

START

1168

CASE

CASE # 1168

1168

COURT OF GENERAL SESSIONS

PART IV

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

FRANK J. BUXTON
-----X

x B e f o r e HON. OTTO

x A. ROSALSKY and a Jury.

x

Indictment filed July 14th, 1909.

Indicted for grand larceny in the second degree.

New York, May 18th, 1910.

A p p e a r a n c e s :

For the People/

Assistant District Attorney, Reuben Leslie Maynard;

For the Defendant,

Emanuel. Hertz, Esq.

Peter P. McLoughlin,
Official Stenographer

1092
CASE # 1168

WILLIAM E. BAGNALL; a witness called on behalf of the people, being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q What is your business? A I am a cashier for the firm of J. R. Williston & Company.

Q Where are the offices of J. R. Williston & Company?

A 5 and 7 Nassau Street.

Q That is at the corner of Cedar and Nassau? A Pine and Nassau?

Q How long have you been employed there? A Eight years.

Q In what capacity? A Well, I started there in the clearing house department and I worked up to the manager's department.

Q In the year 1909, in the month of April, were you the cashier? A Yes sir.

Q Describe your duties briefly to the jury? A I looked after the marginal accounts of the customers. I would keep charge of the cash of the firm.

Q Do you know this defendant, Mr. Buxton? A Yes sir.

Q How long do you know him? A Well, he had been there about a year.

Q About a year? A Yes sir.

Q In what capacity was he employed? A Assistant manager of the customer's room.

CASE # 1168

Q What room was he in charge of? A The first room as you came in the Nassau Street entrance.

Q That was the customer's room? A Yes sir.

Q Did you have any dealings in common with Mr. Buxton, you as cashier and he as assistant manager, tell the jury what if anything you had to do with him in the course of business? A Mr. Buxton had charge of the customer's room. People came in to open accounts. He saw them. He would make arrangements to open the account, take whatever checks or securities they would give, and he would bring the securities to me. On the one hand, if they wanted cash on their account, he would come to me, and I would give him the cash.

Q When he came to you for cash for the customers, what did he give to you for the cash? A A receipt. We have a regular form of receipt that he would have signed by the customers, signed by him and he would give it to me and I would give him cash on it.

Q These were printed forms? A Yes sir.

Q Filled out by him? A By the customer or Buxton. Sometimes the customer would fill them out, Buxton would fill them out and the customers would sign them.

Q Was your room separate and apart from the room in which Buxton was employed? A Yes sir.

CASE 77 1168

Q To get out of his room into yours -- was there a window?

A There was a window. This defendant could come into the room.

Q He would come to your window and ask for money, presenting the receipt of the customer and you gave it to him? A Yes sir.

Q What did you do with the receipt of the customer when you took it? A After charging it up, it was filed in our receipts.

Q Did you charge up those enteries in books under your charge? A Yes sir.

Q You had charge of the accounts? A Yes sir.

Q Among your customers in April 1909, did you have a man named E. B. Murray? A Yes sir.

Q Do you know what his address was? A No sir, I don't know his address.

Q How long had he been a customer of that concern, prior to April, if you know? A Well, a couple of years, I should judge.

Q Did he have an open account in April? A Yes sir.

Q Do you know how long he had an open running account with your concern? A About a year or two or more, I couldn't say exactly.

Q Do you recall whether this defendant ever had any transactions with you in respect to the account of E. B. Murray?

A He came to me on that night about half past three on the 3rd of April and he told me that he had received a telephone call

CASE # 1168

from Mr. Murray and that Mr. Murray wanted fifty dollars, in cash and that Mr. Murray requested him to bring it over to his office and he gave him a receipt, a regular receipt.

Q Wait a minute. Let us see. Is that the paper he gave you? (Handing witness a paper). A No sir, that is not the first.

Q That is not the first one? A No sir.

Q Tell the jury what he did give you? A He gave me a receipt filled out by himself.

Q Do you mean by that, that Buxton gave you a paper signed by Buxton? A Yes sir. A paper signed by Buxton.

Q A receipt for fifty dollars? A Yes sir.

Q All right? A Yes sir. He said, that this was to be charged to the account of Mr. Murray, that he would take the cash to Mr. Murray and bring down to me the next morning a receipt signed by Mr. Murray. I took the temporary receipt, charged the fifty dollars to Mr. Murray's account and the next morning, Mr. Buxton brought to me the receipt which he said Mr. Murray had signed for the fifty dollars that Buxton gave him. I then, gave him back the temporary receipt he had given me the night before.

Q What did you do with the other one? A We keep that in our files.

Q Put it in your files? A Yes sir.

Q Was that the second receipt? A Yes sir, that was the second receipt.

CASE # 1168

6

Q Was there any part of that paper in the handwriting of Buxton to your certain knowledge?

MR. HERTZ: I object to that, unless the witness is qualified.

Objection sustained.

BY MR. MAYNARD:

Q Now, during the course of your employment have you ever had occasion to see this defendant write? A Yes sir.

Q Very often? A Often.

Q You are familiar with his handwriting? A Thoroughly.

Q You could identify it entirely? A Yes sir.

Q You have seen him write and have handled his writings for how many years? A The couple of years he was there.

Q Tell the jury what portion of that paper is in his handwriting? A The date.

MR. HERTZ: I want to see it, inasmuch, as he has testified about it.

MR. MAYNARD: I don't know that you have a right to see it until I offer it in evidence.

THE COURT: He has the right. There have been two cases on that point which hold it to be reversible error not to show such a paper to counsel for the defense.

CASE # 1168

7

When you show a paper to a witness, counsel is entitled to look at it.

MR. MAYNARD: As soon as I offer it.

THE COURT: No, before you offer it.

MR. HERTZ: I concede that everything but the signature is in the handwriting of the defendant.

MR. MAYNARD: I will offer it in evidence.

MR. HERTZ: I consent.

(The paper referred to is marked in evidence People's Exhibit 1).

BY MR. MAYNARD:

Q At the time that you received that paper was it entered?

A Yes sir, it was entered.

Q How did that get torn? A It must have been done in the District Attorney's office.

Q Did you deliver it yourself? A Yes sir.

Q You delivered it where, that is to what person? A To Mr. Bosler. He is the first man who had it.

Q Did you give it to Mr. Bosler or Safford? A I gave it to Safford.

Q At the time you gave it to Safford, it was whole? A Yes sir, it was one piece.

CASE # 1168

Q It has been torn in some way since that? A Yes sir.

MR. MAYNARD:
I offer it as one exhibit despite the fact that it is in two pieces.

Q I will ask you before I read that to the jury, was that mark in pencil on it? A That is my mark "charge". That was charged to Mr. Murray's account.

MR. MAYNARD: (Reading) "Voucher No. New York, April 6th, 1909.

"Received from J. R. Williston & Company" (now, in the handwriting of the defendant) "fifty dollars for act." and it is signed "E. B. Murray."

MR. HERTZ: Do I understand that the entire paper was offered in evidence.

MR. MAYNARD: Yes.

MR. HERTZ: I object to that part of the paper that bears the inscription "E. B. Murray." It has not been proven nor has it been connected with this defendant in any way.

MR. MAYNARD: I have connected it by this witness. He said, he received that paper from this defendant.

THE COURT: He said that Murray had signed the receipt was that it?

MR. MAYNARD: Yes sir.

CASE # 1168

Q Is that what the defendant told you? A Yes sir.

THE COURT: Objection overruled.

Exception.

THE COURT: The entire paper is in evidence?

MR. MAYNARD: Yes.

Q Now, if you gave fifty dollars to this defendant, did you ever receive any part or portion thereof back either on your own account or for the firm that you represented? A No sir.

