

down, if you wanted more margins and he would collect there?

A Not as a rule. Mr. Buxton didn't have the collecting of the margins.

Q I am asking you whether he at any time to your knowledge did that for the firm? A Probably in the customers' room, may be on one or two occasions; yes sir.

Q Was he ever found to be incorrect, inexact or dishonest in those transactions? A Not that I know of, no sir.

Q Is Mr. J. R. Williston, a resident member of the firm -- is he in New York? A Yes sir.

Q Is here to-day? A Is he here in court?

Q Is here in the city to-day? A Yes sir.

Q Is Mr. Frank Tint in the city? A He is not a resident here.

Q He gets to New York how often? A Sometimes not oftener than once in six months.

Q He was here in court on one occasion in this case? A I think he was, but I don't know whether in this case or not.

Q Did you ever have any other case in this court? A No sir, not in this court.

Q Is Mr. Ide in the city? A Yes sir.

Q Is Mr. Charles O. Burbank in the city? A No sir.

Q Does he come to the city? A No sir.

CASE # 1168

Q Is Mr. Meade in the city? A Yes sir.

Q Are you acquainted, Mr. Saffard with a man by the name of Robert B. Weber? (No answer).

Q Is Robert B. Weber -- do you know a man named Robert B. Weber? A I don't know such a man.

Q Was in your employ during the year 1909, before 1909?
A Yes sir.

Q In March or April 1909? A March, yes sir.

Q Before the month of April 1909? A Yes sir.

Q Was he the margin clerk in your place of business? A He had charge of the margin slates; he kept tract of the amount of margin in the accounts.

Q Was he the only man that had charge of that margin slate or margin account in your office? A I can't say he was the only man.

Q Well, who else? A I had charge of those margin slates.

Q Did he have charge of Murray's margin account? A He had no charge of the account.

Q Who had charge of the slate on which Murray's account was? A I did.

Q He had charge of this slate on which was Henningson's account? A Yes sir.

Q And of the slat upon which Shansey's account appeared?
A Yes sir, there was such an account.

CASE # 1168

Q Now, as soon as Murray's account would fall and the amount of credit would dwindle, Weber would notify him, wouldn't he? A Weber would notify him. That was Weber's duty.

Q Send for more margin? A Yes sir.

Q And the same thing with Henningson? A Yes sir.

Q And with Shansey? A Yes sir, exactly; anybody.

Q Now, if Weber didn't notify Murray, his account could run along for two, three or four days?

Objected to.

Q If Weber wouldn't notify Murray, Murray wouldn't be wiped out?

Objected to.

Q Murray had no way of finding out, whether he owed you or not unless Weber notified him?

Objected to.

MR. HERTZ: If he knows.

Q Did Murray have any way of finding out he had a margin it had not a margin unless he was notified by Mr. Weber, who had charge of the margin slate, he knowing the prices of the stocks of which he was long or short? A By looking at his last statement from J. R. Williston & Company, which state clearly the amount of cash remaining in the account, and he could see whether there was a debit or credit balance.

CASE # 1168

Q He would get that statement the first of every month?

A Yes sir.

Q He wouldn't get any statement for thirty days until the next month came along? A No sir.

Q Is it your intention to testify that Murray could figure out how his margin stood by examining this statement of March 1st on April 1st? A Certainly he could.

Q Do you mean to testify that the market would be the same on March 1st as to the securities which Murray owned, as it was on April 1st?

Objected to. Objection sustained.

Q Is it necessary for a man to know, or for you to know the value of Murray's securities on a certain day, to examine the quotations on that day and compare them with the prices Murray paid for them? A Yes sir.

Q Now, did Murray sleep in your office; was he there all the time; was Murray there all the time? A No sir, he was not.

Q Will you tell me, how Murray came to figure out what his equity was unless he had the quotations and unless he ^{would} see from Monday to Monday, the prices of the stocks he owned?

Objected to. Objection sustained.

Q Can you tell us of your own knowledge or from any examination that you have made of your books, of your records, whether Murray's account during the months of March, February, March

CASE # 1168

or April was ever, as you term it, under water?

Objected to. Objection sustained.

Q Was Murray ever short on margin during the time that he dealt with your firm?

THE COURT: If you know.

THE WITNESS: I don't know.

BY MR. HERTZ:

Q Was Henningson ever short, if you know?

Objected to. Objection sustained. Exception.

Q Is there anything in court here, by which you can ascertain whether Murray's account was ever short? Is there a man named Eyre at the present time or in the last three or four days -- have you had any conversation with Eyre in the last three or four days about this case? A Nothing, except to tell him I was going up to court on this case.

Q Didn't he tell you that a subpoena had been served on the office to produce the books containing Murray's account? A Mr. Eyre did not.

Q Who did? A I think Mr. Bagnall told me so.

Q You state now, that there is nothing ⁱⁿ court room by which you can tell us?

THE COURT: He so stated.

CASE 1168

BY MR. MAYNARD:

Q Mr. Safford, after the time of the conference in the office of J. R. Williston & Company to which you referred this morning, how much longer did Buxton remain in the employ of J. R. Williston & Company? A To the best of my remembrance not more than twenty-four to forty-eight hours..

Q Did you discharge him? A Yes sir, I did.

Q Was he at that time indebted to the firm? A He was.

Q Did he ever obtain checks from the firm of J. R. Williston & Company, when he had no account?

MR. HERTZ: I object to that. If they produce the records of the firm, I will have no objection.

THE COURT: We are not going to try any other issue but the one question.

MR. MAYNARD: The question was gone into whether this man was an honest man.

THE COURT: I will not allow it.

WILLIAM E. BAGNALL; a witness for the people being recalled, testifies as follows: testifies as follows:

BY MR. MAYNARD:

Q Mr. Bagnall, is this the customers' ledger No. 8, E to R of J. R. Williston & Company covering covering accounts during

CASE # 1168

the months of April 1909?

MR. HERTZ: I object to the line of testimony. This witness testified that he was the cashier. He is not the bookkeeper. This is not rebuttal, re re-direct, it is simply trying to reopen this case as far as this witness is concerned.

BY MR. MAYNARD:

Q Have you personal knowledge as to the record of this book? A Yes sir.

Q Did you use this book in the firm's business? A We used it in the firm's business.

Q Did you personally? A No sir, I have access to it.

Q Did you make any entries in the book? A I may have when the bookkeeper is on vacation.

Q Are you familiar with the handwriting on that page (indicating)? A Yes sir.

Q Two seventy? A yes sir.

Q Whose handwriting is it? A Mr. Meade's.

Q Who is Mr. Meade?

Objected to. Objection sustained.

Q Is Mr. Meade here? A Yes sir.

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

THE COURT: I sustain the objection. The testimony is stricken from the record.

CASE # 1168

MR. MAYNARD: I will reserve the right to put that in later. Aside from that, that is the people's case. I reserve the right to place Murray on the stand and offer in evidence certain of the entries in this book.

MR. HERTZ: I move to dismiss the indictment for the reason that it does not appear that J. R. Williston & Company ever paid out fifty dollars on the account of E. B. Murray, or that they ever actually parted with its possession, and for the further reason that nothing appears before this court, no receipt, nor order upon which any money was drawn, and nothing appears whatever that that money was returned to Murray. On the contrary, one or two witnesses testified that they personally did not repay it and did not know who did repay it.

THE COURT: Mr. Murray testified that he did not receive any money from this defendant; that he had not authorized this defendant to obtain any money for him from this concern.

MR. HERTZ: There is no testimony here to show that Murray ever actually lost fifty dollars.

THE COURT: The charge is that this firm lost it. Murray is the complainant.

MR. MAYNARD: Let me call the attention of the Court

CASE # 1168

to the fact that the people's case is closed with the exception of the admission of evidence to which he is now referring. On the arrival of Mr. Meade, I shall show from the books of the concern that on April 6th, the account of Mr. Murray was charged with fifty dollars and that in May he was credited with fifty dollars.

MR. HERTZ: It seems to me that is the essential thing in this case.

MR. MAYNARD: If you desire to wait, we will have it here. Do you want to wait until that comes.

MR. HERTZ: I submit, that is the essential point in this case, whether Murray ever got or did not get that fifty dollars. If Murray did not get the fifty dollars, Buxton did not get it and this indictment must fall. They must prove that Murray lost the fifty dollars.

