time between you and himself, have you given all of it? A Might have been some other topics to talk about.

Q We came in and he said that he had your letter and that there was some mistake about their not cashing his check? A Yes, sir.

Q But that he would make it good? A Yes.

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Q Didn't he at that time in connection with that conversation pull the money out of his pocket and pay you a large part of that check right at that time? A No, he did not.

Q How long afterwards was it that he paid you that money?

Objected to. Objection sustained. Exception.

Q At the time Mr. Julian came in -- at the time the check was cashed -- another gentleman by the name of Fox was with him? A Yes.

Q And Julian's eyes were in very bad shape, he was being led around by Mr. Fox, is not that so?

Objected to.

A He was.

THE COURT: What difference does it make?

MR. HOLBERT: I want to show the condition at this time and subsequent to this time.

THE COURT: If objected to I must sustain the objection.

MR. WASSERVOEL: I object.

THE COURT: Objection sustained.

Exception.

BY MR. HOLBERT:

Q You had known Mr. Julian quite a while? A Yes.

Q You had cashed quite a number of check for him before?

A Yes.

Q Never had any trouble about the checks before? A No.

BY THE COURT:

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Q Did you cash checks of the Cuba Supply Company for him?

A That was the only one.

BY MR. WASSERVOGEL:

Q This is the only check of the Cuba Supply Company you ever cashed for him? A Yes.

THE PEOPLE REST.

MR. HOLBERT: If your Honor please it is now after three o'clock and I desire to make a motion to dismiss this indictment, and I would like to ask for an adjournment so that this motion may be properly prepared and presented. It is rather a technical legal proposition involved and one that I would like to present to the court at length.

THE COURT: You are not prepared to do it now.

MR. HOLBERT: No, I am not presented to present it at length at this time.

THE COURT: In the interests of the defendant I will grant the application though I regret very much to be obliged to adjourn court at half past three. At the same time his interests must be protected.

The Court admonishes the jury in accordance with section 415 of the Code of Criminal procedure and takes an adjournment until to-morrow morning May 17, 1910 at 10:30 o'clock.

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New York, May 17, 1910.

Trial Resumed.

MR. WASSERVOGAL: Will your Honor permit me to call one witness before we finally rest?

THE COURT: Yes.

WILLIAM P. JUDSON, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you reside? A Ardsley on Hudson.

Q You are an attorney at law? A Yes.

Q And have been how long? A Since 1895 I think or 1896.

Q You are the president or were the president of the Cuba Supply Company? A Yes.

Q Do you know this defendant? A Yes.

Q How long have you known him? A Since the fall of 1904.

Q And you know Mr. Little, one of the counsel for the defendant in this case? A Yes.

Q Mr. Little was formerly your partner in business?
A We were associated together.

Q You became acquainted with Mr. Julian through Mr. Little?
A Yes, sir.

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Q And Julian frequently came down to your office at 135 Broadway? A No - he came -- when Mr. Little and I were associated together we had offices at 32 Nassau street and Mr. Julian came there a great deal. After we gave up these offices he very seldom came to 135 Broadway.

Q When were you at 32 Nassau street? A From sometime in the fall of 1904 until the end of April 1905.

Q The Cuba Supply Company was organized under the laws of the State of Delaware? A Yes, sir.

Q For what purpose? A The purpose of carrying on a contracting and supply business in Cuba.

Q It had no banking powers? A No.

Q No power to do a banking business of any kind? A No.

Q And was never authorized to do any business in the State of New York whatever?

Objected to as not the best evidence and as incompetent.

MR. WASSERVOGEL: We have the records in evidence already.

THE COURT: If that be the only objection I will receive it.

Exception.

DEPENDANT'S COUNSEL: We object as incompetent and immaterial and not the best evidence.

A I had always supposed that.

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Q Answer my question. A That was what I was going to answer.

Q Did your company at any time have authority to do business in the State of New York? A I had supposed that we had filed the necessary papers here.

MR. WASSERVOGEL: I ask that the answer be stricken out.

THE COURT: Strike it out.

Q You are a lawyer? A Yes -- from the testimony given here yesterday --

Q Wait a minute.

THE COURT: Mr. Witness, you must appreciate, if you have legal training, that your function is to answer questions. Appreciate what the question is and then do not go outside of the four corners of it.

THE WITNESS: Very well.

THE COURT: Reply to that and nothing else.

DEFENDANT'S COUNSEL: I wish to add to my objection that it is incompetent and not the best evidence and not binding upon Julian, the fact that they were not authorized to do business.

Objection overruled. Exception.

BY MR. WASSERVOGEL:

Q (Question repeated) Yes or no? A No, sir.

Q Did this defendant ever deposit any moneys with the

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Cuba Supply Company? A No, sir.

Q Did this defendant have a bank account with you ?

A No, sir.

Q Did he have a passbook? A No, sir.

Q Where were the books of the Cuba Supply Company in July 1905? A In Havana, Cuba.

Q In storage? A In storage.

Q That company had been out of business for upwards of a year prior to July 1905? A Practically.

Q And no meetings of the directors had been called for about a year prior to that? A No, sir.

Q That is correct, is it not? A Yes, sir.

Q Do you know aman named sicker? A No, sir.

Q Did you ever have any printing done by a man named Sicker or Polan for the Cuba Supply Company? A Not that I can recall.

Q You would recall it? A Yes, I think so.

Q You never had any printing done by Sicker? A Not that I can recall.

Q Did you ever pay a man named Sicker money for printing checks? A I do not recall it.

Objected to as incompetent, irrelevant and immaterial.

THE COURT: How has it any bearing.

MR. WASSERVOGEL: To bring out that this defendant printed checks of the Cuba Supply Company himself and

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that none of those checks were printed by the Cuba Supply Company or its manager and officers.

THE COURT: I will sustain the objection.

BY MR. WASSERVOGEL:

Q You were a witness before the Grand Jury in this case, were you not? A I was.

Q You were examined under oath there? A Yes, sir.

Q Did the Cuba Supply Company have any bank account in the months of May, June and July of 1905? A No, sir .

Objected to as incompetent and immaterial and not binding upon the defendant.

Objection overruled. Exception.

Q You said no? A I said no.

Q Did the Cuba supply Company during the months I have named have any money at all, any cash? A Yes, sir.

Q How much at any one time? A At different times two and three hundred dollars.