Q Now, had you ever paid any money to this defendant on account of any other customer? A Yes sir.

Q In the same manner that you did here? A Yes sir.

Q Taking the receipt of the customer from Mr. Buxton or taking his receipt signed for the customer? A Yes sir.

Q Had it always been made good before? A Yes sir.

Q Had you ever paid any money to Mr. Buxton on the account of E. B. Murray? A No sir.

Q Prior to this time? A No sir.

Q Well, in each instance did you thereafter require the receipt of the customer himself for your files? A Yes sir.

Q And in each instance, theretofore, did this defendant produce a receipt of the customer for whom he had previously obtained the money on his own account? A Yes sir.

10990
CASE 77 1168

CROSS EXAMINATION:

BY MR. HERTZ:

Q How many times did Buxton draw money for customers in the course of the two years he was with you? A Only a few times.

Q About how many times? A About three or four times.

Q In each case he returned the slip which was signed by the customer? A Yes sir.

Q It was correct each time? A Yes sir.

Q Did you ever ask Buxton for the return of that fifty dollars? A What do you mean?

Q Murray's? A Murrays? I had a receipt for it.

Q Did you ever ask for the return of the fifty dollars?
A I had a receipt for it. That is, as far as my responsibility went.

Q In other words, you didn't ask him for the return of the fifty dollars? A I turned the fifty dollars over to him..He gave me a receipt and that ended my responsibility.

Q Did you ask Buxton at anytime for the return of the fifty dollars? A No sir.

Q Yes or no? A No sir.

Q Did anybody in your presence ask him for the return of that fifty dollars? A No.

CASE # 1168

Q You didn't see Buxton sign the name on that paper?

A No sir.

Q You are nor prepared to swear that Buxton wrote that, are you? A Well, what part of it?

Q E. B. Murray? A No sir.

Q You never saw him write that name? A No sir.

Q How many customers did Buxton bring to J. R. Williston & Company in the course of the two years that he was with them?

MR. MAYNARD: Objected to as incompetent and immaterial.
Objections sustained.

Exception.

BY MR. HERTZ:

Q How long had Murray been a customer with J. R. Williston & Company, before April 6th, 1909? A Sometime; I couldn't say exactly how long.

Q Two years? A I should say two years or more.

Q Who in your firm had charge of Murray's account? A Why, I don't understand the question.

Q Who in your firm bought and sold stock for Murray? A Why, that was done by the Board Member R. L. Ide.

Q If Murray came to your office who took charge of him?

A Mr. Buxton.

Q Was he one of Buxton's customer? A No sir.

Q Whose customer was he? A A house customer.

Q Was he there before Buxton came there? A Yes sir.

Q Can you tell me who was the margin clerk during 1909?

MR. MAYNARD: I object to that as immaterial.

THE COURT: Are we not going off into some foreign issue, now.

MR. HERTZ: The difference is that Murray's account was negative. He owed money to J. R. Williston & Company, and the man whom we will mention in due time kept his account and instead of wiping out ^{it} these fifty dollars ~~was drawn on~~ *account* of that particular individual, whose name I want to elicit later; that is why I am asking who was the margin clerk.

MR. MAYNARD: I object to it as irrelevant. It does not make any difference what was the condition of E. B. Murray's account, if the brokers, when he requested, did have fifty dollars sent him, or desired to lend him fifty dollars, and they had no objection to that --

THE COURT: It strikes me that under this indictment, that the people are called upon to prove, first, that this

CASE # 1168

defendant represented to the firm that he was communicated with by Mr. Murray, who wanted the loan of fifty dollars and that the representation was made by the defendant and was believed by this concern. That is what this cashier said, and that also he relied upon the representations and pretenses made by the defendant and believing in the truthfulness of the statements made by the defendant, and that this defendant at the time he made the pretenses, did so with the intention to defraud the concern of this money, and that he procured the money and that he appropriated it to his own use; that Mr. Murray never authorized him to get the fifty dollars; that would be sufficient. If the firm advanced this money, there could not be any crime. We don't want any outside issue brought in here.

MR. MAYNARD: That is just what it is.

THE COURT: The issue is very simple. Did the defendant make the representation that Murray wanted the money?

MR. HERTZ: I am trying to get from this witness an answer to the question, who was the margin clerk, who had charge of this?

THE COURT: You can call back this witness.

MR. HERTZ: I will make him my own witness.

CASE # 1168

THE COURT: I don't want at this time in the case to develop a situation that may not be met..

MR. MURRAY: It is not material.

Objection sustained.

Exception.

BY MR. HERTZ:

Q What became of the first slip that Buxton drew for fifty dollars? Have you got that? A (No answer).

Q The first slip, it was a receipt signed by F. J. Buxton, upon which you paid out fifty dollars? A I gave it back to him when I got this one.

Q As soon as you gave out the fifty dollars, you charged fifty dollars to Murray. That is where you left the matter as far as you are concerned? A No sir, I did not leave it there because my attention was brought to it, the next day when I got this original receipt.

Q When you got the original, you charged Murray with fifty dollars and that is all that you did? A I charged Murray with fifty dollars as soon as I gave it out. I had to do that to keep my books straight.

Q What did you do in addition to that, the next day; did you charge Murray again another fifty dollars? A No sir, I did not.

CASE # 1168

Q You didn't charge anything against Murray except the fifty dollars, the day before? A That is all.

Q You did nothing with that account from that day to this, as far as you are concerned? A As far as I am concerned, no charge drafts came through my office for Mr. Murray.

Q You never did anything further about the fifty dollars in that account, nothing at all from that day to this? A The firm refunded Mr. Murray the fifty dollars, that is he got a credit.

Q Did you refund it? A No sir.

Q I am asking you, did you refund it? A No sir.

Q Did you make any entry in the book? A No sir, the bookkeeper did.

Q You made no entry on that day yourself? A No sir.

Q What is Mr. Murray's first name? A Really, I don't know.

Q Don't you know your customers' first names? A No sir, I know his initial is E, E. B. Murray.

Q You don't know what "E" stand for or "B?" A No sir.

Q No mystery about that name?

Objected to. Objection sustained.

RE-DIRECT EXAMINATION:

Q Who had charge of the account of Murray after this fifty

1928
CASE # 1168

dollars had been handed over to you by this defendant, the same bookkeeper? A Why the bookkeeper had charge of the account; he kept the books. I don't quite understand your question.

Q You have been asked, whether after this fifty dollars had been charged against Mr. Murray, the customer, you ever made any charge on the books in respect of that charge. Now, do you understand me? A No, I don't.

Q You are asked whether after you had charged the fifty dollars against Murray's account -- after you had given that fifty dollars to this defendant -- whether you ever rectified Murray's account to the extent of fifty dollars?

THE COURT: Strike out the word "rectified."

BY MR. MAYNARD:

Q Whether you rectified it or not? A No sir, I never rectified it.

Q You don't know of your own knowledge, whether that account was charged or Murray credited with fifty dollars? A I know of my own knowledge that it was refunded by a member of the firm.

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

THE COURT: Strike it out.

BY MR. MAYNARD:

Q Did you see that entry made by the member of the firm?

A It was made by the bookkeeper that very day.

CASE # 1168

Q In your presence? A (No answer).

Question withdrawn.

EDWARD BERNARD MURRAY; a witness called on behalf of the defendant being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q What is your first name? A Edward Bernard Murray.

Q What is your business Mr. Murray? A Butter and eggs, wholesale.

Q Where is your place of business? A 167 Reade Street.

Q What is your business Mr. Murray? A Butter, produce, butter and eggs.

Q You have to talk a little louder? A Butter and eggs.

Q Where is your place of business? A 167 Reade Street.