MR. MAYNARD: It will never become necessary for me to show that Murray got his fifty dollars because it is alleged in this indictment that this defendant got the fifty dollars from J. R. Williston & Company by fraudulently representing that Mr. Murray told him to get it. Now, we have shown that Mr. Murray says, that he never told him to get it; that he never gave a receipt for it and never got the money, and as soon as he got his account

CASE # 1168

and saw that he was charged with fifty dollars, he called the attention of this firm to it and had a conversation in their office.

THE COURT: Didn't Mr. Murray state that the fifty dollars was withdrawn from his account?

MR. MAYNARD: It was charged to him but he didn't have his statement until later.

MR. HERTZ: I asked Mr. Murray about the statements and he promised to produce them this morning. He said, he had a complete set of statements and was going to produce them here this morning and that he was going to show that the fifty dollars was charged against him.

MR. MAYNARD: I submit that it is not fair for counsel to make these statements in the presence of the jury. If he desires to have any statements produced by anybody, it was his duty to serve a subpoena duces tecum.

MR. HERTZ: Nothing was produced. I contend that this indictment charges that fifty dollars was obtained from J. R. Williston & Company and unless they actually lost that fifty dollars, this indictment can't stand.

If Murray made them a present of that fifty dollars, it is up to Murray.

MR. MAYNARD: I submit this should not go on before the jury.

CASE # 1168

THE COURT: You must not consider statements made by counsel on either side, not supported by evidence. Counsel have the right to bring to the attention of the Court certain facts in a case. I invite the attention of both of you, gentlemen, to ^a perusal of the case of the People against Meade, 125 Appellate Division on this branch of this case. Of course, you have got to show that the money was obtained by false or fraudulent pretenses or representations and that it was the money of the complaining witness, J. R. Williston & Company and that they were defrauded. The Appellate Division said in that case, "we think a crime is complete when it appears that the property, feloniously taken or appropriated, was not the property of the accused and this fully appears by the indictment in question."

"It is not necessary to show that the defendant knew whose property he was taking so long as it was alleged that he knew it was not his own."

MR. HERTZ: Let us assume that he was authorized by Murray to keep that money. If he was not authorized by Murray, the case falls. Let us assume that the fifty dollars was charged to Murray's account. It has not been proven that the complaining witness, J. R. Williston

1157

CASE # 1168

& Company have been deprived of the fifty dollars.

MR. MAYNARD: Ragnall, the cashier has testified that he gave out the fifty dollars on the representation of this defendant and that he never got back a solitary cent of that and that he immediately charged Murray's account with fifty dollars.

The bookkeeper has been telephoned for.

(The Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and took a recess until two o'clock).

CASE # 1168

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART IV.

-----X
THE PEOPLE OF THE STATE OF NEW YORK:
 against
FRANK J. BUXTON.
-----X

New York, May 19th, 1910, P.M.

(Trial resumed).

HOWARD F. MEAD, a witness called on behalf of the
People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Mead, will you kindly talk loud enough so the
furthest jurymen can hear you, hear all you have to say. What
is your address? A 34 West 88th street.

Q What is your first name? A Howard.

Q Howard Mead? A Howard F. Mead.

Q What is your business, Mr. Mead? A I am employed by
Messrs J. R. Williston & Company, as a bookkeeper.

Q As what? A As bookkeeper.

Q How long have you been in their employ? A Since Oc-
tober 5, 1908.

Q 1908? A Yes.

Q Did you have charge of the books containing the account

CASE # 1168

of E. B. Murray in the months of April and May, 1908? A May I ask 1909?

Q 1909, I mean? A I did.

Q 1909, I am mistaken. I call your attention to customers ledger No. 8, letters G to R, of J. R. Williston & Company, and will ask you to state -- step down if you will, and look at page 270 of that book, and ask you if that is the account of E. B. Murray with that concern, in the months I have mentioned?

MR. HERTZ: I object to that question unless the witness made the entries in the book in person.

Q Will you let me ask that in advance then. Did you make the entries covering the account of E. B. Murray on page 270 on that book? A All but one entry at the top of the page

Q That is an entry as of? A Brought forward from the old ledger.

Q A little louder. A Balance brought forward from the old ledger.

Q As of what date? A December 31, 1908.

BY THE COURT:

Q 1908? A 1908. 1908.

BY MR. MAYNARD:

Q Now I call your attention to the entry, April 6th of 1909, and I ask you if that is in your handwriting? A It is.

Q Did you on that date charge the account of E. B. Murray with fifty dollars?

CASE # 1168

MR. HERTZ: That is objected to. The book is the best evidence.

MR. MAYNARD: I will offer that entry. I will take your word for it. I will offer the entry on page 270, of April 6th, and for the convenience of the jury, I will read it into the record. "April 6th, cash carried out Fifty Dollars."

Q I now call your attention to another entry on the same page as of May 11th, 1909, and I ask if that is in your handwriting? A It is.

MR. MAYNARD: I offer that entry in evidence.

MR. HERTZ: That entry is objected to as being beyond the date recited in the indictment. The date recited in the indictment is the 6th day of April.

THE COURT: Objection overruled.

MR. MAYNARD: Now, this entry -- I will have these marked subsequently -- read May 11th, "To correct charge April 6th, Fifty Dollars."

Q On which side of the account is that entry? A Credit side.

Q Then on that day you credited E. B. Murray with fifty dollars?

THE COURT: In your own handwriting?

Q (Continued) In your own handwriting? A Yes, sir.

Q And on April 6th, what side of the account do you call

CASE # 1168

that? A Debit side, charge.

Q Did you on April 6th debit his account with fifty dollars? A I did.

(Entry April 6th marked People's Exhibit 1 in evidence)

(Entry May 10th marked People's Exhibit 2 in evidence)

CROSS EXAMINATION BY MR. HERTZ:

Q You read from customers ledger No. 8 of J. R. Williston & Company? A Yes, sir.

Q Are you the sole bookkeeper in that concern? A No, sir.

Q You are the head bookkeeper? A The head bookkeeper.

Q Did you make all these entries on page 270? A All but the first entry.

Q Now, is this the original book of entry, A No.

Q From what book did you make this transcript?

A Which entry?

Q The entry you testified about. You only testified about one, the one on April 6th, and the one on April 11th?

MR. MAYNARD: That is two I asked him about.

Q (Continued) Is that two? All right. About the two. What book did you bring the entry of May 6th from? A From a book called the blotter.

Q And where did you get the entry on the blotter from?

A Well, that is a transcript of the -- well, I don't know how to explain it; that is a transcript of the daily work.

CASE # 1168

Q Of the daily work; is that a book too ? A That is a book, yes.

Q And where do the entries come from that go into the daily work? A In the course of business.

Q In the course of business, from slips I suppose that are handed in to you; is that right? A Not always; some are slips, and some are not.

Q Some are our books; now where is the daily blotter?
A We have it.

Q Where is the daily work book?

MR. MAYNARD: Here are the books.

RE-DIRECT EXAMINATION BY MR. MAYNARD:

Q I call your attention to a book bearing on the outside cover the words, "No. 9 Journal. J.R.W. & Company," and will ask you once more to step down and call your attention to page 171 of that book, and I ask you -

MR. HERTZ: If that is in his own handwriting.

Q (Continued) I call your attention to an entry under May 11th, 1909, and ask you if that line is in your hand writing ?

A It is.

MR. MAYNARD: I offer that in evidence.

(Entry marked People's Exhibit 3 in evidence).

MR. MAYNARD: It reads, "E.B.Murray"-- the line reads "E. B. Murray, to correct charge on April 6th, folio 270 of the Ledger, carried out, Fifty Dollars."

CASE # 1168

MR. HERTZ: What is the date of that?

MR. MAYNARD: It is May 11th.

Q (Continued) Was this the original entry made by you in which you credited the account of E. B. Murray with fifty dollars? A It was.

MR. MAYNARD: I will ask that this witness will step aside for a moment.

W I L L I A M E. B A G N A L L (recalled)

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Bagnall, I call your attention to a book bearing on its outside cover, "Ex. Tuesday, Thursday, Saturday," and to the pages covering the date April 6th, 1909, and to an entry on the last page of that day. A Yes.