Q Where was that money kept? A In the safe at 135 Broadway.

BY THE COURT:

Q That is at what time?

THE WITNESS: During the month.

MR. WASSERVOGEL: May, June and July of 1905.

BY MR. WASSERVOGEL:

Q During those months did you have a personal bank account?

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A I think so.

Q Do you remember being asked that question before Magistrate Wahle upon the original hearing in this case? A I don't remember it, no, sir.

Q Your recollection was better at that time than it is at present? A A great deal.

Q If you said at that time that you had no personal bank account, would that be correct?

Objected to as immaterial.

THE COURT: I think it is and the other questions were also.

DEPENDANT'S COUNSEL: I did not care to interfere.

THE COURT: I will strike it out if you move to strike it out.

MR. WASSERVOGEL: Which does your Honor strike out?

THE COURT: The three questions and the three answers.

BY MR. WASSERVOGEL:

Q Did you ever give to him any authority to draw checks on the Cuba Supply Company? A I did not give him authority to draw checks. I gave him authority to draw on the Cuba Supply Company.

Q Did you give him any blanks to fill out? A Not that I recall. I may have done so.

Q Did you give him blanks such as the one I now show you, People's exhibit 1? A I do not recall it. I may have done

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so.

Q Did Julian have authority to draw checks on the Cuba Supply Company between January and February 1905? A No, sir, he did not.

Q Did he have authority to draw checks or drafts on the Cuba Supply Company in the month of March 1905?

Objected to as a conclusion. Objection sustained.

MR. WASSERVOGEL: It seems to me, if your Honor please, that I have shown sufficiently so far to convince your Honor that this witness is a hostile witness, and I would like permission to cross examine him.

THE COURT: I do not think you have.

BY MR. WASSERVOGEL:

Q Did you have any conversation with Julian in the month of February 1905 about drawing upon the Cuba Supply Company?

A I had a conversation about that time -- whether it was in February or March I cannot recall at this time.

Q What was the conversation? A Julian had for several months previous thereto done quite a lot of detective work for the company and he was asking about being paid.

BY THE COURT:

Q This was in January 1905? A Some time previous to that.

Q Some time previous to January 1905? A Yes -- he had done work for the company -- or it may have been that the work continued into January and February. I cannot recall at this

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time the exact dates.

BY MR. WASSERVOGEL:

Q And what was the nature of the work that he did for the company? A Some detective work, or rather trying to locate a person for me.

Q And you were to pay him a certain sum if he did collect that amount? A Nothing was ever said about being paid. I simply asked him to try and locate this person for me.

Q Do you remember testifying before the Grand Jury as follows, "If we collected, that we were willing to pay him a large sum for his services". Did you so testify? A I do not recall specifically but I think it is true.

Q It is true? A Yes.

Q Do you remember being asked this question, "If you did not collect it then what", and you answered, "I would pay him the best I could up to a small amount" -- did you so testify? A I do not recall having done so.

Q If the record so shows, that is correct? A That is correct.

Q That was true? A Yes, sir.

Q The amount was never decided upon? A I do not recall that it ever was.

Q It was not as matter of fact, you so testified before the Grand Jury "We never decided upon any definite amount"?

A That is correct, sir.

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Q Julian never sent you any bills of any kind? A No.

Q On July 20 1905 had you collected that claim? A We hadnot.

Q So that the entire amount at that time that had ever become due to him was for some small amount for locating some person against whom you had an uncollected claim, is that correct? A I do not think it is correct.

Q If you so testified before the Grand Jury would that be correct ?

Objected to as calling for a conclusion.

THE COURT: You might ask him if it would change his opinion now -- the statement that he had made now .
BY MR. WASSERVOGEL:

Q Now I call your attention to a statement made by you before the Grand Jury. I ask you does that alter your opinion as to the testimony you are giving at this time? A I do not think it does.

Q Do you remember being asked this question before the Grand Jury by the Foreman of the Grand Jury, "So that the entire amount at that time that had ever become due to him was for small amounts for locating a person against whom you had an uncollected claim"? A Yes." Do you recall giving that testimony? A I do not recall it.

Q If it is in the record it was true at that time?

Objected to as calling for a conclusion.

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THE COURT: What do you say as to the statement read to you purporting to be a transcript of the testimony given?

THE WITNESS: I would say this, that my feeling would be that I did not thoroughly understand the purport of the question when it was given before the Grand Jury.

BY MR. WASSERVOGEL:

Q Do you remember being asked this question by Magistrate Wahle, upon the preliminary hearing of this case as to any authority that this defendant had to draw checks, "Q. Down to when did he have such authority? A. I should say that continued until along, probably in May sometime 1905". Did you so testify? A I do not recall it.

Q If the record so shows, is that correct; do you concede that is correct? A I should say it is correct if the records shows so.

Q How many drafts did he draw -- you call them drafts -- how many drafts did he draw altogether? A I am unable to state. I should say probably twenty or thirty.

Q These amounted altogether to how much? A To several hundred dollars.

Q How much would you say \$200? A No, I should say they amounted to three or four and possibly five hundred dollars.

Q You did not owe him \$500, did you? A I always -- my feeling would be that the company should pay --

Q Just answer my question, did you owe him \$500 or not?

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A Yes, sir, I think so.

Q Do you remember testifying before the Grand Jury that if he had collected the amount due you, his services would have been worth two or three hundred dollars at the most? A My recollection, before the Grand Jury, was about between four and five.

Q Are you positive of that? A That is my recollection. I am not positive.

Q As matter of fact he did not collect the amount, that is true, is it not, he did not collect the amount due you from this party? A Oh, no.

Q Did you ever pay him any money? A Pay Julian money?

Q Yes. A For other things than this account?

Q Yes? A I think so.

Q Did he render other services for you, is that what you mean? A No.

Q What were the other payments for? A I think one time I loaned him some money.

Q Have all the checks which were drawn by him on the Cuba Supply Company been paid? A I cannot say.

Q How many were returned? A I cannot tell you.

Q When did they first come back? A I cannot tell you, I do not recall.

Q You never kept any books at all? A No, sir.

Q Simply a mental method of bookkeeping -- mental book-

ing? A Yes, sir.

Q Did you tell him in May or June that you could not meet any more checks, and that he was discontinue drawing upon the Cuba Supply Company? A I do not think I used those exact words. We had some talk at that time but I do not think I used those exact words.