Q In the City of New York? A Yes sir.

Q Now, in the year 1909 did you have an account with J. R. Williston & Company, the brokers at Number 5 and 7 Nassau Street?
A Yes sir.

Q How long had you been a customer of that concern? A Well, I should judge about a year previous to that.

Q Buying and selling stocks and securities through them?
A Yes sir.

Q Had you had an open account throughout that period?
A All the time.

CASE # 1168

Q You received statements from time to time? A Monthly statements.

Q Had you ever seen this defendant, Mr. Buxton? A Yes sir.

Q There at the office of J. R. Williston & Company? A Yes sir.

Q Have you ever transacted business there with him? A Yes sir.

Q He was in charge of the customer's room? A Yes sir.

Q You had come yourself? A Frequently.

Q Did you pay him any money to be credited to your account?
A Yes sir, very often.

Q Did you ever turn him over any securities? A No sir, cash always; always cash.

Q Your transactions with J. R. Williston & Company were cash transactions? A Yes sir, always.

Q You ordered stocks and securities sometimes on a margin?
A Always.

Q Always on a margin? A Yes sir.

Q Do you recall whether or not your margin was ever exhausted? A There is a clause on all the statements --

Q That doesn't answer my question. That has nothing to do with the case. What I would like to know is whether your account ever ran under water?

CASE 1168

MR. HERTZ: I object to that on the ground that the books of the firm are the best evidence.

THE COURT: I sustain the objection but not on that ground. I have ruled out the question because at the present it is immaterial.

BY MR. MAYNARD:

Q I will ask you whether on the 6th of April 1909, you requested this defendant to get fifty dollars from J. R. Williston & Company and charge the same to your account? A No sir.

Q Have you any recollection of talking with him at all in respect to money matters on that day? A No sir.

Q Or in respect of money matters on that day? A No sir.

Q Were you in the office of J. R. Williston & Company on the 6th of April 1909? A I think not.

Q Did you ever authorize this defendant to draw money from the J. R. Williston & Company and charge same to your account?

A Never, sir.

Q Never before? A Never before or since.

Q Never before or since? A No sir.

Q Did this defendant on the 6th of April or thereafter give to you fifty dollars which he said, he had drawn from J. R. Williston & Company and had charged it to your account?

CASE # 1168

MR. HERTZ: I object to that as immaterial.

MR. MAYNARD: Question withdrawn. I will ask it subsequently in another form.

Q I show you People's Exhibit 1, and I ask you if that is your signature? A No sir, that is not my signature.

Q Did you ever receive from this defendant any part or portion of the fifty dollars represented by this receipt? A No sir.

Q Did you receive from J. R. Williston & Company, a statement of your account on the 30th of April 1909? A Dated the 30th of April, received about May 1st or 2nd.

Q Mailed from their place on the 30th, covering your account for the month of April? A Yes sir.

Q From your examination of that account, did you find anything the matter with your April account? A Yes sir.

MR. HERTZ: I object to that.

Objection sustained.

THE COURT: Strike out the answer. The jury will disregard it.

BY MR. MAYNARD:

Q Did you thereafter at that time communicate with J. R. Williston & Company in respect of that statement for April? A Yes sir.

CASE # 1168

MR. HERTZ: I object to the question.

THE COURT: He may answer yes or no.

THE WITNESS: Yes.

BY MR. MAYNARD:

Q You did? A Yes sir.

Q Do you remember what date it was when you communicated with your brokers, J. R. Williston & Company, in respect to the April statement? A The day after the receipt of the statement when I examined it, I found it was wrong.

Q The day following the receipt of the statement? A Yes sir, the 2nd or the 3rd of May last.

Q It was the early part of May last year? A Yes sir.

Q Did the firm communicate with you in any way? A Yes sir.

Q After you had communicated with the firm in respect of your account, did you see this defendant in your office? A Yes sir.

Q When was that? A That was the day after I wrote the letter.

Q Where was your office at that time? A 321 Greenwich Street

Q What time of day did you see the defendant there? A I got there about half past nine and he was waiting for me.

Q What did the defendant, then say to you or what did you say to him? A Well, he told me that day I received a letter.

CASE # 1168

Q What do you mean by that? A J. R. Williston & Company
me
had received a letter from, stating that this fifty dollars had
been given him and he said, "Now, I am in trouble." He says,
" I got that fifty dollars, I drew it intending to return it to
you; I got it on the 6th of April and intended to return it to
you before the termination of the month; before the April state-
ment." He says, "I overlooked it and I didn't do it and now you
can do what you like."

I said, "My advice to you is to go down there and tell those
people the truth."

Q Who did you mean? A J. R. Williston & Company.

Q What else did you say to him? A That is all. I let
him go.

Q Now, how long was he in your office? A About ten minutes.

Q How long after that conference with this defendant, did you
go to the office of J. R. Williston & Company? A The next day.

Q The next day? A Yes sir.

Q Whom did you see in the officer of J. R. Williston & Com-
pany? A Mr. Safford, one of the firm.

Q Did you see this defendant? A Not at that time.

Q Did you see him? A Yes sir.

Q Did you see this defendant in the customer's room or in
some other room? A In the reception room.

CASE 1168

Q A private room? A A private room, yes sir.

Q Whom were you talking to at the time this defendant came into the room? A Mr. Safford and one of the members of the firm. I don't know his name.

Q Is Mr. Safford here now? A Yes sir. Either Mr. Ide or Mr. Tint, I am not sure, -- one of the firm.

Q Tell the jury what was said on that occasion either by the defendant or by you or by Mr. Safford? A Well, they --

Q Who do you mean by they? A Well, Mr. Safford said, "We received your letter and communicated with you."

Q This was in the presence of the defendant? A No sir. (Strickenout).

Q Now, answer the question Mr. Murray. I have asked you to state what was said when you and Safford and this defendant were in that reception room, either by Buxton or Safford or by you? A He was called in and this receipt was shown him. He says, "Mr. Murray says that he didn't receive this receipt;" he says, "That is all right, I got the money."

Q Whom do you mean by he? A Mr. Buxton.

Q Buxton was sent for and then what? A That receipt was shown him.

Q People's Exhibit 1, that is what was shown to the defendant?

A Yes sir.

CASE # 1168

Q By whom? A By Mr. Safford.

Q Now, did Safford ask him any question at the time he showed him the receipt? A Mr. Safford told him that I didn't get -- I didn't sign that receipt and I didn't get that money, and he says, "I did; I done it" -- Mr. Buxton --

Q Now, Mr. Safford submitted this receipt to this defendant?

A Yes sir.

Q And said to this defendant that E. B. Murray says that didn't sign that receipt? A Yes sir.

Q And E. B. Murray says that he didn't get the money?

A Yes sir, that is correct.

Q Now, what did the defendant Buxton say to that? A Well, he blustered around a little bit.

THE COURT: Strike out the words "blustered around."

BY MR. MAYNARD:

Q What did he say? A He said that he signed it himself.

Q Tell the jury? A He said, he signed it himself.

Q He admitted in the presence of yourself and Safford that he signed that receipt? A Yes sir.

MR. HERTZ: I object to your leading the witness.

THE COURT: Strike it out.

BY MR. MAYNARD:

Q He said he signed it himself? A Yes sir.

CASE # 1168

MR. MAYNARD: Now, I shall have to object to the side remarks of defendant's counsel and ask the Court to request him not to lead the witness. The statement made by him to the jury was, "He is only too willing," referring to this witness's testimony and those remarks should not be made.

BY MR. MAYNARD:

Q Tell this jury once again what if anything was said between this defendant in respect to your signature on this receipt?

A Mr. Safford showed it to him and told him that I hadn't signed it, that I repudiated the signature and he said, "Well, I signed it, I got the money."