Q On the last page of that date, on the charge side, and I ask you if the entries on that line are in your handwriting? A They are.

Q All of them? A All of them, all but the folio number.

Q Read that line through to the jury? A "Of whom bought." Under the heading "of whom bought" -- there is just merely -- --

Q Just read the line through? A "Cash amount \$50.; net amount \$50., account of E. B. Murray."

BY THE COURT:

Q What date? A April 6th, 1909.

(Entry marked People's Exhibit 4 in evidence)

CASE # 1168

BY MR. MAYNARD:

Q Now, tell the jury under what circumstances, or for what purpose you made the entry?

MR. HERTZ: That is objected to as immaterial. The entry speaks for itself.

THE COURT: Objection overruled.

Q Tell the jury? A After receiving the receipt from Mr. Buxton, I charged it in this book of record, so that the bookkeeper would get it on his ledger.

THE COURT: Strike out, "So the bookkeeper would get it on his ledger."

Q You charged it on this book of record against the account of -- A E. B. Murray.

Q E. B. Murray. That entry represents the fifty dollars which you turned over to Mr. Buxton, the defendant? A Yes, it does.

CROSS EXAMINATION BY MR. HERTZ:

Q Is there a date to People's Exhibit 4 in this book?

MR. MAYNARD (Showing).

Q What did you do, Mr. Bagnall, after you received this voucher, or whatever you call it, People's Exhibit 1?

A I wrote it in the blotter just as the entry is made there.

Q You examined this paper, didn't you, People's Exhibit 1?

A Yes, sir, I examined that; yes, sir. *L*

Q What did you say?

CASE # 1168

MR. MAYNARD: Be sure you understand the question.

A Yes, I examined this yesterday.

Q You examined it at the time it was presented at the window, did you not? A Yes, sir.

Q And did you read it? A Yes, sir.

Q What did you do with it after you had it? A Gave it in cash.

Q Do you mean to tell me when he gave you the receipt or that voucher, you examined it at the window, and looked at it, and gave him the cash? A This one was the next day.

Q I ask whether you examined that certificate when you got it? A I looked it over, yes.

Q What did you do with it when you got it? A I filed it away.

Q You did not do anything at that time? A No, not this one. I explained that yesterday.

Q I am only talking about that one. What did you do with the certificate when you got it? A This one we filed it away and gave him -- I gave Buxton back the one he gave me the night before.

Q Now, what did you do with that certificate after you filed it? Anything? A Stayed there until it was called for and we heard from Mr. Murray.

Q And you did nothing else? A No.

Q Didn't you enter it on any book, A No, it had already

CASE # 1168

been entered on the previous day, the one Mr. Buxton gave me.

Q In other words, you made the entry on this slip the day before when you gave Buxton the fifty dollars? A Exactly. I had to balance my cash that night.

Q I simply asked you the question, did you or didn't you?

MR. MAYNARD: He said he did.

A I did.

Q You made the entry then which is designated as People's Exhibit 4 in this book? A Yes.

Q "Ex. Tuesday, Thursday and Saturday"; is that right?

A That is right.

Q Is that in your handwriting, this line? A That is my writing.

Q Did you know the signature of E. B. Murray when you got that receipt? A No, I did not.

Q Did you make any inquiry whether that was E. B. Murray's signature? A No, sir, I did not.

Q Did you have Mr. E. B. Murray's signature any place? A Not that I know of, no.

Q When you paid out money on such orders as these, didn't you make examination as to the correctness of the signature? A Why, the people there present the receipts for the parties who sign them, and take their word for it.

Q And you hadn't any reason to doubt Buxton's word? A No, I did not when he presented this, not a bit.

CASE # 1168

Q You simply passed that in when you got it? A Yes, sir.

Q Did you get the fifty dollars from any place and pay it back to J. R. Williston? A Did I?

Q Yes. A No.

Q All you did was to make the entry for it? A Yes.

Q Did you know the condition of Murray's account at that time? A No, I did not.

Q You did not. Now, who made the entry known as People's Exhibit 3 on page 171 of No. 9 Journal, J.R.W. & Company?

A Mr. Mead.

Q Mr. who? A Mr. Mead.

Q And he took it from his book? Is that right? A No, that is an entirely different entry, and it is made a month or so after. One is April 6th, and the other is May 11th.

Q Do you know whether on that date when you say you charged back the fifty dollars to Murray, do you know whether his account was entitled to fifty dollars or not?

MR. MAYNARD: He did not say he charged back.

A Which day did you mean?

Q The day you deducted fifty dollars from Murray's account and charged it to J. R. Williston's account. Did you know whether Murray had fifty dollars to his account? A I never said I did anything like that.

MR. MAYNARD: He said he did not do anything of the kind.

MR. HERTZ: I think we both understand each other.

We speak the same language.

Q Did you know at the moment when you charged J. R. Williston fifty dollars which you had deducted from E. B. Murray's account, did you know on that day whether E. B. Murray had fifty dollars to his account? A Show me the charge to J. R. Williston. You say did I the day I charged J. R. Williston. I don't know anything about a charge. I don't know anything about a charge. I didn't charge.

Q So you didn't charge J. R. Williston & Company with fifty dollars? A There is no charge that you can show me to J. R. Williston & Company.

Q There is no charge on these books either on April 6th or any other day; is that right? A The charge on April 6th is to the account of E. B. Murray.

Q When you deduct anything, do you say you charge?

A Deduct?

Q If you deduct from a man do you say you charge that man with fifty? A What do you mean "deduct"?

Q What is expressed by what you describe as deducting fifty dollars from a man's account? A Why, I don't know, when a man takes fifty dollars --

Q When you take fifty dollars away from Murray?

A We charge his account.

Q You charged his account with fifty? A Yes, sir.

CASE # 1168

Q Did you charge Murray,s account with fifty dollars on that day, April 6th? A Yes, his account was charged on the ledger.

Q I said on April 6th. A Under date of April 6th there is a charge of fifty dollars.

Q Now when after that did you in person credit his account with fifty dollars? A Me in person?

Q Yes.

MR. MAYNARD: He said he did not in person.

Q You did not in person? A I did not credit his account.

MR. MAYNARD: It is theother man did that.

Q Can you tell us from this book, Mr. Bagnall, the condition of Murray,s account? The condition during those months, during March and April of 1909? A The book shows just what stocks he had, yes.

Q The book shows that? A Yes.

MR. HERTZ: I offer in evidence pages 270 and 271 of Customers Ledger No. 8, G to R, J.R.W. & Company."

MR. MAYNARD: I object to that as immaterial and irrelevant, interjecting --

THE COURT: What is the relevancy of that account?

MR. MAYNARD: It has none.

MR. HERTZ: I hate to explain it.

THE COURT: Step around here.

MR. HERTZ: I offer in evidence pages 270 and 271 of

Ledger No. 8, G to R of J. R. W. & Company. I offer in evidence page 271, No. 9, Journal of J.R.W. & Company. I offer in evidence --

THE COURT: Do not offer too many at a time.

MR. HERTZ: Page on "EX". Tuesday, Thursday and Saturday," the District Attorney offered, just the one entry.

MR. MAYNARD: I shall object to the first one, because there is nothing on the page now offered save the item referring to Murray's account. These are the accounts of scores of customers, and if it be the purpose of this defendant in offering these pages to spread before the public the names of the customers --

MR. HERTZ: I shall not go beyond those pages.

MR. MAYNARD: Those pages give the names of scores of customers.

MR. HERTZ: I offer the other page.

THE COURT: I will allow that to go in evidence.

MR. MAYNARD: This is the account starting December 1st, 1908, and ending November 23rd.

(Page 270 marked Defendant's Exhibit 1 in evidence),

(Page 271 marked Defendant's Exhibit 2 in evidence).

H O W A R D F. M E A D (recalled)

CROSS EXAMINATION BY MR. HERTZ:

Q Mr. Mead, People's Exhibit 2 on page 270 of that book, of this, "May 11th, to correct charge of April 6th", do you say that is in your handwriting? A It is.

Q And it is made on the day that is designated on the book, May 11th; is that right? A Yes, sir.

Q Are you acquainted with the account of E. B. Murray?

A Merely an acquaintance of having made the entries in the account; that is all.

Q That is all? A Yes.

