

ing to you.

Q Have you heard me ask any such question? A No, sir.

Q Well, what are you talking about that for? A I was trying to explain the thing, to make it clear.

Q Well, all right; we will try and do that by questions, please. Now, there was a day early in May after Safford had talked with you about the communication about Murray's account -- now after that did you go and see Murray at his office?

A I did, yes, sir.

Q What did you go there for? A Mr. Weber came to me --

Q Mr. -- A Wait a minute; I will explain it. Mr. Weber came to me and said Mr. Murray --

Q Now just a minute; will you answer my question?

Question repeated by the stenographer as follows:

"Q What did you go there for?"

A For Mr. Weber.

Q For Mr. Weber? A Yes, sir.

Q Did Safford talk to Weber? A I don't know.

Q Safford talked to you, didn't he, about the Murray account? A He did.

Q And then you went to Murray's, didn't you? A Not directly, no, sir.

Q You did not? A No, sir.

Q You waited over night, did you? A No; I think it was the same day.

Q The same day that he talked with you? A It might have been over night; I cannot tell you; it might have been in the afternoon that Mr. Safford spoke to me, or noon time, or something like that.

Q What do you think it was; was it the same day or wasn't it? A I am not positive.

Q Well, what do you think? Was it the same day or not, what is your strong impression about it? A My strong impression is that it was the next day or the day after that.

Q Before you went? A Yes.

Q And this had not troubled you much? A No, it had not troubled me; not particularly, of course.

Q The fact there was trouble about the Murray account had not troubled you much? A Why, I didn't think it was up to me; that is all.

Q Although you had gotten the money, you did not think it was up to you? A I got it there --

Q You got the money, didn't you? You didn't think it was up to you? A I took the money, yes, sir.

Q And you had given a receipt for the money in the first instance, hadn't you? A In my own name, yes, sir.

Q And then substituted a receipt which you said was Murray's receipt, hadn't you? A I did.

Q And trouble arose about that and you were not worried about it? A Why, I was not worried, no; nothing more

than I did not think it was up to me, that I was to blame.

Q In no way concerned about it? Well, you said today you did see Murray, it was 9:30 in the morning. A That is 9:30 in the morning.

Q What time did the people get to your office? A About 9 o'clock. I most always got in around 9 o'clock.

Q What time did Safford get there? A I think Mr. Safford was always there early; somewhere around 9 o'clock; it might have been half past nine or perhaps ten o'clock; almost ten o'clock some mornings.

Q Did he open the mail? A He did, yes, sir.

Q Well, do you think he might have opened the mail and walked right in and seen you with the letter in his hand and said, "There is trouble about Murray's account"? A He might have done it; I cannot say for sure.

Q Well, is that -- A I cannot remember that.

Q If that was the case and you got to Murray's office about 9:30 you must have put spurs on the heels of your industry; what do you think? You did not lose any time in getting to Murray's office, did you? You got right over there? A Well, I was asked to come down before 10 o'clock.

Q Well, you got right over to Murray's office, didn't you, just as soon as Safford called your attention to that letter? A No sir, I don't think so.

Q You don't think so? A I don't think it was on the

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same morning. I think it was a day or two afterwards.

Q Well, was it the same day that you called on Murray at his office, that you saw Murray in the reception room with Safford? A I did not see Mr. Murray in the reception room with Safford.

Q Didn't you? A No, sir; I did not.

Q Why, I thought you testified that you did? A No, sir.

Q Why, the testimony that Murray gave about being in the reception room with you and a member of the firm, Mr. Safford, was false? A Yes, sir.

Q And the testimony --

THE COURT: Just a moment. The last answer must be stricken out, although no objection be made.

MR. MAYNARD: I will consent that it be stricken out.

THE COURT: You cannot have a witness characterize testimony.

Q You have heard the witness, Safford, testify today in respect to the conference held in the reception room? A Yes, I heard that.

Q Weren't you present at any such conference as that?

A No, I was not. I was not present at any conference with Mr. Murray and Mr. Safford.

Q Never were shown that piece of paper by Mr. Safford?

A No, sir.

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Q Nor anybody else? A No, sir.

Q You never saw that paper after you gave it to Bagnall?

A No, sir.

Q Until you saw it here in court? A Until I saw it here.

Q Never saw it in the interim at all? A No, sir.

Q And nobody ever asked you whether you signed that or not? A No, sir.

Q And nobody ever questioned you about the correctness of that signature? A No, sir.

Q Not even your friend, Kent? A No.

Q Nor any member of your firm? A No.

Q When did you first learn that it was claimed that that signature of Murray's was a forgery? A When I was arrested.

Q Who told you then? A Well, I cannot tell -- I cannot tell you whether it was the officer or who it was, Mr. Maynard.

Q Well, at the time that Safford told you there was trouble with Murray's account, didn't you go right to Bagnall and look at the files and see that receipt? A Oh, no.

Q Well, now, why didn't you? A Well, I am not -- I never would do such a thing; never did such a thing.

Q You were conscious of the fact that you had received the money, weren't you? A Yes.