Q Did you tell him in May or June that you could not meet any more because you had no funds? A I do not recall using those words. We had some talk at that time about it, but just my exact words I cannot recall.

Q Did you have fund at that time, in May and June?

A Did I?

Q Yes. A Yes, sir.

Q Or the Company? A I do not recall ---

Q Yes or no -- did the company have funds at that time?

A I do not recall that they had any.

Q Had none at all? A May have had some small amounts.

Q Did you ever draw any checks upon the Cuba Supply Company yourself to the order of Julian? A I do not recall ever doing so.

Q Were any checks drawn by you to the order of Julian unpaid, by the Cuba Supply Company? A I do not recall any.

Q Do you recognize your signature to this paper (showing a paper to the witness?) A I do.

Q Dated June 20 1905? A June 19th.

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Q June 19, 1905? A Yes, sir.

Q To the order of L. E. Julian, is that correct? A Yes.

Q And this check was not paid? A It is marked paid.

DEPENDANT'S COUNSEL: I object as incompetent, irrelevant and immaterial and not binding upon the defendant, what this man did.

THE COURT: What is the date?

MR. WASSERVOGEL: June 19, 1905. This would bring home notice to the defendant.

DEPENDANT'S COUNSEL: I would like to see the check a moment -- I understand it is a check signed by Judson to the defendant Julian. Whether it was paid or not is a matter of indifference. It is not Mr. Julian's check.

THE COURT: I will take it.

Exception.

MR. WASSERVOGEL: I offer it in evidence.

Received in evidence and marked People's Exhibit 12.

BY MR. WASSERVOGEL:

Q That check was not paid at that time, was it?

Same objection.

THE WITNESS: It is marked paid.

Q When was it paid? A I can't tell you.

Objected to as immaterial.

Q Do you remember a notice being left at your office?

A Not about that check, no, sir.

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Q You do not recall that?

MR. HOLBERT: I move to strike out all the testimony with reference to the check. It shows it was paid.

THE COURT: I will let it stand just as it is. He says it was paid.

BY MR. WASSERVOGEL:

Q Do you know the signature to this check (showing witness another paper)? A I do.

Q Drawn by your brother? A I should say so. It looks like his handwriting.

Q Upon the Cuba Supply Company? A Yes.

Q Dated June 20, 1905? A Yes.

MR. WASSERVOGEL: I offer this check in evidence.

Objected to.

THE COURT: Is it made to the defendant.

MR. WASSERVOGEL: Made to the defendant.

Objected to as incompetent, irrelevant and not purporting to be a check made by him.

THE COURT: But given to him.

MR. WASSERVOGEL: Given to him.

MR. HOLBERT: Given to him.

THE COURT: I overruled the objection.

Exception.

Papers received in evidence and marked People's exhibit

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BY MR. WASSERVOGEL:

Q Do you recall when this check was presented to the Cuba Supply Company for payment? A I do not.

Q You do not recall any of the circumstances as to when it was paid or anything about it? A No, sir.

BY THE COURT:

Q Was it paid? A I do not know. If I see the check I can tell you.

MR. HOLBERT: I would like to know if it was paid or not.

MR. WASSERVOGEL: It is marked paid subsequently -- but first notice given to the bank.

MR. HOLBERT: I move to strike out all the evidence on the ground it does not tend to show any criminal intent on the part of this defendant.

THE COURT: I do not see how it harms you. I will let it stand as it is.

Exception.

BY MR. WASSERVOGEL:

Q I show you this paper and I ask you if you recognize the signature to that? A That looks like my brother's handwriting.

Q It is your brother's handwriting, is it not? A I would not swear to it.

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THE COURT: What is the date of it?

MR. WASSERVOGEL: June 21, 1905.

BY MR. WASSERVOGEL:

Q You have frequently seen your brother write? A Yes.

Q Do you mean to say you cannot recognize this handwriting? A I mean to say I cannot recognize that as his signature.

Q And do you recognize this other check, People's Exhibit 13 as having been signed by your brother? A Yes, sir.

Q Had no difficulty in recognizing that signature?
A Yes.

Q You had some difficulty about this signature?
A I say I would not swear that is not his signature.

Q You would not swear that is not his signature? A No.

Q Look at this check and tell me if that check was paid?

Objected to as incompetent, irrelevant and immaterial.

THE COURT: To whom is it made?

MR. WASSERVOGEL: To the defendant dated June 21, 1905.

THE WITNESS: I should say it was paid.

Q Is it not a fact that check was first protested for non payment on the 21st of June? A I do not know if it was or not.

Objected to as incompetent, irrelevant and immaterial and not binding upon the defendant -- the fact it went to

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protest -- and if it was paid it does not tend to show any
intend upon his part.

THE COURT: The witness has answered the question.
Do you desire to strike it out?

MR. HOLBERT: I desire to strike it out.

THE COURT: I will let it stand.

Exception.

The check is marked for identification People's
Exhibit 14.

Another paper is marked People's exhibit 15 for
identification.

BY MR. WASSERVOGEL:

Q The defendant had been with you in your office for some
time? A At the office at 32 Nassau street.

Q And what was the occasion of your telling him not to
draw any more drafts upon the company?

Objected to as assuming that he ever told him that.

MR. WASSERVOGEL: He testified he did.

MR. HOLBERT: It is not in the evidence.

THE COURT: Ask him the question to clear it up.

BY MR. WASSERVOGEL:

Q Did you ever tell him not to draw any more drafts upon
the company? A My recollection is towards the end of July
or the first part of August I did.

Q Do you remember when? A It must have been after you

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showed me those checks -- subsequent to the 20th or 19th day of July -- what was the date of that check?

Q Well, June 21st? A It must have been subsequent to that.

Q How long subsequent to the 21st of June? A My recollection is towards the end of July or first part of August.

Q You allowed a whole month to elapse before speaking to him about this matter? A You asked him when I told him not to draw any more?

Q Yes. A That is my recollection.

Q You realize that you are under oath here? A Perfectly.

Q Do you remember being asked this question before the Grand Jury, "Q Prior to July 20, 1905, did you have any conversation with him in regard to making checks or drafts on the Cuba Supply Company? A I did." Did you so testify? A I do not recall it. If it is in the minutes I did.

Q Do you remember being asked this question by the foreman of the Grand Jury, "I want you to answer the question? A I told him that he had overdrawn his account somewhat and I did not wish him to draw any more". Did you so answer to that?