Q Who in your mind would be acquainted with all the items in E. B. Murray's account? A Well, there are so many items it would be impossible for anybody to be acquainted with them all without looking on the books.

Q I mean the purchase and sales; who is the man in your office that would know? A Well, any number of people; I know it; the audit clerk would know it for the day. He would probably forget it the next day.

Q Who would know of his transactions between December 31st, 1908, and April 1st, 1909? A I would as well as anybody. I keep the ledger.

Q Would you mind staying in court here until a future time. You are not going to leave the court room right away?

A No.

(THE PEOPLE REST)

MR. HERTZ: I renew my motion upon the reasons heard, and for the additional reason that in order to constitute the offense of larceny under the section under which this indictment is founded, there must be some evidence of a criminal intent to deprive the owner, in this case J. R. Williston, of their property, and in this case there is no such intent, and no such evidence has been offered. I refer your Honor particularly to the case of the people against Seldner, 62 Appellate Division.

THE COURT: Is that Lawyer Seldner? Is that the Seldner who was an attorney?

MR. HERTZ: Yes.

THE COURT: The motion is denied. It is a question of fact for the jury to pass upon.

(MR. HERTZ makes opening speech to the jury)

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CASE # 1168

COURT OF GENERAL SESSIONS OF THE PRACE
CITY AND COUNTY OF NEW YORK, PART IV

.....X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

FRANK J. BUXTON

93
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Before

HON. J. ROSAISKY, J.

. and a Jury
.....S
.

New York, May 19th, 1910, P.M.

Indictment filed July 14th, 1909

Indicted for Grand Larceny in the second degree

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

For the People Reuben Leslie Maynard

For the Defendant, Emanuel Hertz

(Testimony of the Defendant)

F R A N K J. B U X T O N, the defendant, a witness called in
his own behalf, being duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HERTZ:

Q Mr. Buxton, where do you live? A At 1036 Sterling
Place, Brooklyn.

Q How long have you been in this city? A About five
years.

Q Where did you live before you came to this city?

A Boston, Massachusetts.

Q And what has been your business since you have been

CASE # 1168

in this city? A In the stock brokerage business.

Q Speak up. A In the stock brokerage business.

Q In the stock brokerage business, With whom did you get employment when you came here from Boston? A J. R. Williston & Co.

Q How long did you stay with J. R. Williston & Co.?

A One year.

Q Until September, 19th, 1907? A Yes, sir.

Q And when you left did you get this paper? (Showing letter) A I did.

MR. HERTZ: I offer that in evidence.

MR. MAYNARD: Not the slightest objection.

(Letter marked Defendant's Exhibit 3 in evidence)

Q That paper was signed by a member of the firm? A It was.

MR. HERTZ: On the letter head of J.R. Williston & Co., Bankers & Brokers, 7 Nassau Street, New York September 19th, 1907.

TO WHOM IT MAY CONCERN: "Mr. Frank J. Ruxton was in our employ as a branch manager the larger part of a year, and we take pleasure in stating that he was uniformly courteous, attentive to his work, and we have every reason to recommend him to anyone who can make use of his services. Yours very truly, J.R. Williston & Co."

96
Q Now where did you go on and after September 19th, 1907?

A I went to work for Brown, Ryan & Williams, at 111 Broadway.

Q Brown, Ryan & Williams, is that the name? A Yes, sir.

BY MR. MAYNARD:

Q What was the number? A 111 Broadway.

BY MR. HERTZ:

Q And how long did you stay with Brown, Ryan & Williams?

A About a year.

Q That brought you down to September 19th, 1908?

A Yes, sir.

Q And where did you go at that time? A I went with --
I went with Charles Fairchild.

Q Another brokerage concern? A Yes, sir.

Q How long did you stay with them? A A short time.

BY MR. MAYNARD:

Q How long? A Oh, say four months.

BY MR. HERTZ:

Q Where did you go after that? A With J.R. Williston
& Co.

Q Did you go of your own volition or were you sent for?

A I was sent for.

Q Who later engaged you at the office of J. R. Williston
& Co.? A Mr. Paret.

Q Mr. Paret? A Paret.

Q And there you remained from that day until some time

CASE # 1168

F

496

in April of 1909? A Yes, sir.

Q And what were your duties, Mr. Buxton, with J.R. Williston & Co., when you came back again? A Assistant Manager.

Q Assistant Manager; to whom were you assistant?

A To the firm.

Q To the firm, and from whom did you get your orders?

A From the firm.

Q From the firm; from any member of the firm? A Possibly Frank Kent most of the time.

Q Do you remember -- I withdraw that; when did you first meet E. B. Murray? In that firm? A When I first went there.

Q Do you mean when you first went there the second time?

A The second time; the second time, yes sir.

Q Now, was he one of your customers? A He was not.

MR. MAYNARD: I object to that.

THE COURT: Sustained.

Q Was he one of the customers introduced by you? A He was not.

Q You simply met him; how did you meet him in there?

A He came in to my room and traded in my department.

Q For how long a time did you meet Mr. Murray that way during your second employment with J.R. Williston & Co.?

A A couple of hundred times, I should think.

Q Was he there from day to day? A Yes, sir.

Q Was he a frequent visitor there? A He was.

CASE 1168

Q Was he there daily? A Very nearly.

Q And when he did get there, how long did he remain?

MR. MAYNARD: Suppose you ask questions that are not ^{leading} recent questions. I have permitted it so far, but I shall presently object.

MR. HERTZ: When he did get there, how long did he remain? Is that a leading question?

MR. MAYNARD: Yes, that is a leading question.

MR. HERTZ: Pardon me, I withdraw then.

Q Did he remain when he called, or simply remain a few minutes? A Sometimes a few minutes, some days, all day.

Q What was his rule? A Reg pardon .

Q What was his rule? A Usually in the afternoon.

Q And how long would he stay in the afternoon? A A couple of hours.

Q Did you execute any orders for Murray? A I did.

Q Many or few? A All he had from the time I was there.

MR. MAYNARD: That is not the question.

Q Many orders or few orders? A Many.

Q Did anybody else besides yourself attend to Murray's business? A I cannot tell, unless Mr. Weber did some.

Q Who was Mr. Weber? A Margin clerk.

Q And what were his duties? A To keep the margin of each account; to see that the accounts were not below; that

they had margin enough to cover their stocks.

Q Did you receive, incident to your employment, did you receive any orders from Weber? A Quite a good many, yes, sir

Q And what were those orders? A To call on different customers --

MR. MAYNARD: I object to that. That is immaterial and irrelevant, what orders he received from Weber. What has that to do with the issue before the jury?

MR. HERTZ: If it does not connect, I will consent to have it stricken out.

BY THE COURT:

Q Was Weber a member of the firm?

MR. MAYNARD: He was not.

Q Was he your immediate superior? A In a way, yes, sir.

BY MR. MAYNARD:

Q He was not in any sense your superior, was he?

A In a way. We called for margins for customers for customers that came in to my room.

Q That does not mean he was your superior in any way.

A I don't know how you mean.

BY MR. HERTZ:

Q Did any member of the firm tell you to obey orders from Weber? A They did not.

Q Did you obey any orders of Weber's?

P-

7 99

MR. MAYNARD: I object to that in view of the last statement made by the witness.

THE COURT: Sustained.

Q Did you collect any money from your customers for the firm? A I did.

Q At whose request did you collect such funds?

A Mr. Weber's.

Q And did you deposit those funds with the firm?

A I did.

Q And did the firm accept these deposits? A They did.

Q And did certain deposits come from people whose margins were short? A They would, yes sir.

Q And were you informed that their margins were short?

A I was.

MR. MAYNARD: I object to this line of questioning. Every question is a leading question.

THE COURT: Sustained. Strike out the answer. Come right down to the present transaction; then your other evidence might make it become material.

Q Do you remember the 6th day of April, about the beginning of April, 1909? A Yes, sir.

Q Was any request made of you on that date by Mr. Weber?

A Yes, sir.

Q What did he request you to do? A He wanted me -- he came to my room and said that he needed \$50.00 and that he

CASE # 1168

100

wanted me to see Mr. Murray and get \$50.00 from him, and I went to Mr. Murray, and asked him. This was on the 5th day of April.

Q The 5th day of April?

MR. MAYNARD: You were talking about the 6th.