Q He said in reference to that signature, "I signed it?"

A That he had signed it himself, Mr. Buxton.

Q I take it from your testimony that you had some conversation, before Buxton came in, with Safford about this receipt?

A Yes sir.

Q Now, can you think of anything further that was said by this defendant at that time? A No sir.

Q Did you make any comment? A No sir, not that I remember.

Q Or advance? A Not that I remember.

Q Do you remember what Safford said to him if anything?

A He showed him the paper and his reply -- there was nothing much said then. I don't recall any further conversation. I

CASE 1168

left shortly after that. They told me that they would see that the fifty dollars was credited back to my account and it was the following month.

MR. HERTZ: I move to strike that out.

BY MR. MAYNARD:

Q Did you ask Mr. Safford in the presence of this defendant to see that fifty dollars was credited to your account?

A Yes sir.

MR. HERTZ: I object to that question as leading.

Objection sustained.

THE COURT: Strike out the answer.

BY MR. MAYNARD:

Q Well, I will ask the witness to state what if anything further was said in the presence of this defendant at that time between himself and Safford? A Well, nothing that I can recall.

Q Didn't you just tell the jury something else that was said? A Well, he commenced to mumble, to say something, and I didn't pay any attention to him.

MR. MAYNARD: Now, having exhausted the witness, I am asking him a leading question.

Q Did you in the presence of this defendant at that time request Safford, the head of J. R. Williston & Company to

CASE # 1168

credit your account with fifty dollars? A Yes sir.

Q That was done in the presence of this defendant?

A Yes sir.

Q Then, there was a further conversation? A There was, before Mr. Buxton came in.

THE COURT: Strike that out. The jury will disregard it.

BY MR. MAYNARD:

Q Didn't you say that you requested Mr. Safford in the presence of this defendant to credit your account with fifty dollars?

MR. HERTZ: I object to that question; it was before this.

BY MR. MAYNARD:

Q Answer the question, yes or no? A No sir.

Q Didn't you say that? A No sir, that was before Mr. Buxton came in.

Q I didn't ask you that. I asked you if you didn't say that you had so requested? A (no answer).

BY THE COURT:

Q If you did testify this afternoon before this jury -- did you so testify? A I think not.

CASE # 1168

BY MR. MAYNARD:

Q Did you ever authorize this defendant to sign that receipt for you? A No sir.

MR. HERTZ: I object to that as already testified to.

THE COURT: He has answered that, strike out the answer.

CROSS EXAMINATION BY MR. HERTZ:

Q You stated in answer to the District Attorney that you paid Buxton some money for J. R. Williston & Company? A Yes sir.

Q How many times? A Eight or ten times.

Q Various sums of money for the firm? A Yes sir.

Q How much were they at times? A One hundred dollars.

Q And Buxton turned it into the firm? A He brought me the receipt while I was there.

Q Did you always find all these transactions to be correct? A Certainly, yes sir.

Q You found Buxton reliable? A In these transactions. I always got my receipt.

Q You always got your receipt? A Yes sir.

Q No trouble between you and the firm occasioned by Buxton at any time? A No sir, not the slightest

Q You mean prior? A Yes sir.

CASE # 1168

Q Now, were you introduced by Buxton to that firm? Who introduced you to that firm, to deal with that firm? A Mr. Henningson.

Q Was Mr. Henningson the only man that introduced you? Objected to. Objection sustained.

MR. HERTZ: I will simply ask one or two questions in order to have an exception to the ruling.

Q Did you do all your business with Mr. Buxton or with somebody else? A I think, prior to his coming there, there was another man, I think.

Q What was his name? A I don't remember his name. Objected to as immaterial.

THE WITNESS: There was a man in charge of the room before him.

MR. MAYNARD: Wait, after the question is answered until you are asked another.

BY MR. HERTZ:

Q Didn't you do your business at the same time during the period through a man named Weber?

Objected to. Objection sustained. Exception.

Q Wasn't that fifty dollars obtained in your name, obtained by Weber?

MR. MAYNARD: I object to that as calling for the conclusion of the witness and contrary to the testimony already

CASE # 1168

given.

BY MR. HERTZ:

Q Isn't it a fact that you authorized the obtaining of that fifty dollars by Buxton to be paid to Weber? A Never.

Q Never? A No sir.

Q Wasn't Weber the margin clerk in that concern? A I don't know.

MR. MAYNARD: I object to that as immaterial.

Objection sustained. Exception.

BY MR. HERTZ:

Q Have you your statement from J. R. Williston & Company here? A No sir.

Q During the two years you dealt with them? A No sir. I got them all home.

Q Got them all home? A Yes sir, every one of them.

Q Have you anything with you to show how your account stood in March and April 1909? A No sir, I have not. I have a statement.

Q Did you know at this time that you were entitled to fifty dollars? A Yes sir.

Q On the April account? A Yes sir.

Q Did you know at this time you were entitled to draw fifty dollars during April 1909 from J. R. Williston & Company? A Yes sir.

CASE # 1168

Q Can you tell this court and jury whether you owed J. R. Williston & Company any money during the month of March 1909?

Objected to. Objection sustained. Exception.

Q Have you got your statement for March 1909?

MR. MAYNARD: Objected to as immaterial.

Objection sustained. Exception.

BY MR. HERTZ:

Q Have you your statement for February 1909?

Objected to. Objection sustained. Exception.

Q Now, when Buxton called to see you at 321 Greenwich Street, who was in the store at 9:30 o'clock in the morning besides yourself and Buxton? A Nobody.

Q Wasn't Henningson there? A No sir, his office is around the corner.

Q Are you sure you had no conversation with Buxton in reference to this fifty dollars in the presence of Henningson?

A No sir, positively.

Q Sure you had no conversation with Buxton about this fifty dollars in Henningson's place of business? A In his presence?

Q Yes? A No sir.

Q Didn't you tell Buxton in Henningson's place of business, "I will write a letter to J. R. Williston & Company O. K-ing that draft of fifty dollars? A no sir.

CASE # 1168

Q Never did? A No sir.

Q Where is Henningson now? A Portland, Oregon.

Q Where is Mr. Weber, do you know? A I don't know.

Q Have you seen him since the draft of that fifty dollars?

A I don't know him at all.

Q In your dealings with J. R. Williston & Company, did you get any profit slips or statements as to the status of your account with J. R. Williston & Company during the months of January, February, March and April 1909?

Objected to. Objection sustained. Exception.

Q Did you get any other statement, except the statement from the firm, from any employee of J. R. Williston & Company during those months?

MR. MAYNARD: Objected to as immaterial.

Objection sustained. Exception.

BY MR. HERTZ:

Q Henningson is your friend, isn't he? A Yes sir.

Q Didn't Buxton ask you to write in Henningson's place of business, on Henningson's letter head, a letter O. K-ing the draft of fifty dollars? Didn't you say, "I don't want to use Henningson's letter head. I am going to use my own while in my office." Didn't you state that you were going to write that letter on a plain piece of paper? A No sir.

CASE # 1168

Q You did not? A No sir.

Q You haven't known Buxton except as a member of J. R. Williston & Company? A That is the only time.

Q You don't know any members of the firm outside of Buxton and Safford? A That is all.

Q You didn't know Weber there? A No sir.

MR. MAYNARD: I object to all these references to Weber.

Objection sustained. Exception.

BY MR. HERTZ:

Q Did the firm of J. R. Williston & Company, through any of its employees, ask a payment of you during the months of March or April 1909, to make good a shortage in your account?

A They made frequent margin calls which were always met. They always do in Wall Street.

Q Did they make demands during March and April, which were not met by you? A My account showed a credit. There was a debit in that account.