MR. HOLBERT: I object to the question because it is an attempt upon the part of the counsel to read in disconnected portions of the minutes.

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MR. WASSERVOGEL: I will read it all.

THE COURT: I will permit you to use it on your cross examination if you want to.

MR. WASSERVOGEL: I will offer it in evidence.

MR. HOLBERT: How can I get at it when I do not know what papers he is reading from.

MR. WASSERVOGEL: I am willing to offer the whole of it in evidence.

MR. HOLBERT: May I have the record show where the first question was read to him and when the second question was read to him.

BY MR. WASSERVOGEL:

Q Page 1, you were asked by the foreman of the Grand Jury "What is your business? A I am a lawyer." Did you so testify? A I do not recall.

Q You are a lawyer? A Yes.

Q You were a lawyer in July 1905? A Yes, sir.

Q "Practicing in this country? A Yes." Did you so testify before the grand Jury? A I imagine so if you are reading from the minutes.

Q "Is there such a corporation as the Cuba Supply Company in business here? A. There is such a corporation. It is not doing business here." Did you so testify? A I do not recall it.

Q If the record so shows was it true? A That

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was true.

MR. HOLBERT: I object to reading the entire record upon the ground that there is nothing the witness has testified to that contradicts it.

Objection sustained.

MR. WASSERVOGEL: I am accused of only reading certain questions and then of not reading enough.

THE COURT: Proceed.

BY MR. WASSERVOGEL:

Q Do you remember being asked this question -- I read from page 3 of the grand Jury minutes, "Did you tell him, Julian, that you would cash no more checks or drafts that he drew against the Cuba Supply Company? A. I don't remember whether I used exactly those words or not." Did you so testify? A I do not recall that testimony.

Q If the record shows that you did, will you say it was true at that time? A Yes.

Q "Q. Whatever the language was, was that what you said in substance? A. My recollection is that the substance of the conversation was that he was not to draw any more drafts." Do you recall that testimony as having been given by you? A I do not recall having given it but it is correct.

Q" For the reason that they would not be paid? A For the reason that the company was hard pressed for money and they would not be paid." Did you so testify? A That is correct.

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I do not recall testifying.

Q All right. I now read from page 4, "Q. You told him he had reached the limit and he should draw no more drafts against the account? A. That was practically what I said, I don't remember the exact words." Did you so testify before the Grand Jury? A I do not recall it, but that is correct.

Q "Q. And some time prior to July 20th you told Julian to present no more checks or drafts against the company? A. That is my recollection." Did you so testify before the Grand Jury? A I do not recall it.

Q If it is in the record, you say it is correct?

Objected to as argumentative and calling for a conclusion.

Q Do you say it is correct?

Objection overruled.

A I would say in view of these checks that you have presented this morning, it was incorrect.

Q What caused you to change your opinion about this one question and answer? A The fact that I was giving in June a draft to Julian to cash.

Q You do not know if that draft in June was paid or not? A I know it was paid. It is so marked.

Q Was it paid on that day? A I imagine so.

Objected to as immaterial. Objection overruled.

Q You realized that you were under oath before the Grand

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Jury at that time? A I did.

Q Do you remember being asked this question before the grand jury, "Whether the Cuba Supply Company owed \$50 or not you do not know? A. No, sir." Did you give that testimony?

A Can you tell me in what connection -- owed to who?

Q Any connection? A Whether it owed \$50?

Q Owed \$50? A To anybody?

Q To the defendant? A To Julian?

Q Yes. A What time?

Q July 20 1905? A I think it did.

Q If you testified at that time it did not, were you telling the truth then? A I was.

Q Do you recall being asked this question "What is the entire amount he Julian ever claimed was due him for his services? A. We have never reached a position where we came to any definite knowledge as to how much the company owed him." Do you recall that testimony? A I do not recall it.

Q That was correct? A But it was correct.

Q "By the foreman of the grand jury: What indefinite arrangement did you have? A. He had done a certain amount of work in locating a person against whom we had a claim. If we collected that we will willing to pay him a large sum for his services." Do you recall giving that testimony? A I do not recall it but it is correct.

Q "Q. If you did not collect it when what? A. I would

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pay him the best I could up to a small amount." Is that correct?

A That is correct, yes.

Q "By the foreman of the Grand Jury: On July 20 1905 had you collected that claim? A. No, sir." That was true?

A Yes.

Q Do you remember being asked this question, "Now what is your best recollection as to the aggregate amount of the checks or drafts which Julian had drawn against the company and which had been returned unpaid? A. I believe on the hearing before the Magistrate there was some draft for about \$200 that the Magistrate stated had been unpaid, that were shown to me at that time." Did you so testify? A I do not recall it.

Q If the record shows it will you say that was true?

Objected to as calling for a conclusion. It is a question of his recollection.

Objection sustained.

Q It is the fact this record so shows, will that refresh your recollection? A That testimony was based on a statement made by the Magistrate.

Q You remember so testifying before the Grand Jury, that is the question at the present time? A Giving that testimony?

Q Yes? A No.

Q At that time when you were before the Grand Jury you based your recollection upon certain things that had transpired

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before the Magistrate? A I based my recollection on a statement made by the Magistrate.

Q You remember this question having been asked you by the foreman of the grand Jury, "But you swear that prior to this presentation you had advised him to draw no more checks or drafts on the company for the reason that they could not be paid? A. Yes." Did you so testify? A I do not recall so testifying, and must have been in error, from the fact of having given those drafts you showed me this morning.

Q Is your recollection on the subject better now than it was several years ago? A No, it was better then.

Q Your recollection was better at that time? A Yes.

Q Do you remember this final question having been put to you by the foreman of the Grand Jury, "Q. You had advised him that if he did draw his draft, it would not be paid? A. I had told him that I was getting down where I could not take care of him, which is practically the same thing." Did you so testify? A I do not recall it.

Q If the record so shows will you say that is correct?

Objected to as calling for a conclusion. Objection sustained.

Q What is the fact on that subject? A My recollection is that I did have a talk telling him not to draw too rapidly.

Q When did those drafts first begin to be returned unpaid, do you remember? A I do not.

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Q If I tell you that before the Magistrate you said that they first began to be returned unpaid some time in June, would that refresh your recollection? A If I so testified before the Magistrate, I would say it was correct.