Q Now this conversation between yourself and Weber happened on the 5th and not on the 6th? A On the 5th, yes, sir.

Q On the 5th -- A And I went to Murray and Mr. Murray asked me if the account would stand drawing \$50.00. I told him I thought it would from what Mr. Weber said, so he said, "Well if the -- well, let Mr. Weber have \$50.00." I went back to the office.

Q Just a moment, what did Weber -- A No, I did not go back to the office.

Q What did Weber tell you before you went to Murray to get that \$50.00?

MR. MAYNARD: I object to that.

THE COURT: What did Weber tell him?

MR. MAYNARD: It is wholly immaterial and irrelevant.

THE COURT: That is the defence. I think it is material. It is a question for the jury whom to believe. And I understand, the Peoples' claim is that this defendant represented to the cashier there that

CASE # 1168

Mr. Murray called him up on the telephone and wanted the sum of \$50.00 in cash; that the cashier gave to this defendant the sum of \$50.00 in cash and obtained his receipt, his personal receipt; that the defendant then stated he would produce a receipt signed by Murray; that the following day a receipt was presented. Now the defence disclaim that any such thing occurred. The defence claim that Murray's account was short and Weber told him to secure the \$50.00 from the firm and that the money was turned over to his marginal account; to the marginal account of Murray.

MR. MAYNARD: That is not the testimony of this witness, if your Honor please; he said Weber wanted \$50.00. Murray's account did not need it, but Weber wanted it, and he sent this witness, he so testifies, to get that \$50.00.

MR. HERTZ: My next question is what he wanted it for. What was said. I do not want to lead him.

THE COURT: I will allow it.

BY MR. HERTZ:

Q What did Weber say to you when he said he wanted \$50.00 from Murray? A He wanted me to see Mr. Murray, because his account had been under water for some time, and he had bought some stock and brought it in so that it showed a profit of somewhere around \$500.00 and he thought he was entitled to

\$50.00 of it and wanted me to ask Mr. Murray for it, which I did.

Q Did you ever telephone --

THE THIRD JUROR: I would ask him to repeat the answer. Speak up. Repeat the answer.

A (Continued) That I went -- that Mr. Weber said that Mr. Murray's account was under water; had been under water for some time, but had now been -- he had bought some stock for Mr. Murray -- Mr. Weber had bought the stock for Mr. Murray.

BY THE THIRD JUROR:

Q In whose name; Mr. Weber's name? A No, Mr. Murray's name, bought the stock for Mr. Murray and which made Mr. Murray's account good by somewhere about \$300.00. That was what Mr. --

BY MR. HERTZ:

Q That is why he wanted it? A That is why he wanted \$50.00 for that work.

Q Now before you left the office of Williston that afternoon, did you telephone to Murray for any money? A No, sir.

Q Did Murray have a telephone at that time? A I think he had a telephone. I used to call him on the telephone, but it was not his own; it was in a --

Q In his name? A No, sir, in a building --

Q Murray had no place of business, had he?

MR. MAYNARD: I object to this.

CASE # 1168

THE COURT: Sustained.

Q Now, you have left the office and have reached Murray's place of business, or where Murray had his office. What conversation --

MR. MAYNARD: Are you changing the scenery?

MR. HERTZ: Yes, certainly; we are going from 5 Wall Street to 32 Nassau Street.

MR. MAYNARD: If you wish a change of scenery, kindly ask the court officer to do so; otherwise, confine yourself to questions and we will understand what the witness is talking about. This theatrical talk, I submit, is absolutely improper.

MR. HERTZ: This isn't any theatrical talk.

Q On the afternoon of April 5th, then, you called on Murray? A I called on Murray.

Q Now, what did you say to Murray. A I said Mr. Weber had brought his account up where it showed a profit, and that Mr. Weber wanted \$50.00 and that he thought that Mr. Murray would let him have it. Mr. Murray said to me, "Will my account stand drawing \$50.00?" and I told him I thought so, from what Mr. Weber said, so he said, "You can draw it and give it to Weber." I goes back to the office next morning on the 6h and told Mr. Weber, and then I drew the money on the 6th.

Q Now, when you drew the money, what did you do before

CASE # 1168

you drew the money? A I made out a slip and signed my own name to it for the account of E. B. Murray and as is usual -- as was usual with me to do these things, I promised to give him a receipt next day from E. B. Murray.

Q Wait a moment. Before you get to the receipt; when you got the \$50.00 from the cashier, what did you do with the \$50.00? A I handed it to Mr. Weber.

Q Mr. Weber; you gave it to Weber? A Yes, sir.

Q What did you do next as to the receipt which the cashier asked from you? A You mean the second receipt? The receipt that he asked for later?

Q Yes. A That, I filled out a slip --

Q Yes. A The face, the top of it had no signature on it; I handed it to Mr. Weber and told him to see Mr. Murray and have him sign it, which Mr. Weber did, as I supposed.

Q Now that was the 6th; when did you get back that receipt? A I got it the next morning, on the 7th.

Q You gave him the \$50.00 on the 6th, and you gave him this slip filled out all but the signature and asked him to get it filled out? A Yes, sir.

Q When did you get this back from Weber? A The forenoon of the 7th.

Q What? A The forenoon of the 7th.

Q Had there been any change on that paper when you got it

CASE # 1168

back? A Well, there was a signature on it.

Q Signature? A Yes.

Q And Weber gave you that slip? A He did.

Q What did he say? A He said, "Here is that slip of Murray's."

Q What did you do with that slip? A I handed it to Mr. Bagnall.

Q And that is the last you saw of this slip? A Yes, sir.

Q Of this Peoples' Exhibit 1? A Yes.

Q That closed the transaction, as far as you were concerned? A It did.

Q Now, when did you next hear about this transaction? A After the 1st of May.

Q What did you hear in reference to it? A Then Mr. Safford came to me, saying he had received a letter from Mr. Murray with the statement returned, saying there was a \$50.00 charge there which he had not received.

Q What did you do when you found out about that? A I said, "There must be some mistake."

Q Did you talk to anybody about it? Did you talk to Weber? A Yes, I talked to Weber and talked to Mr. --

Q What did you say to Weber? A I told him that they had returned that receipt, that statement.

Q Well, what did Weber say? A Weber said to me, he said, "Go down and see Mr. Murray." He said, "I cannot get

P

14

away this morning, but you go down for me this morning." He had to be there at 10 o'clock. He could not be away, so I went down to Mr. Murray's that morning about half past nine.

Q Now, when you got to Murray's that day, who was present?

A Mr. Murray.

Q Who else? A No one, when I first met him.

Q Well, what did you say to Murray and what did Murray say to you? A I asked Mr. Murray what he meant and he said he was not going to give Mr. Weber \$50.00.

Q Well? A And I said, I said, "Well, we have got your receipt." He said, "That is not my receipt." He said he didn't give Weber \$50.00

BY THE COURT:

Q He said what? A He said he didn't give Mr. Weber \$50.00.

Q He said he did not give Mr. Weber \$50.00? A Yes.

MR. MAYNARD: He said he did not give Mr. Weber \$50.00.

THE COURT: The witness said he did not give Mr. Weber \$50.00

THE WITNESS: No, I said that Mr. Murray said that he did not give Mr. Weber \$50.00; Mr. Murray would not; this is what Mr. Murray said to me.

BY MR. HERTZ:

Q What else was said? A And I said -- Mr. Murray

CASE # 1168

said that his account might have been under water, but he wanted -- he did not understand the \$50.00 being drawn from his account, and I asked him why not.

Q Now then, did Murray at that time charge you with having taken \$50.00? A He did not.

Q Did Murray ever tell you, either at that time or at any subsequent time, that you had better go and fix it up with the firm, as far as you were concerned? A No, sir.

Q Did Murray ever tell you in his place of business -- did Murray ever charge you in his place of business with having taken the \$50.00 yourself? A No, sir.

Q Now then, Mr. Safford testified that you, Mr. Safford and Mr. Murray met in the office of J. R. Williston & Co. some time in May -- and he states that Murray told you, "Why don't you tell these people the truth about this matter; tell them the truth." Was there any such conversation over there? A Not that I know of.

Q What did Murray say there, if anything? A What say?

Q What did Murray say down at Williston's office? A Didn't say anything to me in regard to it.