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Q Didn't it occur to you to see whether or not you were protected in the matter by receipts? A Well, I did not look for that, as it was another party and I was authorized to do it, and I supposed that was --

Q Now when did Murray authorize you to do that? A April 5th, the day before it was drawn.

Q April 5th Murray authorized you to draw money for him? A 1909. To give to Weber.

Q Yes.

THE COURT: Pardon me a moment. I presume you will occupy some time?

MR. MAYNARD: Yes, I will.

THE COURT: Before we adjourn I would like to ask you one question.

THE WITNESS: Yes, sir.

BY THE COURT:

Q On May -- when was this alleged conference held? On May 11th?

MR. MAYNARD: The early part of May; about the 5th someone has said.

Q (Continued) About May 5th, 1909, was Mr. Weber still employed by the firm? A I think Mr. Weber was discharged about that day. I do not remember the exact dates, but I know that I was discharged a week after Mr. Weber was discharged.

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Q Well, did you ever tell Mr. Stafford --

MR. MAYNARD: Mr. Safford.

Q (Continued,) Safford rather, or the cashier, or any member of the firm, that you had given the \$50.00 to Weber?

A No, I did not tell anybody.

Q As I understand you, you had no talk concerning the \$50.00 with Mr. Safford or with the cashier? A No, sir; only with Mr. Murray and I drew it and gave it to Mr. Weber and got his receipt.

Q Well, who discharged you? A Mr. Kent.

Q Did you ask him for any reason why you were discharged?

A Oh, yes; there was a mixup there and he came -- I did not ask him; he came to me and told me on account of some accounts being under water, carrying the accounts without any margin --

MR. MAYNARD: Talk a little louder so the jury can hear you.

A (Continued) They were carrying the accounts without any margin, that two of the customers being, one of the customers being mine; that he thought that I might be implicated in it with Mr. Weber, and the firm thought that I had better go.

Q When did you first learn about the \$50.00 transaction; that there was some question as to this \$50.00 withdrawal?

A When Mr. Safford came into my office and told me that Mr. Murray had returned his statement and said there was some

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trouble; that there was some error.

Q Did you on that occasion tell Mr. Safford that you obtained \$50.00 from the cashier at the request of Mr. Murray?

A Yes, sir.

Q And that you gave the money to Weber? A Yes sir, I did.

Q To Mr. Safford? A Yes, I told Mr. Safford and also told Mr. Bagnall when I delivered it, that Mr. Murray had authorized me.

Q I know, but you told Mr. Safford? A Yes, if I remember correctly.

Q Well, now, Mr. Baxton, this is a very important matter. Do you remember ever having told? A I did. Yes, I did.

Q You are sure about that? A Yes, sir.

Q Was Mr. Weber at that time in the employ of the concern?

A He was.

Q Sure about that? A I am quite sure. I cannot say -- I do not remember the exact dates, but I should say he was.

Q Do you know the whereabouts of Mr. Weber? A I do not. I cannot -- he told me some time ago -- I have had him in tow quite a little -- that is to find him and had him come twice to Mr. Hertz's office, and although he did not find Mr. Hertz --

MR. MAYNARD: The jurors do not hear you.

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A (Continued) He did not find Mr. Hertz, so the last time I saw him was five or six months ago and he said he was going up above Montreal with a paper concern; they were going to build a paper mill, or had built one, and he was going with them. That is the last I have heard of Mr. Weber. I went around to his house --

BY MR. MAYNARD:

Q Well, you took from him, before he went away, a statement over his handwriting, that he had received the money from you, didn't you? A I did not, no, sir.

Q Didn't you? A No, sir.

(The Court thereupon admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned for trial of the case until 10:30 A.M. Friday morning, May 20th, 1910.)

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New York, May 20th, 1910.

FRANK J. BUXTON, the defendant, resumes the stand.

CROSS-EXAMINATION BY MR. MAYNARD.

Q On your direct examination, by your attorney, you were asked the question, at your meeting in J. R. Williston & Company'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 fifty dollars," and you answered, "I did not?" A No, sir.

Q Will you tell me what was said to you at the meeting in Williston's office between Safford, Murray and yourself, by anybody? A I didn't meet them. I don't remember meeting Mr. Murray and Mr. Safford and myself together at any time.

Q Why did you answer this question asked you-- "At the meeting in your office, between Safford, Murray and yourself, did you say, 'I have from time to time given Murray information by which he made money, and I felt I was entitled to the fifty dollars,'" and you answered, "I didn't"? A No, sir.

Q You didn't say that there had been such a meeting? A I don't know as I did.

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I don't know as I did, or I didn't understand the question fully.

Q Have you told your counsel as to that? A No, sir, I didn't.

THE COURT: You cannot inquire whether he told his lawyer that.

MR. MAYNARD: I withdraw the question.

Q Now, let us have this matter perfectly clear. Did I understand you to say that you never discussed this matter of the fifty dollars' withdrawal charge from Murray's account in the presence of Mr. Murray and Mr. Safford?

A Yes, sir.

MR. HERTZ: I object to it as calling for a conclusion.

Objection sustained.