Q "And you knew that the defendant was passing these drafts throughout New York, and that they were coming into your company in great numbers at that time?

Objected to as incompetent, irrelevant and immaterial and leading. Objection sustained.

Q Did any other persons draw checks on the Cuba Supply Company?

Objected to as immaterial and not binding upon the defendant. Overruled. Exception.

A Yes.

Q Who were they?

Same objection.

MR. WASSERVOGEL: I will connect it.

THE COURT: On that statement that it will be connected I will receive it.

Exception.

THE WITNESS: Various persons and corporations.

Q Will you name any corporation that drew on the Cuba Supply Company?

same objection, ruling and exception.

Q Name one corporation that drew on the Cuba Supply Com-

pany? A At what time?

Q In the year 1905?

Same objection, ruling and exception.

A I do not recall any corporation at this time. I remember one or two did.

Q In 1905? A In 1905.

Q Where was the office of the Cuba Supply Company at that time? A 135 Broadway.

Q Whose office was that, was that a separate office rented by the Cuba Supply Company? A No, it was occupied jointly by my brother and myself.

Q All the office that the Cuba Supply Company had at that time was the name upon the door? A I would not say so.

Q Did it have any furniture there? A I do not think -- no -- the Cuba Supply Company did not have any furniture there.

Q Will you name any persons who drew checks on this Cuba Supply Company other than the defendant, your brother and yourself?

Objected to as incompetent, irrelevant and immaterial to the issue and not binding upon the defendant.

Objection overruled. Exception.

A My recollection is that Mr. Josiah Marble, a lawyer of Wilmington, Delaware, who had done some work for the company drew a draft at that period.

Q Did a man named Stanley Bagg ever draw any of those checks?

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A I do not recall it.

Objected to. Overruled. Exception.

THE WITNESS: (Continuing) I think I met him once in Mr. Julian's office.

Q Baggwas a friend of Julian's, was he not?

Objected to as incompetent.

THE COURT: If he knows he may say.

A I do not know.

Q You state now positively under oath that Stanley Bagg never draw any checks?

Objected to as incompetent, irrelevant and immaterial to the issue and not binding upon the defendant.

Objection overruled. Exception.

A I do not recall it at this time.

Q See if I can refresh your recollection. On the hearing before Magistrate Wahle this question was asked, "Did Stanley Bagg ever draw any of these checks?" A Yes." Would that question and answer as given at that time refresh your recollection on the subject?

Same objection, ruling and exception.

A If that testimony was given before the Magistrate I would say now that that must be true.

Q Did Bagg have authority to draw checks? A No, sir.

Same objection, ruling and exception.

Q He drew checks on the company also -- your brother drew checks on the Cuba Supply Company?

Same objection, ruling and exception.

A He drew drafts on it.

Q Did he have authority to draw drafts? A Yes.

Same objection.

Q Was he an officer of this company? A No, sir.

Q Do you know a man named Daniel O'Connor? A Yes, sir.

Q Did he ever draw any checks or drafts on the company?

Same objection, ruling and exception.

A I do not recall it.

MR. HOLBERT: I move to strike out the answer.

Motion denied. Exception.

Q If you testified in the Magistrate's Court that O'Connor did, would that refresh your recollection on the subject?

Same objection.

THE WITNESS: If I so testified I would say it was true.

Q Do you know a man named Frank Marinelli? A I used to know him.

Q Both O'Connor and Marinelli were friends of this defendant, were they not?

Same objection. Objection overruled. Exception.

A Is that correct? A I do not know.

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Q Did Marinelli ever draw checks? A I do not recall it.

Q Let me see if I can refresh your recollection on that subject, in the Magistrate's Court you were asked "How about Frank Marinelli? A. I think he did draw checks; he had no authority." Did you so testify? A I do not recall it, but if it is in the minutes I did.

Q Did O'Connor ever have authority to draw checks on the Cuba Supply Company? A No.

Q Still, both of those men did draw checks on the Cuba Supply Company? A According to what you are reading from, they did.

Q And neither one of those men ever had any claim against the Cuba Supply Company? A I think O'Connor did have a claim.

Q Marinelli did not? A No, sir.

Q Do you recall ever speaking to the defendant about Bagg drawing checks upon the Cuba Supply Company?

Objected to as incompetent, irrelevant and immaterial.

A I do not.

THE COURT: Fix the time.

Q In the year 1905. A I do not.

Q See if this will refresh your recollection, the testimony given by you in the Magistrate's court, "I went down to Julian's office and asked him what it meant, as I recall the occurrence now."

THE COURT: Mr. Wasservogel I think you want to bring

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it close to this time.

BY MR. WASSERVOGEL:

Q When were checks first drawn by anybody on the Cuba Supply Company? A The first draft that was drawn was in the summer of 1901.

Q Were these checks of Stanley Bagg -- when were they drawn? A I do not recall any ever having been drawn.

Q If you so testified in the Magistrate's Court, would that statement there made have been correct? A If I testified?

Objected to as calling for a conclusion.

Objection sustained.

Q Do you remember being asked this question in the Magistrate's court, "When did it first come to your attention that Mr. Bagg was drawing these checks on the company? A. I should say in June sometime." Do you recall having given that testimony in June 1905? A I do not.

Q If the record shows that testimony was given, would that refresh your recollection now? A I should say then if I gave that testimony, that I must have had -- that that must be true.

Q Do you remember in June 1905 or about that time having gone down to Julian's office and made this statement to him, "I went down to Julian's office and asked him what it meant as I recall the occurrence now; the whole matter is pretty hazy in my mind now -- what Bagg meant by drawing and Mr. Julian said it

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was a favor to him or kindness to him or something and he would take care of the draft". Do you remember having given that testimony? A I do not.

Q If I tell you that the record in the Magistrate's court shows such a statement made by you, will that refresh your recollection? A That would refresh my recollection that I must have given that testimony.

Q That you did give that testimony -- did you ever make any effort to stop these people from cashing checks or drawing checks or drafts upon the Cuba Supply Company?

Objected to as immaterial. Sustained.

Q Do you recall the Parker check, check of July 13th drawn by the defendant on the Cuba Supply Company? A What check?

Q Parker, a check drawn to the order of a man named Parker? A I do not.

Q Do you know a man named Parker? A I do not. At least I do not recall him.