Q Did he ever say to you that you had signed this receipt for the \$50.00? A No, sir.

Q Did you ever admit to anybody that you had signed that receipt for \$50.00? A I did not, no, sir.

CASE # 1168

Q Did you ever tell anyone anything? A No, sir.

Q (Continued) about signing that receipt? A No, sir; never said anything about it at all.

Q Did you ever give Murray any information for which you wanted to charge him \$50.00? A No.

Q Is it a fact that Murray told Safford in your presence, or that you told Murray in Safford's presence, that you had given him information from time to time and that you felt that you were entitled to the \$50.00? A I don't understand the question.

Q At your meeting in Williston's office, between Safford, Murray and yourself, did you ever say, "I have from time to time given Murray information by which he made money and I felt I was entitled to the \$50.00." ? A I did not, no sir.

Q Did you ever appeal to Murray to help you to straighten this thing out? A No, sir. I appealed to him in this way. I said to Mr. Murray, "Now you" -- when I was down at the store; that if he would straighten that out with the firm for Mr. Weber, he could write a letter on it, which he promised that he would do; Mr. Murray promised to send a letter to the firm that he had that \$50.00; that he authorized the drawing of the \$50.00.

Q Now, who was present when he made that statement about writing a letter? A Over in Mr. Henington's.

109
17
Q That was at Henington's office? A Yes, sir.

Q And he promised that in Henington's presence? A I went to his office with Mr. Henington -- with him to Mr. Henington's office, and he told me over there.

Q Why didn't he write that letter in Mr. Henington's office? A Because he did not want to write it on Mr. Henington's letter head, and Mr. Henington did not want him to. He said as soon as he went out he would write it on his own letter head.

Q And he never wrote that letter? A Not that I know of.

Q Now, as a matter of fact, do you know of your own knowledge the amount of Murray's investment for stock with that firm?

MR. MAYNARD: I object to that except he answers yes or no.

Q Yes or no, that is all. Do you know of your own knowledge, yes or no, how much money Murray had invested with J. R. Williston & Co.? A Not the exact --

MR. MAYNARD: Yes or no is all.

A (Continued) I will say no, I cannot give the exact amount.

Q If I show you the ledger, Murray's page in the ledger, will you be able to tell us?

THE COURT: The jury will be able to tell you,

CASE # 1168

110
13
if it looks at the record.

Q Now then, did you have any further talk with any member of that firm after it became known that \$50.00 had been withdrawn from Murray's account to Weber? A No, sir.

Q Didn't you talk with Kent, Frank Kent? A Yes, I did state in --

Q He is a member of the firm, is he not? A Yes, he was one of the firms.

Q What did Frank Kent say to you about the transaction?

MR. MAYNARD: When was this?

MR. HERTZ: In May, right after it was discovered that Murray's account was \$50.00 short by reason of the withdrawal.

Q (Repeated) What did Kent say about this transaction?

A He came to me and said, "Frank, open your mouth and tell me what the trouble has been here." He said, "Don't you know anything about it? He has been using some of your customers." I said, "No, I don't know anything about it, Frank. Nothing has been done in my hearing and I cannot tell you a thing." Mr. Kent is an old friend of mine in Boston and I would tell him anything.

Q How long had you known Mr. Kent before this trouble occurred? A Fifteen years.

Q You called him "Frank" and he called you "Frank"?

A Yes, sir.

CASE # 1168

19
Q Did he ask you specifically to tell him what you knew about any particular person in that office? A He did.

Q About whom? A Mr. Weber.

Q And about whom else? A About one or two of the customers.

Q What are the names of those one or two customers?

A One Mr. Henington and one Mr. Shansky.

Q What did he say about Shansky, Henington and Weber, if anything?

MR. MAYNARD: He did not say anything about Weber as a customer?

THE WITNESS: He said that Mr. Weber had been jockeying accounts and carrying accounts without any margin whatever and that the firm had lost somewhere about \$20,000.

Q And what did he ask you to do? A He wanted me to open my mouth and tell him what I knew about it.

THE COURT: What did he say to you? The exact words, if you remember them?

THE WITNESS: He said, "Frank, I don't want to make any trouble for you," he said, "you are a *sucker*" --

Q Go ahead; what else? A It is so long ago I forget.

Q What did he say about Shansky and Henington and Weber?

A He said their accounts -- that their accounts were under water that this Weber had been carrying accounts without any

CASE # 1168

margin whatever and that he thought that Mr. Weber was getting some rake off from the customers and that he was -- he had been working that way for them for some little time and he wanted me to find out, or wanted me to let him know if I knew anything about it, or who the parties were he had been doing it with.

Q Now from the 3rd of May, or from the beginning of May, when the thing first came out, how long did you remain with J. R. Williston & Co.? A A week.

Q In the course of that week did you have any conversation with anybody else in reference to this matter? A I did not.

Q You did not? A No.

Q Both Mr. Murray and Mr. Safford stated that you admitted signing that receipt to them; did you ever make any such admission? A I did not.

Q Is it the truth that you signed this receipt, or not? A No, I did not.

Q You never signed that receipt? A No, sir.

BY THE FOURTH JUROR;

Q What was your salary in the firm? A I was getting -- I was drawing \$20.00 and then I had an expense account of almost any amount I wanted each week.

BY MR. HERTZ:

Q You were getting \$20.00 a week drawing account and then

you had an expense account? A Yes, sir.

Q Did you get that out of salary or out of commissions that you made for the firm? A That was the salary or drawing account.

Q Did you get that out of the commissions that you earned for the firm? A Why, yes, sir.

Q And at what proportion, what ratio of the commissions did you get; the firm gets, and what did you get? A About one in five.

Q What do you mean, one in five? A I would get \$100. for every \$500. commissions.

BY THE FOURTH JUROR:

Q I did not get that. A I would get -- say I *get* \$500.00 commission, my salary would be based on \$100. out of \$500.

Q That is for the customers? A That is the way my salary was based.

Q All the customers in your room? A Well, the business I turned in on my slip, not all the business in the room.

BY THE TENTH JUROR:

Q Do you mean business that you got from outside for the office? A Yes, sir.

Q Your own personal acquaintances? A Yes, sir.

BY THE FOURTH JUROR:

Q How much did you earn with this commission and salary

CASE # 1168

114
a week? A Well, I did about -- I would average over \$500.
a week.

Q A week? A That is in commissions; that.

MR. MAYNARD: That does not answer the question.

BY MR. HERTZ:

Q How much did you earn a week on an average? A Oh,
about -- well, \$50.00; \$45.00 or \$50.00.

Q Did you get the same kind of salary with Charles S.
Fairchild? A I did.

Q Did you get a salary or part commission? A No, I
got a straight salary.

Q A salary? A Yes, sir.

Q Did you get a salary with any other commission house,
or did you get one in five? A I got a salary.

Q A salary. It is only with J. R. Williston & Co. that
you got part of the commissions that you earned? A Yes, sir.

BY THE SIXTH JUROR:

Q In drawing the \$50.00 in question from the cashier, did
you make the statement that Mr. Murray had telephoned to you
and authorized you to draw \$50.00 for his account? A No.
I went down to Mr. Murray and asked him.

Q In drawing the \$50.00 from the cashier at the time you
presented your voucher for that, did you tell him that Mr.
Murray had authorized you over the telephone to draw that
amount? A Yes, sir -- that he authorized me, but not over

CASE # 1168

the telephone.

Q What did you tell the cashier when you drew that money?

A That I was drawing \$50.00 on Mr. Murray's account; that he authorized drawing \$50.00.

Q You did not mention the telephone? A No, because there was not any. He did not telephone to me at all. I saw Mr. Murray the day before.

BY MR. HERTZ:

Q Did you use the words, "Murray telephoned to me to draw \$50.00?" A No, sir. I did not.

BY THE ELEVENTH JUROR:

Q Are you acquainted with Mr. Murray's signature? A I am not, no sir, no more than --

Q He has never signed any paper to you, that is in --

A No, I used to take all my orders verbally from him on the slip; no signatures; he might possibly have drawn some money during the time, but if he did I would not remember the signature; I had so many of them.

BY THE SEVENTH JUROR:

Q Did you get any references from the other firms that you worked for before? A Yes, sir.