MR. MAYNARD: There is testimony by Murray that it was after his receipt-- I withdraw that question.

Q Do I understand you to say that you never discussed this matter of the fifty dollars withdrawal charged to Murray's account in the presence of Mr. Safford or Mr. Murray? A No, sir; I never did.

Q Now, when was the first time that you ever talked with anybody about the withdrawal of the fifty dollars on Mr. Murray's account?

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A Do you want me to go back to Mr. Weber? A I want you to answer my question. The stenographer will read it to you.

(Question repeated by the stenographer.)

THE WITNESS: On April 5th, Mr. Weber--

Q April 5th, was it?

MR. HERTZ: May I ask permission of the Court, that the witness be allowed to complete his answer and not be broken in upon.

THE COURT: The witness was asked when and he has answered.

THE WITNESS: I have been in the hospital for five weeks. I am a little weak. I don't know; I am a little bit weak; I will do the best I can to make it clear.

BY MR. MAYNARD:

Q You are a pretty sick man to-day, are you?

A I am not very well.

Q Always need medical attendance? A I do.

Q Came to the court house with help, didn't you?

A No, sir.

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Q Came over alone? A Yes, sir.

Q Who first talked to you of the fifth of April?

A Of the fifth?

Q How long prior to that had you known Mr. Weber?

A From the time I went in there; the day I went there.

Q State to the jury how long you had known that man prior to that day or year? A I think he went the 1st of October. He was there when I was there.

Q When you went there? A Yes, sir; he was there.

Q The second time? A Yes, sir.

Q The first time, he wasn't there? A No, sir.

Q When you came back he was the margin clerk?

A Yes, sir; the second time I went there he was the margin clerk.

Q As I understand it, the offices of J. R. Williston & Company before April 1909, were on the corner of Nassau and Pine street? A Yes, sir.

Q And the shape of the office was an L, part of the office on Pine street and part of it on Nassau street?

A An L shape.

Q Did I understand you to say that your room, the customers' room, was on the Nassau street side, is that true or not? A Both sides.

Q Didn't you testify yesterday that you were in

charge of one room, the customers' room? A I was in charge of one end of the room, then I went back to the other room again. We will say this is the Nassau street side.

Q Leave out these remarks, because the truth is very essential with you. A It certainly is.

MR. HERTZ: I take exception to any comment which is not fair.

THE COURT: Strike it out.

BY MR. MAYNARD:

Q Now, on April 5th, 1909, it is the truth that you were in charge of the customers' room on the Nassau street side of J. R. Williston & Company's office?

A I was.

Q Now, where was the room in which Weber was employed?

A His desk was inside of the railing, a closed partition.

Q On what street? A It was right in the corner of Nassau street and Pine street, I think it was.

Q Didn't you have to go through the corridor, and around to the other room to get to your room, to the place where Weber was? A Around through my room.

Q You had to go out into the corridor and around? A Yes, sir, If I wanted to see him; but I could speak through the window.

Q You could speak through the window? A Yes,

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sir; he was in my office.

Q Was this a conference that you had with him through the window? A No, sir.

Q Well, where was it? A He came into my office.

Q What time did he come there? A I can't tell you the exact time, but it was sometime before three o'clock.

Q It was during the business hours of the day?

A It was.

Q What was his duty in the office? A To keep margins.

Q What time was he in active duty as margin clerk?

A From ten to three.

Q I suppose he was at this slate during all that time? A No, sir.

Q Was he? A No, sir.

Q Did anybody else have charge of the margins?

A Not that I know of; but he couldn't leave the building.

Q He wasn't tied down? A No. He could walk through the rooms, that is what I mean.

Q Do you mean to tell this jury that the margin clerk is free to roam in the office of a broker during the time when the stock exchange is in session? A I don't know whether he is free to do it; I know he did it.

Q You know that he did? A Yes, sir.

Q What did Weber say to you? A He told me what he wanted. He said, "I want fifty dollars. I wish you would see Mr. Murray, and ask Mr. Murray to let me have fifty. His account is under fifty, and ask him if he will let me have it."

Q I understand you to say that pursuant to his request, you went to see Murray? A Yes, sir; I did, after three o'clock.

Q After three o'clock? A Yes, sir.

Q I understand you to say that you got permission from Murray? A Yes, sir.

Q To have Weber draw fifty dollars? A Yes, sir; if his account would stand for fifty dollars. I drew fifty dollars and gave it to Weber.

Q Did you make the report of that to Weber when you came back? A I did when I came back the next morning.

Q About the money, the fifty dollars you got from Bagnall? A. That I got from Bagnall.

Q Bagnall was the cashier? A Yes, sir.

Q He was in the cage? A Yes, sir.

Q How far was he away from Weber? A Only a few feet, perhaps six or eight feet; six or eight or ten

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feet, something like that.

Q He was eight feet away, wasn't he? A If he was at this point--

Q Between six and eight feet from Bagnall was where he was? A Yes, sir; but I don't know as he was there when I drew the money.

Q You don't know that? A I don't know that.

Q What time of day did you draw the money? A The next morning.

Q What time? A If I remember correctly, sometime before twelve o'clock. I can't honestly say.