Q During those months, was there? A There was a credit.

Q You say, during those six months your account showed a credit balance? A Yes sir.

Q Now, isn't it a fact that, Mr. Murray, that during those six months your account showed a debit balance? A No sir, I will produce the statement.

CASE # 1168

Q Now, isn't it a fact that the same thing was true of your friend, Henningson? A That, I don't know.

Objected to. Objection sustained. Exception.

Q Isn't it a fact that Weber kept you informed and Henningson informed of the condition of your account?

Objected to. Objection sustained. Exception.

Q Now, you came down to 5 Nassau Street on the 3rd or 4th of May in response to a certain communication? A Yes sir.

Q Did you find Buxton there? A He was sent for.

Q He was sent for? A Yes sir.

Q Was he in the building? A He was in the building.

Q How long was that after the conversation you had with Buxton at your place of business? A The next day.

Q The next day? A Yes sir.

Q Did you telephone the same day and did Buxton speak to you? A I telephoned to J. R. Williston & Company.

Q About the fifty dollars? A No sir.

Q Didn't you feel you were deprived of fifty dollars?

A I wrote them and he came in response to my letter.

Q You didn't say anything up to then? You waited until he called upon you -- you didn't telephone about that paper? A I supposed it was a clerical error and I didn't think it was a defalcation and I wrote them to that effect.

7

CASE # 1168

upon
Q You didn't call anybody the next day? A The following day. They wrote me that day.

Q After Buxton confessed to you he took the fifty dollars, you waited until the next day before you went down to straighten out that fifty dollars? A I got a letter from them when I got home that night. They sent it to my home address and on the receipt of that letter I went down.

Q Did you call? A Yes sir. I had a letter to call.

Q You never got the fifty dollars back from them in cash?
A No sir, I got a credit on my account.

Question repeated.

Q Don't be so anxious to answer any question that I am not asking you. Did you get fifty dollars in cash? A No sir.

Q Now, when after May 3rd did you get your next statement from them? A June.

Q Have you got that statement here? A No sir. The credit was on that statement.

Q Have you got that statement here? A No sir.

Q Is there any reason, why you are so anxious to answer questions I am not asking you? A No sir, but these are the facts in the case.

been
Q I am asking you the question, has a demand_A made on you by J. R. Williston & Company to make good the shortages of those

CASE # 1168

months, March and April? A There was no shortage.

Q Did you ever examine the books of J. R. Williston & Company? A No sir.

Q You have various statements from them?

MR. MAYNARD: He has answered that before.

BY MR. HERTZ:

know

Q Do you know anything at all about Buxton, outside of his connection with J. R. Williston & Company? A No sir.

Q Do you know how long he was employed by them? A I should judge about a year and a half or two years.

Q How many times during that time or period did you meet him? A Probably a dozen times.

Q A dozen times? Did you speak or talk to him about that account during that time? A Yes sir.

Q What was the reputation among your friends of Buxton's reliability during that time? A They thought well of him always. He was a good fellow.

Q An honest fellow? A Yes sir.

Q He was a good fellow, an honest fellow? A Yes sir.

Q Doesn't it seem strange to you at this time that Buxton should all of a sudden have taken fifty dollars from you that didn't belong to him?

MR. MAYNARD: I object to that on the ground that the

CASE # 1168

not
fifty dollars was taken from this witness, whereas, the
fifty dollars was taken from J. R. Williston & Company.

Objection sustained.

BY MR. HERTZ:

Q Can you bring with you all of the statements that you received from J. R. Williston & Company during the period of time you had been trading with them? A I think I have got them all.

Q Can you get the slips, when you purchased and when you sold? A Yes sir.

Q In other words, you can get a complete record, a complete set of papers? A I don't think there is anything missing. I got them all.

Q You got them all? A Yes sir.

Q You can bring them to court? A Yes sir, sure.

Q Will you do that? A With pleasure.

Q You are sure about this? A Yes sir.

Q At no time since that draft of fifty dollars, did you, Mr. Buxton and Mr. Henningson ever talk about that fifty dollars?
A You mean together?

Q The three of you together? A I don't recall.

Q Any conversation between yourself, Buxton and Henningson, after the 6th of April? A Well, the probability is that he came over the 6th, as I have said, to my office, and there we may

CASE # 1168

have had a conversation. He said, he was in trouble. He was discharged from the place there, and he wanted to know what he should do. Well, I told him I didn't know what advice to give. I felt sorry for him. I didn't think he was that kind of man and I hoped that everything would come out right for him.

Q You didn't do a thing about that whole business? A No sir.

Q You never went anywhere about it? A No sir.

Q When you found out that fifty dollars had been withdrawn from your account you made no complaint?

MR. MAYNARD: I object to that on the ground that it assumes that the fifty dollars was drawn from his account.

Objection sustained. Exception.

BY MR. HERTZ:

Q When you found that fifty dollars was drawn from your account on that order that you testified about, did you make a complaint to anybody outside of making a request to J. R. Williston & Company?

THE COURT: This money wasn't taken from this witness's account. This defendant told the cashier that he received a telephone call from Murray, that he wanted fifty dollars and that he would take the cash to Mr. Murray and bring a receipt for it. Then, the cashier gave him the fifty dollars

CASE # 1168

and took his receipt and the next day, the defendant gave him a second receipt and it was charged against Mr. Murray.

BY MR. HERTZ:

Q Now, when you found out that fifty dollars had been charged against your account but that you hadn't received it --

THE COURT: Yes, that is a different question.

BY MR. HERTZ:

Q When you found out that fifty dollars had been charged against you, that you had not received, did you do anything about it? A Well, I notified him.

Q You made no complaint to anybody? A Just simply notified them and they credited it.

Q You had been informed that fifty dollars was obtained from your account? A Yes sir.

Objected to. Objection sustained. Exception.

THE COURT: If money was obtained upon false representations, the firm couldn't bind the account of this witness, Mr. Murray.

BY MR. HERTZ:

Q From the time it became apparent that fifty dollars was drawn from your account until it was replaced or credited -- if it was ever credited --

MR. MAYNARD: Objected to.

CASE # 1168

MR. HERTZ: A certain period of time elapsed and he told us what happened during that period. I want to ascertain that from the witness.

MR. MAYNARD: Objected to. He has given his explanation. There is no proof that the fifty dollars in question was ever taken out of this witness's account, and no proof that it was taken out of the till of J. R. Williston & Company. They made a charge on this man's account which was an improper charge and since it was an improper charge, they wiped it off the books and the account stood just what it did before. The fifty dollars was never taken out of this man's account.

BY MR. HERTZ:

Q Mr. Murray, on the 6th of April, a charge was made against your account of fifty dollars; that is true, isn't it?

A Yes sir.

Q You didn't find out about that until the next month?

A Until the statement was rendered.

Q Until the 3rd of May? A Yes sir.

Q From the 6th of April until the 3rd of May, your account was charged with fifty dollars, which you never got? A Yes sir.

MR. MAYNARD: I object to that as hearsay.

THE COURT: I will allow it.

CASE # 1168

BY MR. HERTZ:

Q So from the 6th of April until the 3rd of May, there was nearly one month your account was short fifty dollars?

MR. MAYNARD: Objected to. Don't answer until the Court rules. It is objected to as assuming a fact not proven.

MR. HERTZ: I submit, that if that account was charged with fifty dollars, it was shorter by fifty dollars, than it was before the 6th of April.

THE COURT: That is a matter of argument.

MR. HERTZ: A minute ago the District Attorney refused to concede that the account was ever charged with the fifty dollars.

MR. MAYNARD: I have proven to this jury that the account was not charged with fifty dollars.