CROSS EXAMINATION BY MR. MAYNARD:

Q You had worked for the firm of J. R. Williston & Co. some years before this trouble arose, I understand? A Yes,

CASE 1168

I worked one year before and then I left them and went to work for them again later.

Q Was your friend, Mr. Kent, a member of the firm at that time? A Not the first time, but the second time.

Q Well, why did you leave them the first time? A I was offered some better inducement.

Q Did you ask for the letter of recommendation at that time? A I think not. I think Mr. Paret offered me one when I was in his office, and I told him I had been made an offer from another firm, and he wished me good luck and asked me if I wanted a recommendation; that is, as I remember it.

Q Well, he urged it upon you. You didn't need it? A No, I don't know as he urged it.

Q Well, you didn't need it? You had already taken a position, hadn't you? A Well, I don't know as I --

Q They rather urged it upon you, didn't they? A No, I don't know as they urged it upon me.

Q You did not ask for it, did you? A I don't remember. I can't tell you, I don't think I did.

Q Well, you didn't need it, did you? You had already taken the position, hadn't you? A Oh, yes.

Q So you didn't need it, and you didn't ask for it and you have got it? They must have urged it upon you. Didn't they rather insist that you -- A No, I don't think they urged it on me. I might have asked for it.

117
25
Q Now, who did you go to work for? A Who did I go to work for?

Q Yes, at that time? A For Brown, Ryan & Williams.

Q Brown, Ryan & Williams. When did you go to work for them? A Well, I cannot exactly tell.

Q Why can't you? A Let's see; the date, I have not got the date well established in my memory, but just as soon as I left Williston's I went with Brown, Ryan & Williams. I went from Williston's to Brown, Ryan & Williams, when I left.

Q When did you leave? A I don't know the exact time when I went to work for Mr. Williston the first time, and I worked there a year, I know, and then from then I went with Brown, Ryan & Williams.

Q The first firm that you worked for when you came here was for Williston, wasn't it? A Yes, J.R. Williston.

Q How long have you been here? A Well, four years and a half, I think, or five years.

Q Well, is it five years? A Four years and a half.

Q Four years and a half; and you worked for a year with Williston & Co. and then you went to the other concern, Brown Ryan & Williams, is that right? A Yes, sir.

Q Well that is -- A That must have been in 1895 -- then I worked there until 1906 --

Q I am not asking you -- you are anticipating, trying to avoid something. On September 19th, 1907 where were you em-

CASE # 1168

played? A I think at Brown, Ryan & Williams.

Q And you went from that concern to Brown, Ryan & Williams? A Yes, sir.

Q I notice this letter is dated September 19th, 1907 and you got it after you were employed? A Yes, I got it after I was employed.

Q Well, you have a stock of these letters of recommendation, haven't you? A No, I have two or three.

Q Two or three; I thought you had a stock of them? A Oh, no.

Q Just two or three, and did you get the others in order to aid you to get a new position? A Oh, no.

Q Didn't need those? A No.

Q The other people -- A I don't know as I needed them but I always like to have a thing like that with me.

Q That is what I am trying to get at? A Yes, sir.

Q So you did not object to receiving that letter from the concern? A No, sir.

Q Not if you needed it at all. Well now, in what capacity were you employed by Brown, Ryan & Williams? A As assistant manager, just the same.

Q Assistant Manager, just the same? A Yes.

Q Who were you assistant to there? A Well, it was the firm; that is about all; they call them assistant managers, these room men.

CASE # 1168

Q Did they have a manager there at the other place, at Brown, Ryan & Williams, a real manager? A They had three or four of them.

Q Real managers? A Just the same as myself.

Q Well, you were only an assistant manager? A Well, you can call me a manager then, if you want; I don't know what they call it.

Q Now, were you a manager at J. R. Williston's? A Assistant to the firm.

Q Well, were you an assistant to the firm of J. R. Williston ' Co.? A Yes.

Q Now -- A If you want to term it that way.

Q I don't want to term it so. I want to get the truth. I has been testified by others that you were an assistant manager. What is the fact? A Well, I can tell you.

Q Not what you can call it; what is the fact? Now, were you their manager, or were you their assistant manager?

A Well --

Q What was the truth? A I was the manager.

Q You were the manager? A Yes, sir.

Q For J. R. Williston? A Or assistant to the firm.

Q You were the manager. Now you knew a man named Safford there, didn't you? A Yes, sir.

Q Was he a superior of yours? A I don't think so; no.

Q Well, was he; I don't care what you think. A No.

Q He was not? A No. I didn't hear so; I was never notified he was.

Q Did you ever take directions from him? A No, sir.

Q Weren't you discharged by him? A He came and told me

Q Do you object to say yes or no? A No sir; I was not discharged by him.

Q You were not? A No, sir.

Q You were not discharged by him? A No, sir.

Q Who did discharge you? A Mr. Kent.

Q That was your friend? A I know it.

Q And he discharged you? A Mr. Kent told me I would have to go; the firm would have --

Q To dispense with your services? A Dispense with my services, yes, sir.

Q And it was your own best friend in the firm that discharged you? A Yes, he felt very sorry.

Q I don't doubt that, and you felt sorry too. A I certainly did.

Q Well, now, at the time that you were employed there what stated salary did you have? A Well, they were giving me \$20.00.

Q Was that your stated salary? A That was what I was allowed to draw.

Q \$20.00 a week? A Yes, sir.

CASE # 1168

Q You said you had unlimited expense money. A It was not unlimited.

Q You said, "any amount"; I took your word? A Yes, some weeks I would get \$20.00 or \$15.00, and some weeks \$5.00 or \$6.00.

Q What was your expense account made up of? You, as a manager, didn't have any expense? A Yes, sir.

Q What were they? A Entertaining some customers and perhaps taking them out to lunch, buying some cigars for them almost anything.

Q Champagne, or anything? A Well, I didn't use to drink very much champagne.

MR. HERTZ: Speak up.

A (Continued) I did not drink very much champagne, but if a customer wanted it, they could have it.

Q Was that the custom in the other concerns where you worked, that they let you entertain the customers at their expense? A Some of the time, yes sir; not all the time; not as fully as Mr. Williston -- as the firm of J.R. Williston & Co. did.

Q They gave you a pretty free hand, J. R. Williston & Co.?

A Well; not so free; not any more than any of the other assistant managers.

Q Of the concern? A Of the concern.

Q Well, they trusted you, didn't they? A They cer-

tainly did. Yes.

Q Now, was it your friend, Mr. Kent, that hired you the time you went back there, the second time? A Mr. Kent and Mr. Paret.

Q Haven't you the words yes or no in your vocabulary? Do you never use the words yes or no? Now did Mr. Kent hire you the second time that you went there? A Both him and Mr. Paret.

Q Yes or no. A Both of the firm.

Q Both; two of the firm? A Yes.

Q It took two men to hire you? A Yes, sir.

Q Was Paret a member of the firm? A Yes, he was.

Q Wasn't he a manager also? A Yes, sir; that is, he looked after the firm.

Q Well, he was the manager, wasn't he? A Yes.

Q Didn't Safford take his place? A I don't know what Mr. Safford did, but Mr. Safford was not over the customers men, which were called either managers or assistant managers. I cannot designate them.

Q Did Mr. Safford take Paret's place in the office and do the work that Paret had done? A I think that he sort of took the place, but not one of the firm. He did not take his place as one of the firm.

Q But he took his place in the office and did the duties that Paret had theretofore done, didn't he? A Not all

CASE # 1168

P

123
32

of them, no, sir.

Q Not all of them? A No, sir.

Q Paret had supervision of you assistants, didn't he?

A Yes.

Q The employees? A Yes.

Q Well, had Safford supervision of the Employees?

A The clerical employees, but not the room managers.

Q Not the room managers? A As I understand it; as I always understood it.

Q There was never any conflict about that? A No, no conflict at all, because Mr. Safford had very little to do with the room managers.

Q Well, wasn't Safford a room manager? A Not that I know.

Q What? A Yes, I guess he had customers of his own and would be called an assistant manager, just the same as manager.

Q You guess as wide as that, that Safford was sort of assistant manager himself, is that right? A He was a manager and assistant manager.

Q Well now, you were in charge of a room? A Yes, sir.

Q How many of these rooms were there; customers' rooms?

A There were three.