Q During business hours? A Yes, sir; during business hours.

Q During business hours, Weber's duty was to be on the slate? A Yes, sir; it was.

Q Then if he was attending to his duties at the time you got this money he was just a few feet away from Bagnall? A Yes, sir.

Q There, attending to his duties? A Yes, sir.

Q Will you tell this jury why it was necessary under the circumstances to go around and ask Bagnall for the money when Weber himself was six feet away from him? A That was the general course of business. The customers would come there and I went in there if there was any money to be drawn, by customers that were in my

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room, I would go to Mr. Weber and get him to give me the money in my name and I would give him my own personal receipt.

Q You would get the money off Weber? A Yes, sir.

Q Why did you give your personal receipt?

A Because I was to give Weber the receipt. I didn't know he wanted it-- the next morning I didn't show up when he wanted me.

Q Who Weber? A Yes, sir. I didn't know-- I always gave a receipt when I got the money.

Q At the time you got the money you didn't know whether Weber wanted the money? A I knew he wanted it himself.

Q You knew he wanted it the day before, you say? A Yes, sir.

Q Then you went and got permission to draw it? A I didn't know what time he wanted to draw it.

Q You came back to him and said that Murray said that he might draw it? A Yes, sir.

Q You say you didn't discover the correct time at which you should withdraw the money? A He said he wanted it then, that forenoon.

Q That forenoon? A I didn't know whether he was

going to get it that afternoon or the next day or some other day.

Q You didn't understand that he was going to get it?

A Yes sir.

Q Why did you go for it? A Why, did I go for it? Because it was the general course of work for the customers. I always done that and I did it for every customer, everybody that was in my room, and that is the way I drew the money unless they went up to the window when I wasn't there.

Q In such transactions where the customer signed a receipt, did you sign a receipt? A Never. I never signed a receipt unless they would say over the telephone-- as often my customers would say, "I wish you would get me a hundred or five hundred," and I would say, "All right." I would give my receipt and then I gave it to the customers and got their receipt and handed it in.

BY MR. MAYNARD:

Q Now, in your own transactions when you gave your personal receipt, you went and got the customer's receipt, didn't you? A Yes sir.

Q When you got for a customer any money on his account and gave your personal receipt, you afterwards went to him and got his receipt for your self? A Yes sir.

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Q That was your protection? A Afterwards I did that.

Q Now, you got a receipt for fifty dollars? A Sometimes he would say, "I will put it in the morning."

Q You gave your personal receipt for fifty dollars, did you? A Yes sir.

Q To be charged against Murray's account? A Yes sir.

Q Did you go to Murray and get his receipt to take the place of yours? A No, I gave it to Weber, for him to see it.

Q Had you ever written a receipt of that kind before? A Yes sir.

Q Who did you ever sign one for before? A I can't tell you now. I couldn't tell who the customer was.

Q I think you mean to say -- A If I remember correctly. I have to be positive. I won't say that I did or did not.

Q You knew that your receipt charged you with fifty dollars, don't you? A Yes sir.

Q Unless you got a receipt from the customer? A Yes sir.

Q Now, you say that Weber said for you to go and see Murray, and you went to see him? A Yes sir.

Q You say that you gave fifty dollars to Weber and asked Weber to go and see Murray and get a receipt? A Yes sir.

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Q Now, how do you reconcile those two statements? You are the errand boy on one occasion and Weber is the errand^{boy} on the other. You are concerned in one and not in the other?

Objected to. Objection sustained.

Q Did you ever go to Mr. Murray to get a receipt, to relieve you of your personal receipt? A No sir, I made out a receipt for Mr. Weber, to go to him himself, and he said, he would. He would see Mr. Murray several times, if Murray came in, he would speak to Mr. Murray and say, what he has done.

Q When you gave your personal receipt, what did you tell Bagnall? A I told him I wanted it. I told him, I wanted this fifty dollars on Mr. Murray's account.

Q What did you tell him about the account? A I told him to charge this money to him. I told him whose account it was.

Q Did you tell him you would get the receipt? A Yes sir.

Q What did you tell him? A That I would bring Mr. Murray's receipt in, the next day or some day shortly.

Q Didn't you tell him that you would give it to him tomorrow morning, as Bagnall testified? A I did not know whether it would be to-morrow. I did not know what time I would get it, but usually when I have drawn that way I would give it to him, perhaps in two or three days.

Q Wasn't it important for you to get back your personal receipts? A It certainly was. In case of death or anything.

Q In case of life it might be important, might it not?

A Yes sir.

Q But you told the jury you didn't get it, and the receipt that you filled out -- that you filled out the receipt all except the signature? A Yes sir.

Q And gave it to Weber? A Yes sir.

Q And asked Weber to do you the favor of going to see Murray? A It wasn't doing me -- it was doing him a favor. He was doing it for himself, it wasn't me; I didn't have anything to do with it, no more than to help him. I was doing him the favor in the first place.

Q You had the receipt on both? They charged you with fifty dollars? A I did.

Q Didn't you ask him to do you the favor of getting a receipt for each? You were liable for that fifty? A I didn't
to
take that in consideration at all.