Q Can you say Mr. Judson whether Julian had funds to pay any checks on July 15, 1905, had funds with your company?

Objected to as immaterial and also upon the ground it is not shown that he is competent to testify.

MR. WASSERVOGEL: He was president of the company.

Objection overruled. Exception.

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BY MR. WASSERVOGEL:

Q In your concern, in your Cuba Supply Company? A Money on deposit ?

Q yes. A He did not.

Q Do you remember being asked this question in the Magistrate's court, "Did Julian have funds enough to pay the Parker check, when it was dated, the 15th day of July, or did he have funds enough these, the day that he made that check," and you answered "He did not".

Objected to as incompetent, irrelevant and immaterial.

Sustained. Exception.

Q Did you so testify? A I do not recall it but that is true.

Q How about July 20 1905, did he have funds to pay this check to the Imperial Hotel on that day? A He did not.

CROSS EXAMINATION:

Q Mr. Julian never had funds deposited ~~in~~ with you at any time? A No, sir.

Q You first testified in this matter and on this topic, in Magistrate Wahle's court in April or May 1906, did you not?

A I do not recall the date. I do recall testifying before Magistrate Wahle but I do not recall the date.

Q And in that court you gave a full and complete statement of all the matters connected with the Julian transaction? A I was subject to a three day very severe cross examination.

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Q Mr. Judson, is it not true that in that examination before Magistrate Wahle, in response to a question asked by Magistrate Wahle that you said to him that the total number of checks that Mr. Julian drew that had been paid were about \$175 about, you should say?

MR. WASSERVOGEL: I ask that the record be produced.

THE WITNESS: I do not recall any such testimony.

Q Didn't you say at that time in response to a question by the Magistrate that there was at that time due, at the time when this examination took place in 1906 --

MR. WASSERVOGEL: Tell me where you are reading from.

MR. HOLBERT: Not from anything. I am using my memory.

MR. WASSERVOGEL: I object to the question.

BY MR. HOLBERT:

Q Didn't you then testify that in 1906 there was still due Mr. Julian from one to two hundred dollars from the Cuba Supply Company ?

Objected to.

THE COURT: Was that testimony taken?

MR. HOLBERT: There was such testimony. I want to get the witness's independent recollection.

THE COURT: See that you are right yourself. Refer to the transcript if you have it.

BY MR. HOLBERT:

Q I will put the question to you in this way, "Did not the Magistrate ask you this question, what is your best judgment now as to the amount of money you owed Julian in July and August? A. Last July and August"--

MR. WASSERVOGEL: What page are you reading from?

MR. HOLBERT: Page 34.

BY MR. HOLBERT:

Q (Continuing) "Last July or August? Q. Yes. A I suppose about one hundred or two. Q \$102. A One hundred or two hundred dollars." Were those questions asked you and did you so answer? A I do not recall them.

Q Since I have read them to you, what do you say now? A I say if that testimony was given before the Magistrate, it was true.

Q Then on the 20th day of July 1905 the Cuba Supply Company did owe Mr. Julian from one to two hundred dollars according to your best judgment? A I do not recall the amount at this time. All the records that you gentlemen have there show the amount, because my memory was fresh when that testimony was given.

THE COURT: You have no independent recollection of what you testified to?

A No.

Q You do not refute the record? A No, not at all.

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Q Of the stenographer? A No, not at all.

Q But whatever you testified at that time is the fact as you understood the facts to be? A Exactly.

BY MR. HOLBERT:

Q And your recollection at that time was much better than it is now? A Certainly.

Q Because at that time it was less than a year from the happening of this occurrence? A Certainly.

Q I will ask you further in answer to Mr. Iselin, in the same examination and immediately following the other examination did Mr. Iselin ask you this: "For much did you pay him" and you answered "I do not know. Q. Have you an idea? A No. Q Have you any means of assuming? A I cannot swear to it. Your best assumption? A \$150 to \$175." Do you recall so testifying in the Magistrate's Court? A No, I do not.

Q Since reading this to you and refreshing your recollection on that subject what would you say as to what in your judgment was the largest amount you had paid Julian prior to July 20 1905? A I should say the testimony as given in these proceedings that you now read from ---

Q That is, in other words from \$150 to \$175? A If that is what the record shows.

Q Haven't you examined the minutes of your testimony before the Magistrate? A I read them over hastily the other day.

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Q Do you not now recall that the minutes of your testimony do so provide or show? A I remember this -- some amounts were mentioned but I do not recall the exact amount.

Q When was the Cuba Supply Company organized? A My recollection is in the fall of 1901.

Q It was a corporation? A Yes.

Q And took out its articles under the laws of Delaware?
A Yes.

Q Where was its principal place of business? A Havana Cuba, my recollection is.

Q The principal place of business for your company was at Wilmington, Delaware? A If that is what the articles of incorporation state, that is undoubtedly correct.

Q Your work was actually done in Havana Cuba? A Yes.

Q The original office of the company was opened in Havana Cuba? A Yes.

Q The books of the company were maintained in Havana, Cuba?
A Yes.

Q How much of an actual capital paid in, did this company ever have? A My recollection is that we were organized --

Objected to. Objection overruled.

THE WITNESS (Continuing) With a capital of \$100,000 and that was all paid in.

Q In cash? A Yes.

Q And placed with the treasurer of this company? A Possi-

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bly the certificate of incorporation shows the capital was less but, whatever the certificate of incorporation shows as having been the capital stock, that was paid in in cash.

Q Was the defendant Julian a stockholder of that company?

A No sir.

Q Did you know the defendant Julian at the time this company was organized? A No.

Q Had you done continuous business as the Cuba Supply Company from the date of its organization down until July 1905? A The latter year, from sometime in 1904 the company did very little business.

Q When you first met Mr. Julian, you met him with reference to his transacting some business for you? A No, sir.

Q How did you meet him? A I had met him a short time previous thereto in connection with Mr. Little with whom I was associated.

Q About how long previous? A I suppose a few weeks. Possibly a month or six weeks.

Q That is you mean to say you were introduced to him and knew him as a speaking acquaintance? A Yes.

Q Did you have any business relations with Mr. Julian between the time you first met him and the time you employed him to do this detective work for this company in connection with the judgment you held, did you have any business dealings with him of any kind? A No, none at all.

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Q Did you have any talk with Mr. Julian about the character of the Cuba Supply Company or its resources or its property, prior to the time he was hired to do with work? A I do not know as I even had a talk with him then.