BY MR. HERTZ:

Q I want to know if you ever found out through your trading with the firm, through purchasing and selling, whether you became aware that your account was short between the 6th day of April and the 3rd of May?

MR. MAYNARD: I object to the question again on the ground that it assumes a thing contrary to the fact, to wit, that in the period in question his account was ever short.

CASE # 1168

THE COURT: It means if the account became fifty dollars less.

MR. MAYNARD: I object to the question on the ground that it assumes a thing contrary to the fact, to wit, that at the period in question his account was ever short.

THE COURT: It must necessarily follow that the account became fifty dollars less. How material is it what subsequently happened?

MR. HERTZ: They may have called upon him, sent to him for more money and he may have become aware of that fact at that time.

THE COURT: Suppose they did.

MR. MAYNARD: There was a whole month's time.

THE COURT: It is your claim that this defendant at the request of the witness, Murray asked the firm to advance a loan whenever his account became short.

MR. HERTZ: That is my contention and my defense and I am going to prove it later that this witness's account was short and that this fifty dollars was a bonus, paid at this man's request to another employee of that firm, through this gentleman as the messenger, Buxton.

THE COURT: I know, but the point is this, I want

CASE # 1168

you to state the matter correctly. This witness had an account with the firm with which this defendant was connected, and if, subsequently, his account became short, wherefore was the necessity of advancing a cash loan; why was it necessary to advance a cash loan.

MR. HERTZ: Otherwise, his account would be wiped out.

THE COURT: If the firm credited him?

MR. HERTZ: The firm did not know about these transactions. The other clerks knew about this.

MR. MAYNARD: I feel constrained to interrupt this argument at this time. In this case it is not evidence.

THE COURT: You may prove that on the defense.

BY MR. MAYNARD:

Just one or two questions.

Q You were asked whether after the conference you had with Buxton, the defendant, in your office, the morning after you had sent the communication to J. R. Williston & Company, whether you went to see that firm about the matter. Did you then, understand that fifty dollars had been taken from you or from the firm? A From the firm.

Q Did you see any reason for going to the firm about their own matters? A To correct an error.

CASE # 1168

Q You wrote to them to correct an error in your account?

A Yes sir/

Q Did you have anything, whatever, to do with the fifty dollars which this man took from J. R. Williston & Company?

A Nothing, only to keep my account straight. This was quite a long statment, debit and credit.

Q You have answered it. A Yes sir.

THE COURT: I will allow you to prove by this witness your line of defense, that you have outlined if you can, and you may ask such questions of this witness as you see fit.

BY MR. HERTZ:

Q Did you ever receive messages from Weber?

MR. MAYNARD: I object to that as not being cross examination and I warn defendant's counsel that he is making this witness his own. I object to the question on the ground that it is immaterial; it is collateral to the issue and wholly immaterial.

MR. HERTZ: I am willing to make him my own witness and willing to obtain every truth.

MR. MAYNARD: I am not willing that you should waste our time on a matter which is wholly immaterial and which can have no possible bearing on the issue.

CASE # 1168

MR. MAYNARD: It may not be material to the People's case but it is our defense and as I stated before, I am raising no technical objections here.

THE COURT: I will allow it.

MR. MAYNARD: If your Honor please in the interest of time, I will call your Honor's attention to the fact that the issue is whether or not, this defendant stole from J. R. Williston & Company and whatever conversation this witness may have had with any other people, has no possible bearing upon the case.

THE COURT: It is allowed on the question of the intent with which the money was obtained. In other words, the defendant makes that claim and he has the right to question this witness, as to whether or not there was some understanding between the witness and somebody who acted as the margin clerk.

BY MR. MAYNARD:

Q You knew R. B. Weber? A I knew him, yes sir.

Q You knew he was the margin clerk in that firm? A I think that is the position he occupied. He used to come in there occasionally in the trading room and I spoke to him half a dozen times in my life.

Q Did you meet him -- you knew him? A Yes sir.

CASE 1168

Q Personally -- you never spoke to him more than half a dozen times? A Yes sir.

Q Did Weber ever telephone to you? A Never in his life.

Q Did you have a telephone during the months of March and April 1909? A Did I have what?

Q A telephone in your place of business? A No sir.

Q How long had you known Weber? A When I went down there to trade.

Q How long had you known Weber? A I didn't see him at all, just met him there occasionally.

Q You met him there occasionally? Didn't he tell you during March or April or February or March of 1909, when he met you there casually that your account, as he said, ^{was} under water, you know what I mean? A I know what you mean. My account was subject to a margin call and when they called for margins, I paid it.

Q Do you mean to state to us that at no time during the two years of your dealing with J. R. Williston & Company, you were never short? A I was never notified to that effect.

THE COURT: By allowing you to prove what you claim, you are going to show, I don't want you to examine this witness on a lot of collateral matters. Come right down to the precise issue. As I understand you, this witness authorized

CASE # 1168

somebody to draw fifty dollars. Now, ask him those questions.

BY MR. HERTZ:

Q Did you ever pay Weber any money? A Not a cent.

Q Did you ever tip Weber? A No sir.

Q Did you ever pay Weber? A Never met him outside of the place in my life.

Q Didn't you during the entire time pay Weber fifty dollars for bills he rendered to you? A Never a cent in any shape or manner, not one cent and not fifty dollars.

Q You don't know at this time that Weber did you a favor there in that firm? A Yes sir, if you call it a favor. The firm wanted to sell Reading short, and I sold it short at forty and it went up five points. That is the only good information I got from Weber. I saw what kind of a man he was and I cut him out.

Q You have a check book against J. R. Williston & Company?
A No sir.

Q How many times did you draw money did you say? A Never in my life.

Q Never drew any money? A No sir. Never drew any money only by check, not in cash.

Q Paid in checks? A Whatever they paid me, they paid me in checks.

Q By mail? A Yes sir or I could call for them.

CASE # 1168

Q You could collect? A Yes sir.

Q Did Buxton deliver checks to you? A No sir. I had my business with the house direct.

(The Court then admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of this case until to-morrow, May 19th, 1910 at 10:30 o'clock).

New York, May 19th, 1910.

LOUIS L. SAFFORD; a witness called on behalf of the people, being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Safford, where is your place of business? A 5 and 7 Nassau Street.

Q Are you with the firm of J. R. Williston & Company? A Yes sir.

Q In what capacity? A As office manager.

Q How long have you been with them in that capacity? A About a year and a half.

Q How long have you known this defendant, F. J. Buxton?
A About a year and a half.

Q Was he employed by your firm in the month of April 1909?
A He was.

CASE # 1168

Q In what capacity? A As an office room -- customers' room manager, and assistant manager would be the correct term probably.

Q You were his superior officer with that concern? A Yes sir.

Q I wish you would describe to the jurors, the duties of this defendant in and about your office and speak as distinctly and loudly as you can? A His duties were to take charge of one of our customers' rooms, in which certain customers do their business, from ten to three; to see that they were properly looked after and to receive from people their orders for different trades

sales of stock and transmit these orders to the order room; receive reports; give them to these customers, and if the customers required it to ask for money; to get the proper order from the customers who got the money that they received, to get the proper receipt and to turn that receipt into the cashier. In case a customer brought money or securities to be credited to his account to receive them and to bring them to the cashier and get the proper receipt from the firm for them and give it to the customer.

Q Then, his duties were really those of an assistant manager with you? A Yes sir; in charge of one of our customers' rooms.

Q Was he in charge of one of your customer's room? A Yes sir.

CASE # 1168

Q Was it any part of his duties which he rendered to the concern, which paid his salary to collect monies for customers? (No answer).

Q Was it any part of his duty to J. R. Williston & Company, or was it only a matter of convenience for the customers?