Q You didn't think that was a favor to you? A No sir, I didn't think so.

Q It didn't release you from liability? A I supposed everything was on the level and straight. I didn't think of that.

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Q Now, you stated on your examination that you were at the office of a man named Henningson? A Yes sir, Henningson.

Q Do you remember what day you were there with Murray as you said? A It was -- No sir, I can't tell you the date.

Q Was it after you had learned that there was trouble over this fifty dollars? A Yes sir.

Q Was it on the very day that you first consulted Murray at his office? A I didn't consult Mr. Murray.

Q Didn't you?

MR. HERTZ: I object to the question.

THE WITNESS: I don't understand that.

MR. HERTZ: That question is capable of a double meaning. It may refer to one ^{day} or it may refer to another.

MR. MAYNARD: I will reform the question.

Q I think I had asked you if it was after you had had your attention called to this trouble. Now, I will ask you whether after your attention was called to this trouble about the fifty dollar charge, did you go to the office of Mr. Murray?

A Yes sir.

Q Was it the same day that you went with him to the office of Henningson? A Yes sir.

Q Did you go to Henningson's office immediately after your conversation with Mr. Murray in his own office? A Yes sir.

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Q Was Henningson one of your customers? A Yes sir, he traded in my room.

Q You discussed in Mr. Murray's presence with Mr. Henningson this fifty dollar charge or trouble that you had? What was said? A You mean what was said in Mr. Henningson's office?

Q Yes? A Well, we went in and Mr. Henningson -- Mr. Murray said to Mr. Henningson that, "Mr. Buxton is down here in regard to the fifty dollars that had been obtained from my account by Mr. Weber. Now, I didn't get the money." He said to Mr. Henningson, "Will I write a letter? Mr. Buxton wants you to write him a letter to exonerate him and Mr. Weber for drawing the fifty dollars," and he says, "I didn't give him any authority to do it." Mr. Henningson says, "What do you think?" Mr. Murray says, "Yes, I will do it." Mr. Henningson says, "Well, that is all right, I wont down you," and Mr. Henningson says to Mr. Murray -- or Mr. Murray says to Henningson, "Give me a sheet of your paper and I will write the letter and have Buxton take it back."

Mr. Henningson says, "You better not write it on my letter head." Mr. Murray says, "Well, I will write it on mine or I will go over." I says, "I will go out and get you a letter head if you want it." He said, "I can get it in my office. It will be all right. I will send the letter right along. He

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says, "All right, I will go back to the office," and that is all there was about it.

I told Mr. Weber that I thought everything was going to be cleaned up then. So I said that I would hold my receipt and I gave Mr. Murray's in and I got mixed in it.

Q How far from Henningson's office was Murray's office?
A I should say that it was about one hundred feet around the corner of Duane Street.

Q If Murray told you he would write a letter that would fix this up and he was only one hundred feet from his office, why didn't you go right back to his office and get that letter?
A I wanted to get back to my office by ten o'clock, the time it opened -- the stock market opens.

Q Were you and Weber intimate friends? A Not particularly, only we had quite a lot of business. That is, he would come in with customers that were trading.

Q He always knew the condition of the accounts? A I suppose he did, that is I expected that he did.

Q Now, while you went for a customer to the cage where Bagnall had the cash and where you got that money for the customers, did Bagnall invariably call out to Weber, "Find out the condition of the customer's account?" A No sir.

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Q He did not? A I don't know as I ever heard Mr. Bagnall say that, not in my presence.

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Q Now, at the time you got this fifty dollar, he said, "I will tell you if Mr. Weber would O. K. this". What do you mean by O. K. this? A O. K. receipts or something like that.

Q Those receipts that you got for the fifty dollars from ^{making} the charge on Murray's account signed by you, Weber O. K-d that receipt? A I think so, yes sir.

Q According to your own statement, Murray said to you that his account would stand fifty dollars? (No answer).

Q Now, on the occasion that you got the fifty dollars from Bagnall, the cashier, did he submit your receipt to Weber for his O. K. before he gave you the fifty dollars? A I don't know. I am sure I cannot tell you that. I thought that he would do that on the second receipt that came in.

Q I am talking of your personal receipt, the first one?
A Yes sir.

Q When you offered your personal signature charging E. B. Murray's account with fifty dollars, was that paper submitted to Weber for his O. K? A Yes sir.

Q Right then and there? A I presume so, yes sir. When I drew it-- I don't know if it was right then and there but it may have been in the office, in my room.

Q What was the purpose of his O. K? A To show that there was money enough in the account to pay it.

Q To show that there was enough money in the account after the money had been drawn? A Certainly.

Q That O. K. would have to be there before the money was paid over, wouldn't it? A Yes sir, I presume so.

Q The money was paid over to you, wasn't it? A Why, yes sir.

Q Then, have you any reason to doubt that that receipt of yours signed by you was O. K-d by Weber? A No reason to say it but that it was.