Q Have you ever had any such talk with him? A I think one time when he began to press me for payment for the work that he had done I then told him that they were hard up.

Q Did you discuss with him the question of whether you had filed articles of incorporation in the State of New York? A No, sir.

Q Did you tell him you had not? A No.

Q Did you tell him you had not complied with the laws of the State of New York? A I always supposed until yesterday that we had.

BY THE COURT:

Q Did you or not tell him? A No.

BY MR. HOLBERT:

Q Did you tell him so? A No.

Q Did he have any knowledge of that so far as you know?

A As far as I know he did not.

Q What was the work you hired Julian to do? A We had a claim against---

THE COURT: Is this important, the nature of his work?

DEPENDANT'S COUNSEL: It is very important.

MR. WASSERVOGEL: I object to the question.

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DEFENDANT'S COUNSEL: First, the nature of the work he had to do shows whether or not he had an honest account against this company and second it shows the assets of the company.

THE COURT: Why cannot you ask him that.

BY DEFENDANT'S COUNSEL:

Q You employed the defendant Julian to shadow a woman that owed your company something like \$21,000 ? A I employed him to try to locate this woman.

Q A woman that owed the company something in the neighborhood of \$21,000? A No, she did not owe it, but we had a claim against a man she was interested in.

Q Incidentally it is the same thing, she was liable for the payment of the claim because of proceedings that had been had in court? A I would hardly say she was liable.

Q You had her taken up before the court in this city on supplementary proceedings? A No, sir.

Objected to. Objection sustained.

Q Who did you obtain your judgment against? A Against a contractor named Charles C. Converse.

MR. WASSERVOGEL: I object and move to strike out the answer.

Objection sustained. Answer stricken out.

Exception.

Q You wanted this woman shadowed in connection with a

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judgment that you held?

MR. WASSEKROGEL: I object.

THE COURT: I do not consider this at all material or relevant to the issue. You may find out what his relations with the company were.

BY DEFENDANT'S COUNSEL:

Q You did hire Julian to do some work A Certainly.

BY THE COURT:

Q And you were going to pay him for his services?

A Yes.

Q You gave him authority to draw upon the Cuba Supply Company? A Yes.

Q For the services that were to be rendered by him?

A That had been rendered.

BY DEFENDANT'S COUNSEL:

Q You know that he employed other men to help do this work and paid them cash for doing it?

Objected to. Sustained. Exception.

Q Now, along in February 1905 Mr. Julian asked you to settle with him for this work? A I do not recall the exact date -- somewhere in there. May have been in March; I do not recall.

Q You said to him then that the company was a little short of funds, but that if he would draw against your company drafts you would meet those drafts as they came in in small amounts?

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A Substantially. I do not recall the exact words.

Q You gave Julian a copy of the draft as you recall it?

A I don't recall whether I did or not -- probably I did.

Q I want to refresh your recollection on it. In the examination before Magistrate Wahle you were asked, "Did you furnish them printed to anybody, I mean that Cuba Supply Company or its officers furnish them printed to anybody (referring to these blank drafts.) A. I cannot recall at this time whether I did

or not. Q I did not ask you whether you did, I asked you if the company did? A. If I did not nobody else did.

Q. Don't you know if you had them printed? A. Yes. Q. I do not mean these particular ones (indicating checks) I mean a form like that, of that color? A. I have forms like that.

Q Check forms of the Cuba Supply Company or draft forms?

A. Draft forms. Q. Do you issue them in books? A No.

Q In blanks or pads? A. At times in blanks? Q. Not in

pads? A No, sir. Q Did you give them to Julian? A Julian had some, yes. Q. Do you know how he got them? A. Yes."

A No, I do not recall giving that testimony.

Q If you did so testify, was that the truth? A I was true if I testified to it.

Q You did furnish him then with these blank drafts as you call them? A Apparently, according to that testimony.

Q You knew that Julian was not a lawyer at this time?

A No, I do not know if he is or not.

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Q In handing him these papers and treating of these papers, you always call them drafts in talking to Julian? A Always.

Q You have always called them drafts down to this day?

A Always.

Q You were not pretending to do a banking business with the Cuba Supply Company? A No.

Q In the same examination in answer to a question by Mr. Iselin, referring to one of these drafts that had been not paid and was returned, did not Mr. Iselin ask you this question and did not you answer, "If there had been money to pay it, you would have paid it?" A. I would. I am not trying to conceal anything. I will tell you anything I can." Didn't you so answer? A I do not recall it .

Q Do you recall now, if the money had been on hand you would have paid this draft? A Yes.

Q That is true, isn't it? A Yes.

Q When the draft of this Imperial Hotel Company was presented to this office, if you had had the money you would have paid it? A Yes, sir.

Q And the money was actually due Julian , and you would have paid it, if you had had the money to pay it?

Objected to. Objection overruled.

A Yes, sir.

Q The only reason the draft was dishonored was because you were out of funds? A Yes.

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Q That is true? A Yes.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q How do you know there was \$50 due him at that time?

A How do I know there was.

Objected to as cross examination of his witness
and as leading and suggestive.

Objection sustained.

Q In answer to a question put to you by counsel upon cross
examination you stated that your company was capitalized
at \$100,000? A I stated that was my recollection.

Q And that was all paid in, you said? A Yes.

Q Nevertheless, when you came to New York, you were the
only officer left of this company?

Objected to as immaterial and not proper re-direct
examination.

Objection sustained.

Q Were there any judgments against the Cuba Supply Company
in 1904?

Objected to as immaterial. Sustained.

Q Can you tell us now how much money your company owed
Julian?

Objected to as not proper re-direct examination.

Objection sustained.

THE PEOPLE REST.

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DEPENDANT'S COUNSEL: If your Honor please the defendant moves the court to strike from the evidence all of the testimony of the witness Picker, as to the printing of checks or drafts at the order of the defendant Julian, and all the testimony of the witness Parker as to the receiving and presenting of a draft drawn by the defendant Julian, for the reason that the same does not show deception as to Parker, and cannot be used by the jury in arriving at the intent of the defendant in passing the check on the Imperial Hotel. The defendant further moves to strike from the record the State's Exhibit in the form of the certificates from the State Banking and Corporation Bureau, on the ground that there is nothing in the evidence to show that the Cuba Supply Company was transacting business in the State of New York or was required to comply with the banking laws of the State of New York, and the evidence affirmatively shows that its principal place of business was Delaware and its active place of business in Havana, Cuba.