A To collect money for a customer? Yes sir. I understand -- I may have been mistaken.

Q Did he get orders from the customer and then get money, and then bring it back to the customer and take the customer's receipt -- in doing that was he serving the customer? A It was one of his duties as requested by the customer.

Q That is what I want to get before the jury. Now, did you have at that time as one of the clients of your firm, E. B. Murray? Do you know of your own knowledge how long he had been a customer of the concern? A He had been a customer previous to my entering the employ of the firm.

Q You found him as one of your customers of the concern when you got on the job? A Yes sir. His name was on the books.

Q Now, I show you People's Exhibit 1 in this case, the receipt of which the defendant obtained fifty dollars from your cashier, Mr. Bagnall and I will ask you, when for the first time your attention was called to the existence of that receipt?

MR. HERTZ: Objected to for the reason that no money

CASE # 1168

was ever received on that receipt.

THE COURT: I will sustain the objection, to the form of the question because there is incorporated in the question, a question of law as well as of fact.

MR. MAYNARD: I think it is sufficiently important. The receipt first given by the defendant was his own, for which he afterwards substituted this receipt. I will withdraw that question and ask the witness, when for the first time was your attention called to the existence of this receipt, People's Exhibit 1?

THE WITNESS: On or about the morning, the forenoon of May 6th.

Q On or about the morning or forenoon of May 6th? A If I remember correctly.

Q It was on or about that day? A Yes sir, on or about that day.

Q State to the jury how your attention was called to it?
A It was one of my duties to open the mail, the letters of the firm and on that morning in opening the mail, I found a letter from Mr. Murray -- it was a letter of the firm's which had been sent to Mr. Murray and that he had made a foot note and that foot note contained the information --

Objected to. Objection sustained.

CASE # 1168

Q After he received that letter, did you at any time have a conference with E. B. Murray in the office of J. R. Williston & Company? A I did.

Q Did he come there at your request? A Yes sir, he did.

Q In what office did you receive him? A In the reception room.

Q Now, who was present at the time that Mr. Murray came?

A At the time Mr. Murray came?

Q At the time he came into the reception room, who was then present? I think Mr. Robert L. Ide and Frank Tint of the firm. I am not prepared to state which.

Q One of the members of the firm besides yourself was present when Mr. Murray came into the room? A Yes sir.

Q Did you have any conversation with Mr. Murray while only yourself and a member of the firm were in the room; yes or no?
A No sir.

Q How long after the arrival in that room of Mr. Murray was Mr. Buxton, the defendant, brought into the room? A He was there.

Q Brought by whom? A By me.

Q Did you go out and get him? A I did.

Q Where did you find him? A In his room, the customers' room which he had charge of.

CASE # 1168

Q Tell us what you said to Buxton, if anything, and what Buxton said to you from the time he started from the customer's room and until the conference ended at the table with Murray present? A I asked him if he would come into the reception room with me, or something of that kind -- anything to get him to go to the reception room. We found Mr. Murray there; he was seated at the end of the table -- reception room.

Q Did you then have this receipt in your possession? A I had that receipt in my possession and I said to Mr. Murray --

Q Where was Mr. Murray at this time? We want to give this jury an idea -- where was the table in the room? A Well, as the jurors are facing, the end of the table would be towards the jurors and Mr. Murray sat at that end of the table (indicating), which would be just back of the jurors. Mr. Buxton sat right alongside and I sat on Mr. Buxton's right hand side.

Q The table ran out into the center of the room? A Yes sir.

Q You can go around the table? A Yes sir.

Q Murray at one end of the table? A Yes sir.

Q And Buxton was next to Murray? A Yes sir, that is right.

Q And you were next to him? A Yes sir.

Q Now what happened? A I said to Mr. Murray, "Mr. Murray

here's the receipt for fifty dollars which I want to ask you, if you signed," and I laid it down before Mr. Murray and Mr. Murray says, "Oh no, I didn't sign that receipt." I then turned to Mr. Buxton and I said, "Mr. Buxton, you got fifty dollars on this receipt," and, of course, it wasn't actually this receipt because this one had been substituted for the former one. This was in fact the original. "You got fifty dollars on this receipt for Mr. Murray's account, -- for Mr. Murray, and Mr. Murray said, he didn't sign this receipt. What have you to say about it?" Mr. Buxton started to flounder a little bit.

Stricken out.

Q Don't describe about floundering or blustering. Say what he said and if he only made part of a statement make it. Tell us what he did? A Before Mr. Buxton said anything that was really intelligible, Mr. Murray broke in upon his conversation.

Q Tell us what he said? A He said, "Mr. Buxton, why don't you tell these people the truth about this matter," and he further said, "You have got these fifty dollars; I didn't sign this receipt, now, tell them the truth."

Q What response did Mr. Buxton make to the suggestions made by Murray, if anything? A Mr. Buxton said, that he had gotten the money and that he had signed this receipt.

CASE # 1168

Q Now, what if anything further was said by you or Buxton or Murray? A Well, there was a conversation between Mr. Buxton and Mr. Murray, but the exact words I can't remember.

Q The best of your recollection? A The best of my recollection it was this; that Mr. Buxton said, "I have at times given Mr. Murray information by which he has made money and I thought I ought to get fifty dollars from this account, and I drew this fifty."

Q What did Mr. Murray have to say to that, if anything? A Mr. Murray said, "Well, I didn't get the fifty dollars, you will have to straighten this matter yourself, all by yourself. I don't see what help I can give you in the matter," and so forth. As I remember, that practically ended the conversation between Mr. Murray, Mr. Buxton and myself.

Q Were you satisfied at that time that Mr. Murray had not received the fifty dollars?

Objected to as immaterial.

Objection sustained.

Q Did you thereafter credit to the account of Mr. Murray --

MR. HERTZ: I object to that as not being the proper way of proving it.

BY MR. MAYNARD:

Q You are the manager of the concern? A I was the manager

CASE 1168

of the clerical department or office at that time.

Q You had called Mr. Murray there in reference to this discrepancy about his account? A I had.

Q Did you have authority to rectify the account if there was a mistake in the account? A I think I had.

Q Did you have authority in your position to rectify accounts? A Yes sir.

Q Now, I ask you, then, if you did at that time direct, that the account of Mr. Murray be rectified and he be credited with fifty dollars?

MR. HERTZ: I object to that as not the proper way of proving it.

THE WITNESS: I personally --

BY MR. MAYNARD:

Q I asked you? A I did not.

Q Now, do you understand that question?

(Addressing stenographer). Will you kindly read it to the witness again?

The question repeated by the stenographer as follows:
"Now, I ask you then, if you did at that time direct, that ^{the} account of Mr. Murray be rectified and he to be credited with fifty dollars?"

THE WITNESS: Not at that time.

CASE # 1168

Q Did you thereafter?

MR. HERTZ: Objected to as immaterial. What was done must be in the presence of the defendant. I object to it as not the proper method of proving it.

THE COURT: I sustain the objection as to the form of the question.

BY MR. MAYNARD:

Q What did he do? I will adopt the Court's question. What did you do? A I then, brought the matter to the attention of the firm.

MR. HERTZ: I object to that as being a conclusion.

He brought the matter to the attention of the firm.

BY MR. MAYNARD:

Q What did you do?

THE COURT: Objection sustained.

BY MR. MAYNARD:

Q Tell us what you did? A I then, went right to one of the members of the firm and I brought this matter to his attention.

THE COURT: He can't state what he said.

BY MR. MAYNARD:

Q You had some talk with the firm? A Yes sir.

Q After that talk what did you do in reference to Murray's

CASE # 1168

account? A The firm ordered --

Objection sustained.

(the answer is stricken out).