Q So that Weber knew of that transaction and had dealings with Bagnall in respect thereto, didn't he? A I don't know if he said anything to Mr. Bagnall at all about it. That is all there was when I put in the receipt. He would put an O. K. or something on it. I never looked on it at all. Mr. Bagnall would examine those receipts.

Q Assume that on the list of your customers you had a man named Maynard and ^{he} came up and wanted to draw fifty dollars on his account, would Bagnall say -- without addressing anybody apparently, "Maynard's account stand fifty dollars" and would Weber answer? A I never heard him say anything like that.

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Q You never heard him say anything like that? A He may have but he always did it quietly, if he did.

Q Would anybody in the firm, Mr. Bagnall or anyone advance money to you on behalf of a customer without ascertaining the condition of the customer's account? A Yes sir. He would do it. He would look at the receipt and I suppose he knew, but he wouldn't say anything to Mr. Weber or anybody.

Q That is, what I am trying to find out? A Yes sir. He would take the receipt and go to the cash wherever it was and take it out and hand it to me.

Q Without consulting anybody? A Yes sir, lots of times.

Q You mean Bagnall, the cashier, without consulting anybody would pay money out of customers' accounts and you would see him put it in his book? A I don't know whether he did or not.

Q Didn't you use that expression? A I presume I did but I don't know. Of course, I don't know what he had in his hand or anything about that.

Q Do you mean to tell the jury that you really believed that Bagnall, the cashier, without consulting the margin clerk or anybody else as to the condition of a man's account, would pay out the money on your request, on your signature? A Well, He did. I don't know whether he would or not -- that is what he always did right along. I don't know, but sometimes when

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I was drawing money he would make up the man's account but I don't remember it. He was always very prompt in anything that way.

Q Well, that is the manner of brokers' clerks to be prompt in their work? A Yes sir.

Q It is got to be rapid work? How do you know that receipts were O. K-d by Weber, the margin clerk? A Because I had been to Weber on different occasions and asked him if this man's account would be all right to draw so much and get the man's receipt and hand it to Weber and he would O. K. it.

Q Before you handed it to Bagnall? A Not always but sometimes I would put in the receipt and Mr. Bagnall might see it, or if Mr. Weber was out, I would go to him or anyway that way.

Q You mean to tell the jury, don't you, that you did understand that it was necessary to have somebody O. K. receipts before money was advanced? A I don't mean to say that. No sir.

Q Do you mean to say that it wasn't necessary for Bagnall to have the receipt of the customer O. K-d by the margin clerk before he advanced money?

Objected to. Question allowed.

Q What is the answer? A It was necessary although it wasn't done. Mr. Bagnall might have O. K-d that himself for all that I know. I don't know how that was because that was out of my department.

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Q You do not know anything about this O. K. business?

A No sir.

Q Haven't you told the jury that you went yourself to the margin clerk with the receipt of a customer and got his O. K. before you submitted it to Bagnall? A Sometimes, not always, once in a while.

Q You did know the necessity for the O. K. of somebody?

A Yes sir.

Q You don't mean to tell the jury that you didn't know it was necessary? A I don't know whether it was necessary or not. That was not my business, not my business. I don't know whether it was necessary or not. Mr. Bagnall can tell you that.

Q If you come with a receipt to Bagnall calling for fifty dollars to be charged to somebody's account and Weber was six feet away from Bagnall and only a wire screen between, could not Bagnall ascertain in a second whether or not the account would bear the withdrawal by the asking of a single question and get a single answer? A He could have done it.

Q One word on the part of the margin clerk would tell him whether he could properly make that withdrawal?

Objected to. Objection sustained.

Q I will ask you this. Did you hear Bagnall on the occasion when you withdrew the fifty dollars ask the margin clerk whether

the account was good for it or not? A I had not, no sir.

Q Did you submit the receipt that you then presented to Bagnall for fifty dollars to Weber for his O. K? A If I remember correctly, I did.

Q Your personal receipt, you did? A My personal receipt, I did, If I remember correctly I did, I am not positive.

Q But when the second receipt was handed in by you to Bagnall, did it have the O. K. of Weber? A I can't tell you. Mr. Weber handed it to me in my office. I went right in and gave it to Bagnall.

Q You don't know whether it did have his O. K. on or not? A No sir, I couldn't tell you.

Q Did you examine it yesterday? A No sir, I did not.

Q Didn't you? A I looked at it. I didn't examine it.

Q Didn't you see any O. K. of Weber on it? A I don't know what there was on it. I don't know whether Weber's O. K. was on it or not.

Q That is People's Exhibit 1? A People's Exhibit 1 in this case.

Q Did you see anything else which indicated that Weber's O. K. was on it? A No sir.

Q Who was protected, if anybody by the O. K. of the margin clerk on the receipt? A I am sure I don't know who would be protected.

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Q Seriously, you mean to tell us that you don't know who
O. K. of the
would be protected by the margin clerk on the receipt?

MR. HERTZ: I object to that. There is no O. K. on
that slip. It is a general question.

Objection sustained.

BY MR. MAYNARD:

Q This man Weber severed his connection with the firm
of J. R. Williston & Company some days in advance of you, you
said? A I think about a week if I remember correctly.