The defendant moves to dismiss the third count of the indictment upon the ground that there is no evidence to support the count, and because the evidence affirmatively shows the defendant is not guilty under the count -- that is the count for grand larceny at common law.

The defendant moves to dismiss the first count of the

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indictment upon the ground that there is no evidence that the defendant made any representations of any kind or character at the time of the passing of the check to the party who cashed it, and, because the evidence affirmatively shows that no representations of any kind were made. Further, because it affirmatively appears that the check was not cashed on representations made by the defendant, but on the O. K. of the witness Wiggins.

The defendant moves to dismiss the second count of the indictment upon the grounds first that there is no evidence that the defendant knew that the drawer or maker of the check was not entitled to draw of the drawee for the sum therein specified. Second because the evidence affirmatively shows that he was entitled to draw on the company and there is no evidence that the right had been withdrawn. Third because there is no evidence that the defendant knew that the Cuba Supply Company was not properly organized or that it was not authorized to do a checking account business. Fourth because there is no evidence that the Cuba Supply Company was not authorized to do a checking account business. Fifth because under the law of this State any concern may do a checking account business, a check being a bill of exchange. Sixth because there is no evidence the defendant knew the Cuba Supply Company had not complied with the laws of this State with reference to

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banking corporations.

Seventh. There is no evidence the Cuba Supply Company was transacting business in this State.

There is no evidence under the laws of Delaware that the Cuba Supply Company was not authorized to do a banking business.

Further because there is no evidence that the check in question was not a valid instrument and worth its face amount .

Further because there is no evidence that the defendant did not have an account with the Cuba Supply company subject to check.

The defendant moves the Court to instruct the jury at this time to return a verdict of not guilty for the reason that the evidence affirmatively shows that the defendant in drawing the check had a right to draw it and that there was a fund for its protection which he had a right to rely upon.

Second, because there is no evidence he knew the check would be dishonored or was likely to be dishonored and

Third, for all the reasons named in my motion to withdraw or to dismiss the second count in the indictment.

THE COURT: I will hear you, Mr. Wasservogel: I will ask you to address yourself to the last motion made. A great many motions I consider to be, while reasonable in

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view of the proof adduced, still at the same time not relevant to the issue. I do not believe the State has connected the defendant with the Cuba Supply Company in such a way as to allow the proof with reference to its organization and character to stay in the case, and I will strike out from the proof all evidence of that character. I will hear you now upon the main motion that is why the court should not advise the jury to acquit.

MR. WASSERVOGEL: I think I had better call your Honor's attention to all the facts which the People claim they have shown by the evidence. I contend that we have shown that on July 20 1905 the defendant requested the Manager of the Hotel Imperial to cash a check for \$50 drawn on the Cuba Supply Company. That in exchange for this check \$50 was given to him and that in the regular course of business the check was deposited in the Amsterdam Bank and payment demanded and refused, and that the bank messenger returned the check. No express representations were necessary as to whether this check was good or not and the Hotel Imperial had the right to assume that it was good. In that connection I want to call your Honor's attention to the case, if you wish to see it, of the people vs. Poote reported in 17 Hun where the court holds that the giving of the check is a distinct representation that the

defendant kept an account in that bank and that his statement that the money was in the bank must be taken to have regard to the bank upon which the check was drawn and to have been what the defendant had on deposit there. And in that connection I want to call your Honor's attention to the fact that although a number of letters were sent to the defendant by the manager of the Hotel Imperial after the check came back unpaid, no attention was paid to those letters by him and that he never again appeared at the hotel. The People take the position that the crime was complete the moment the defendant received this cash in exchange for his bad check. We have shown by the witness Parker that on July 13, 1905 he received from the defendant a check for \$50 in payment of a debt; that this check was drawn by the defendant on the Cuba Supply Company and also returned by the bank as no good, and within three or four days thereafter, after July 13th he called the defendant's attention thereto. By the witnesses Curry and Battersby we have shown on July 20th, 21st and 22nd they cashed checks for the defendant drawn on the Cuba Supply Company and also called the defendant's attention to the fact that these checks were not paid. We call your attention to the fact that we have shown by the witness Ledermann, on August 2nd another check drawn by the defendant on the Cuba Supply Company and which was returned as no good, and that the

defendant's attention was called to that. We have thus shown that other checks similar to the one mentioned in the indictment were cashed by the defendant prior to July 20th, on July 20th and after July 20th; that all of those checks were returned unpaid and notice of such non-payment were given to the defendant, both before and after July 20th. Now, whether or he had funds in that bank really makes no difference. That is whether or not Mr. Judson's concern, the Cuba Supply Company, would have paid those checks or not, if they had the money, makes no difference, because the testimony shows that prior to July 20th, prior to the day when this particular check was made, he notified him not to draw any more drafts or checks on the Cuba Supply Company as the company had no money and could not pay them and so he had notice prior to the date when this particular check was given, and the cash received thereon, not to draw any more checks. I do not think there is any serious dispute about that. That is the position the People take with reference to the case.

THE COURT: The theory of the prosecution, as I understand the theory, is that the defendant is guilty of the crime of grand larceny because of false representations and pretenses, in that on the 20th of July he gave to the assistant manager of the Imperial Hotel an order upon the Cuba Supply Company to pay \$50. That is the theory of the

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prosecution. The People must establish that that representation was a false representation of a particular existing fact, and that it was appreciated as such by the defendant; that it was relied upon by the assistant manager of the hotel as true, and had a material influence upon him in inducing him to part with \$50.

I have given a great deal of latitude to the prosecution in this case in furtherance of justice and public ends, but I am constrained, in view of the entire proof ---

MR. WASSERVOGEL: Will your Honor pardon me just a moment. I would like you to read 1293 of the Penal Law. It particularly says no representations need be made.

THE COURT: (Continuing) I have given a great deal of latitude to the prosecution in the interests of justice and the Public, but I am confronted by a motion made at the conclusion of the People's case upon the proof. I must apply the surgery of the law of the proof. I do not deem this evidence sufficient either in quantity or quality to warrant this jury in finding the defendant guilty and impressed with that judgment I advise his acquittal.

The jury rendered a verdict of not guilty.

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