BY MR. MAYNARD:

Q Did you do anything in reference to Murray's account?

A No sir, I did nothing personally. The matter was then in the hands of the firm.

MR. HERTZ: I move to strike out that "The matter was in the hands of the firm."

CROSS EXAMINATION BY MR. HERTZ:

Q Where do you live? A I live at Hartsdale, New York.

Q Are you related to any member of the firm of J. R. Williston & Company?

Objected to.

Q Are you related to any member of the firm of J. R. Williston & Company? A I am a distant relative of J. R. Williston.

Q What was your position in that firm in April 1909?

A Officer Manager.

Q Who was the bookkeeper at that time?

Objected to as immaterial. Objection overruled.

MR. MAYNARD: What possible bearing has that upon the issue before this Court?

THE COURT: It may have.

CASE # 1168

BY MR. HERTZ:

Q Who was the bookkeeper? A We had more than one.

Q Who was the head bookkeeper? A Mr. Ward was the head bookkeeper.

Q Who was the bookkeeper in charge of the books which contained Mr. Murray's account? A Mr. Meade.

Q What is his full name? A I have forgotten his initials.

Q Where does he live? A I think in New York City.

Q Is he with you to-day? A Yes sir.

Q When a new customer comes to your place of business and makes a deposit for the purpose of trading, does he sign any book?
A No sir.

Q Does he sign a card? A A signature, a specimen signature is the rule.

Q Murray did the same thing? A I imagine so. I wasn't there at the time.

Q Don't you know? A I do not.

Q Can you tell me who knows in your firm? Who was the manager of the office at the time Mr. Murray opened his account; who was the manager of the office at the time Mr. Murray opened his account? A Mr. Paret was generally, practically in charge of that work.

Q If I showed you Mr. Paret's handwriting, would you recog-

CASE 1168

nize it? A I think so. I have become familiar with it.

Q I ask you to examine this signature and tell me whether that is in the handwriting of Mr. Paret. Look at the whole bill and see if that will refresh your recollection? A I am not sufficiently familiar with Mr. Paret's handwriting to swear that that is the signature of Mr. Paret -- the firm's signature.

Q It is not the firm's signature? A I am not sufficiently familiar to swear that that firm's signature was written by Mr. Paret because that it is before my connection with the firm.

MR. MAYNARD: That is all.

BY MR. HERTZ:

Q But you are pretty sure that when Mr. Weber came and opened an account, he gave his signature to the firm?

Objected to.

Q Every customer does that? A Not in every case. No sir.

Q Any one who deals with you for two years -- you would take his signature?

Objected to as calling for a conclusion.

Objection sustained.

Q Did you hear Mr. Murray's testimony on the stand yesterday? A I did.

Q Did you hear the District Attorney ask him to repeat everything that happened in that office when you and Murray and

CASE # 1168

Buxton were present and did you hear him answer the District Attorney and repeat everything that transpired in the office that morning when you, Murray and Buxton were there on that morning? A Yes sir, I did.

Q Did you hear Murray say on the stand -- did you hear Murray quote Buxton as saying, "I had received from him -- Mr. Murray had received from me valuable information and I thought I had authority to draw fifty dollars from his account." Did you hear Murray say that in answer to the District Attorney?

A Well, that question is so involved. I don't believe I can answer it intelligently.

Q I will repeat it. (Question withdrawn). Now, you heard Murray on the stand yesterday? A Yes sir.

Q You stated now, a few minutes ago that when you confronted Murray with Buxton and asked Buxton to explain how he came to draw the fifty dollars, that Buxton stated as follows: "I had given Mr. Murray valuable information upon which he had made money from time to time and I thought, ^I was entitled to the fifty dollars." You state, that Buxton said that? A I just stated that.

Q Did you hear Murray state that on the stand yesterday?

A I don't know that Murray said those actual words, but I think he made some such statement. I think his testimony yesterday would convey that idea.

CASE # 1168

Q Did you hear Murray yesterday say anything about receiving information, whether valuable or not valuable from Buxton?

A I don't remember.

Q Did you hear Murray on the stand yesterday say, "I didn't get the fifty dollars. You will have to straighten that out. I don't see what help I can give you."

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

MR. HERTZ: That was the testimony as far as I recall. Now, then, Mr. Safford testified that at the office No. 7 Nassau Street, Murray, Buxton and himself had a conversation and in the course of that conversation, Murray said, "I didn't get fifty dollars. You will have^{to} straighten that out with these people. I don't see how I can help you."

THE COURT: I have the record here. The receipt was shown and Mr. Murray said, "I didn't sign the receipt," and the defendant said, that he signed the receipt. Mr. Murray said, "I didn't get the money," and he said, "he signed the receipt himself." What do you intend to show by this question?

MR. HERTZ: I simply intend to show that Murray testified certain things happened and Mr. Safford testifies that this conversation took place in their office.

CASE # 1168

THE COURT: Murray testified that that conversation -- the matter I have just read occurred in Mr. Safford's office.

BY MR. HERTZ:

Q I repeat the question then. Did you hear Murray testify on the stand yesterday and state as follows to Buxton: "I didn't get that fifty dollars. You will have to straighten that out. I don't see what help I can give you." A I think I recall him testifying to that, in that way yesterday.

Q You heard what the District Attorney read as to the testimony on that subject -- the District Attorney just read to you what he said on that occasion? A Well I heard it.

Q Did you hear that same thing that the District Attorney read? A I heard it yesterday.

Q Did you hear him read that, what is supposed to be what Murray testified on the stand? A Yes sir.

Q Did you hear him read any such statement by Murray to Buxton, "You will have to straighten that out. I don't see what help I can give you."

THE COURT: Put a question.

BY MR. HERTZ:

Q You stated that among his duties, Buxton's duties was to properly look after the customers and among others was if they

CASE # 1168

asked for money to see that they got it. Do you know of your own knowledge whether that thing happened frequently; whether he drew money very frequently for customers? A I think it happened quite frequently. Buxton would simply come up with the ordinary slip to the cashier to ask for the money for Mr. Murray and the cashier would pay it out and then he would turn it over to the customer.

MR. MAYNARD: I object to the form of the question.

Question withdrawn.

BY MR. HERTZ:

Q What method would Buxton adopt to get fifty dollars from Murray if he asked for it?

Objected to.

MR. HERTZ: The charge that he drew fifty dollars for Murray, as the witness testified, the first witness, Mr. Bagnall.

MR. MAYNARD: He testified to the circumstances under which the money was drawn; the defendant gave his personal receipt and told him he received a telephone message from Mr. Murray.

MR. HERTZ: That is what I am trying to find out.

Q What method was provided for by this office of J. R. Williston & Company, if Buxton drew money.

CASE # 1168

Q How did he do it, if you know? A The regular method was to present to the customer asking for the money a blue receipt blank.

Q Similar to this? (People's Exhibit 1). A Yes sir. A duplicate of that and have the customer fill it in to the amount that he wished and sign it. Mr. Buxton would then take that, present it to the cashier at the cashier's window and receive the cash and leave the receipt with the cashier who would in turn file it away.

Q Now, do you know how it happened that Buxton drew money for a customer on his own receipt? A I never knew of this happening but in this one instance to my knowledge.

Q How is it that your cashier honored such a draft if that was the first time it happened? A Because Mr. Buxton gave him a perfectly satisfactory explanation as to why he was doing it that way.

Q Now, then, during all the time that you have known Buxton was he ever found incorrect, inexact or dishonest in his transactions, about collecting money or turning it over to the customers? A This was the first instance ever brought to my attention.

Q Buxton occasionally collected money from customers for your firm, did he? He was sent out for margins, and he would go

CASE # 1168