Q You are quite sure about that? A Yes sir, I am quite
sure.

Q Who took his place? A I couldn't tell you.

Q Why can't you? A I don't know.

Q That is a fair question? A I think there was a half
a dozen of them that was doing his work or doing some of the
work -- there would be about half a dozen, I think two or three
or only one -- possibly Mr. Bagnall did it or Mr. Safford or some-
one else.

Q You visit over there? A I don't know.

Q You say you were in the office a week; why don't you
know? A Well, I don't. I don't know. I was acquainted thorough-
ly with the inside of the office, with the clerical work.

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Q You didn't have anything to do with the margin clerk?

A Yes sir, frequently, quite often.

Q Constant was it? A Yes sir.

Q Who was the margin clerk after Weber severed his connection with the concern? A I don't think -- I don't think there was anyone on that. If I wanted to find out if a man's account -- if I had anything coming up or if there was anything, I should perhaps go to Mr. Bagnall, the bookkeeper or Mr. Safford, or any of the three or any other bookkeeper.

Q Did you ever see Mr. Bagnall on the slate as margin clerk? A No sir, I never did.

Q Did you ever see it? A They never allowed me to look at it.

Q Did you ever see Mr. Safford on the slate act as margin clerk? A Do you mean sitting at the margin clerk's desk?

Q Yes? A I have seen them, when Weber was there sitting there and after Mr. Weber had gone, if I remember correctly.

Q Both Bagnall and Safford? A Sure, I think so. Yes sir, I don't know who else might be sitting there.

Q Then, you mean to say there were others beside the margin clerk who had charge of the slate? A Yes sir, I mean while Weber was there and after he had gone.

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Q While he was there? A Why, they used to help him out. I suppose somebody did. I don't know whether he had charge of it entirely or not. I don't know how the system of the office was there.

Q Let us reduce it to one question. Will you state who the margin clerk was that succeeded Mr. Weber in the office of J. R. Williston & Company? A I cannot.

Q How long did you say you remained in that office after Weber went away? A About a week, I think.

Q What were you doing? A I was attending to my customers just the same.

Q Now, before you went away did you have a discussion with any member of the firm about this receipt, People's Exhibit 1? A I don't know what you mean.

Q (Question repeated)? A No sir.

Q You said you were discharged by Mr. Tint? A Yes sir.

Q What reason did he give you for your discharge? A He said, they could get along without me. There had been a mistake up here in the office and Mr. Weber, they had to let him go, and they wanted me to say something about something which I didn't know anything about. He said, "If you can't open your mouth, we don't want you any longer."

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Q Well, do you mean to tell the jury that your friend Tint discharged you because you ^{wouldn't} squeal on Weber, is that right? A No sir, I don't mean to say that.

Q What did you mean? A Well, I meant to say that he didn't want me any longer. That is all I know. His reason I don't know. I don't know the reason why he let me go unless it was that.

Q Didn't you just tell the jury that you thought he let you go because you ^{wouldn't} ~~would~~ tell on somebody else? A Yes sir. That is what I was telling you. He said, they wanted me to open my mouth about Mr. Weber..

Q Did you talk over the matter of this receipt with Weber before he went away? A No sir, I think not, only that we went over it, that is all. He wanted me to go up and see Murray, that is all. He didn't say that to me -- Mr. Murray -- I mean Mr. Weber never said that to me -- that he signed it or didn't sign it or anything, but as I understood it was Mr. Murray's signature.

Q You told the jury that Mr. Murray promised to write a letter that would put things all right? A Yes sir.

Q Did he do it? A No sir, he did not, but the matter quieted down. The matter quieted down when Murray came in, I think so far as I know that they didn't say anything to me about it.

Q You mean to say that after you had gone to Murray for the letter, that you expected to get that letter and that letter didn't come and you didn't hear anything from the firm about this receipt -- A I heard from Mr. Weber that the letter didn't come in. That is all I heard.

Q When did you discuss that matter with Weber, whether the letter had come in? A He just came in the office and told me and I said, "Look around to-day. I can't help you. You will have to look out for yourself."

Q Was he the man that was in the trouble? A Well, I didn't think he was in trouble at that time. I wasn't looking at that at all.

Q Did you tell ^{him} to go look out for himself? A Yes sir.

Q Now, ^{after} you were charged with the larceny of fifty dollars, did you talk the matter over with Weber? A No sir, I never talked much about it. I met him on the street afterwards and I asked him to come and see my lawyer.

Q Did you tell him that you were charged with the larceny of that fifty dollars? A Yes sir, I told him I was arrested -- that was after I was arrested.

Q Did you not tell him then about this receipt and the genuineness of it? A Certainly I did.

Q You talked with him then? A Yes sir.

Q You told him that you had been arrested, charged with the larceny of fifty dollars? A Yes sir.

Q Did he admit that he was the guilty party? A He did.

Q Did he? A Yes sir to me.

Q You took it in writing? A No sir, I did not.

Q When was that? A I couldn't tell the date it was but it must have been about two months after I was arrested. That is the first time I saw him. I went to his house several times.

Q When did you last see him? A About six months ago, I guess.