Q Three; who were in charge of the others? A Well,

CASE # 1168

P

38

I guess there were four or five, if you want to call that another room. 124

Q I don't want to call them anything, but I don't want you to guess. A We will call it four.

Q Make it four? A Yes.

Q Won't you make it five? A Let me see; one; two, three -- that is all I know; two assistant managers in one room; that would make five assistant managers.

Q Well, will you make it five; five rooms? A No; four rooms.

Q Wouldn't make it five? A Five assistant managers, as we will call them.

Q Five assistant managers in four rooms; all right. Now was Mr. Safford at any time in charge of any one of these rooms? A I think he was when he first went there.

Q Well, he took Paxet's place. A He handled some -- I think he was there before Mr. Paxet went, if I remember correctly.

Q You think he was there when Paxet was there? A Yes, sir, but after Mr. Paxet went out.

Q Well now, in the year 1909 was Safford in charge of any customers' room? A I think not. I don't know.

Q What was he doing? A He had charge of the clerks, the clerical clerks and bookkeepers and --

Q Clerical clerks, and you were a grade higher than that;

CASE # 1168

than the clerks? A I don't know how you would call it.
It was really a separate department, you might say.

Q Well now, in 1908 when you went there; I take it
that is the year you went there? A 1908? Yes, sir.

Q This letter is September 1907? A Yes, sir, 1908.

Q And you were with Williston & Co. a year and a half,
weren't you, this last time? A It seems to me I was
there a year. I am not positive that I went the second time
in May in 1908, or earlier.

Q Well, at the time that you went there did you bring
any customers from that other concern, from Brown, Ryan &
Williams; take any of their customers over? A I did not
take any of theirs; no, sir.

Q Did you have any of your own when you were over there?
A Yes, sir.

Q Did they go with you to the other concern? A Yes.

Q Then you did take some of the customers, didn't you?
A Well, yes, I took some of my own customers over there.

Q Well, about how many did you take? A Well, I think
there was a couple went right off with me; perhaps three.

Q Then afterwards you got acquainted with the customers
of the concern of Williston & Co.? A Yes, sir.

Q That is, they came in to your room? A Yes, sir.

Q And among those was this Mr. Murray? A Yes, sir.

Q You had not known him before? A No; I never knew

126
34
him before.

Q Well, did you have particular charge of his affairs after he came there? A No, only to take his orders; that is what I did. He used to stay in my room with me.

Q I am not asking you anything about that. Did he have a pretty active account? A Well, I should not consider it very active; no.

Q Why, he was there every day? A He used to come in and sit and look at the figures; he would come in without doing anything for a week at a time.

Q Sit there and look at the ticker for a couple of hours? A Yes, sir.

Q But he did not buy or sell much? A No, I don't think he did.

Q His lots were small anyway, twenty share lots, and of course, he had some sixty and some ten.

Q You thought he was a sort of piker? A Well, not that; only he did not do very much business.

Q Well, did he turn in any money to the concern through you? A I don't remember that he did; he might have.

Q Did he ever give you any orders? A Oh yes; yes, sir.

Q Well, at the time he gave you orders, he did not give you any money? A No, I think not.

Q No? Just said -- A He did not give me any, no.

CASE # 1168

35 127
Q And he did give you the orders? A Yes, he gave me the orders.

Q And you understood he had an open account and money to spare, didn't you? A Until Mr. --

Q Well, you did? A Yes, of course. I would take them until they stopped me at the office.

Q Yes. If he did not have any money you would expect him to present this order and a check or cash, wouldn't you, when he ordered stock? A No.

Q Wouldn't you? A No, sir.

Q If he didn't have any open account or anything to his credit, you would not expect cash or a check? A When the order was executed, no sir.

Q When the order was given? A No, sir.

Q That is, for an old customer of the house? A An old customer. Of course a new customer coming in --

Q That is quite a different proposition? A Yes, sir.

Q When was the first time you ever went to Murray's private office? A Oh, I had been there several times.

Q You knew Mr. Murray pretty well, then? A Oh, yes.

Q Have any private business with him? A Not a bit.

Q Never, at any time? A Only we would sit down and talk sometimes, when I would walk around to these old customers or go to see some new ones.

MR. HERTZ: Speak up, will you?

CASE # 1168

P

36

158

A (Continued) I might go to see him, to say, "how do you do."

Q He was not much of a customer, and did not buy or sell very much; yet you went to see him at his office? A For business, if I could.

Q He was there every day a couple of hours in the office?

A I would go there when I was going by.

Q Where did you live? A I lived at that time at 104th Street if I remember correctly.

Q In the Bronx? A No; west 104th.

Q Up the city? A Harlem; it is up the city.

Q Well, did your path towards home lead by his office?

A Yes, I used --

Q You made it lead by? A After 3 o'clock I used to go around everywhere.

Q He was then at 321 Greenwich Street. A I used to walk from there --

Q I have not said anything about that. What was the number on Greenwich street at that time? A Well, I don't know the exact number, but I think it was 231.

Q Where was it near; what street? A It was near Duane Street.

Q Near Duane Street? A Yes, I don't know the street this side of it, but it is between the street this side and Duane.

Q How many times do you think you were at his office prior

CASE # 1168

to the time this trouble arose? A Prior to that, possibly six or eight times.

Q Six or eight times; did you have any correspondence with him in any way, shape or manner? A Not that I know, I don't remember.

Q At the time he gave you such orders as he did give, did he write them out for you? A No, sir.

Q You did that yourself? A I did not write them at all; just put them on my pad that was on the desk.

Q Well now, do you remember the day when Safford gave you this paper? A I don't remember ever seeing it before; he never gave it to me.

Q Well, look at it. Didn't you tell the jury a little while ago that Mr. Safford showed you a letter from Mr. Murray?

A I don't remember that I said that.

Q That is my question. A No. I did not tell the jury

Q You did not tell the jury so? A No, he said he had got a letter, received a letter from him. He told me he had received a letter from Mr. Murray.

Q I wrote your words down as you testified. I wrote them down myself. Safford showed you a letter, didn't he?

A He did not take that letter in to me and show it to me. He walked in and told me he had received a letter from Mr. Murray stating that his account was not correct.

Q Well, didn't Safford have the letter in his hand at

F

38 130

the time? A I don't know. I don't remember.

Q Well, what did Safford say to you and what did you say to him? A He said that Mr. Murray's account was wrong; that Mr. Murray had written him stating that there was \$50.00 drawn that he had not authorized and there must be some mistake and I said, "There must be a mistake."

Q Yes. Now how do you account for the fact that Safford came to you about it? He was not your superior officer, was he? A No.

Q He was not over you in any way? A No.

Q Why on earth did he, just a manager, come and talk to you about the letter? A Because he found out I drew \$50.00 there myself, and Mr. Murray was in my office.

Q Well, did he tell you he had found that out? A He did not, he did not, no, sir; he did not, he did not tell me that.

Q Why do you tell us now that he had found it out?

A Who do you mean found it out?

Q Safford. A Found it out?

Q You are the man that was talking about it; you said that Safford had already found out you had taken the \$50.00 and that was the reason he came to you about it? A I did not mean to say that. I suppose Mr. Safford found it out and that is why he came to me. He probably asked Mr. Ragnall who drew the \$50.00.

CASE # 1168

1212

Q Now, you were not in any way inseparably connected with the E. B. Murray so you would be the natural person to go to about anything about his account? I am trying to find --

A Why, no.

Q (Continued) out why Safford should come to you?

A Because he was trading in my room at that time; that is why.

Q He was not your customer? A No, that is right; that didn't make any difference. You know if he was Mr. Weber's customer, which Mr. Weber claimed to me ^{that} at Mr. Henington was his customer, and Mr. Murray was brought in by Mr. Henington and consequently Mr. Weber claimed Mr. Henington and Mr. Murray --

Q You have not said anything about Shansky? A No, he was my customer.

Q He was your customer? A Yes, sir.

Q I thought Henington and Weber and Shansky were sort of all tied together; you could not say a word to one without saying it to the other? A No.

Q Had I asked you anything about Weber?

MR. HERTZ: Will you let him finish?

Q (Continued) Have you heard me ask you any questions about Weber so far? A I don't remember it.

Q What are you talking about? Have you heard me ask any questions about Henington thus far? A I was explain-

CASE # 1168