Q Where did you see him then? A I happened to meet him on Broadway up near the Imperial Hotel.

Q Do you know where he is now? A No sir, I do not.

Q You haven't see him in six months? A I haven't seen him in six months. I went to his house where he used to live and they said, he wasn't living there.

Q How soon did you go to his house? A A little while after I saw him. I asked him to come and see my lawyer and he came into the office and Mr. Attorney wasn't there and he didn't come back and that is why I went to see him.

BY MR. HERTZ:

Q One question. Were you arrested the 17th of June 1909?

A Yes sir.

Q Is that right? A Yes sir.

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BY THE COURT:

Q Just a second Mr. Buxton. As I recall it, you testified yesterday that you had no conversation with Mr. Safford or Mr. Bagnall concerning the fifty dollars either in the office of Mr. Safford or Mr. Bagnall, is that right? A Yes sir.

Q And after the money was given to you by Mr. Bagnall, at no time thereafter did you have any talk concerning the receipt offered in evidence, or about the fifty dollars? A No sir, not after.

Q No talk whatever? A No sir.

Q It was Mr. Tint who discharged you? A Yes sir.

Q Is that right? A Yes sir.

Q What did Mr. Tint say to you? A He said, they wanted me -- he said, "Frank, why don't you open your mouth about Weber;" He said, "We want you to open you mouth about Weber." I said, "I haven't anything to say. I don't know anything about the business." He said, "Tell us the whole of this matter" and I said, "I don't know anything about it," and then Mr. Tint said, "We will have to dispense with your services."

Q Didn't you testify yesterday -- did you ask any reason why you were discharged? A No sir, I don't know. I may have gotten a reason but I don't remember it, your Honor.

Q Did you testify yesterday to this: "I told Mr. Safford

and also Mr. Bagnall, when I spoke to them, that Mr. Murray had authorized me. Q. I know, but did you tell Mr. Safford.

A Yes sir." A If I remember correctly -- well, I am not positive but I don't hardly think that I spoke to him about that. When I went to Mr. Bagnall, I passed in the receipt and I told him that Mr. Murray wanted fifty dollars, to have the money on his receipt.

Q Now, I want you to make it clear to the jury if you can, Mr. Buxton, your understanding. As I understand it, you had some talk with somebody of that concern when he called your attention to the claim of Murray, that fifty dollars was improperly withdrawn from his account? A No sir.

Q Never? A No sir, only when later, Mr. Safford came in to my office. Mr. Safford came in later and said that Mr. Murray had returned his statement and said, that there was an error of fifty dollars on the statement for cash drawn.

Q Then you had some talk with Safford about the fifty dollars? A Yes sir, I talked that much.

Q Did you at that time tell Mr. Safford that you knew something about that fifty dollar transaction? A No sir, I said nothing more. He knew that I drew it, I presume.

Q Did you tell him that you drew the money at the request of Murray and then that you gave the money to Weber? Did you

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tell him that? A No sir, I don't think I did, no sir.

Q Did you ever have any talk -- did you and Mr. Safford have any talk in the presence of Murray in regard to this fifty dollar transaction? A No sir.

Q At no time? A No sir.

BY MR. MAYNARD:

Q Just one question, in the matter of your salary. You said, you got twenty dollars week? A Yes sir.

Q Then, you said you had commissions from the firm?
A No sir. I said nothing of the kind. My salary -- I said I was drawing twenty dollars a week.

Q Tell the jury what you did earn? A The understanding between myself and the firm was that I would get one and five.

Q What do you mean by one and five? A My salary would be based on one and five, that is one to five hundred -- if there was five hundred dollars commission, I got one hundred dollars -- based on that basis.

Q Now, let us have that clear before the jury. If the commissions of the customers that you brought in amounted to five hundred dollars, they gave you one hundred dollars of that? A No sir, I mean that I was drawing twenty dollars and when I wanted -- when I settled up which I never made a settlement that that would be the way it would be figured up.

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Q You never made a settlement? A No sir.

Q Did you understand that for every five hundred dollars of commission earned on the business that you brought in, you would get one hundred dollars of that? A Yes sir, that was the basis.

Q That you were to have one-fifth of the commission?

A Yes sir, one in five.

Q You were to get one-fifth of the commission? A Yes sir.

Q And they were to have four-fifths? A Yes sir. I wouldn't want it; but that would be -- that is the way my salary was based on, one to five; that is the way they hired their men.

Q Did you split commissions with the firm of J. R. Williston & Company? A No sir, I haven't yet.

Q Did you ever split commissions with them? A No sir.

Q You never have had a settlement with them? A No sir.

Q Is that what you mean? A Yes sir.

Q When you went away, you hadn't closed up your account and made any settlement or accounting? A No sir.

Q That is up in the air, yet? A Yes sir.

Q Didn't they owe you money? A I think so; yes sir.

Q Did you ever make a claim on them for it? A No sir.

Q How much do you think they owed you? A I can't tell you.

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Q Now, J. R. Williston & Company you believe to be one of the reputable firms of the city, don't you? A Yes sir, I do.

Q Don't you know whether it is against the rules of the stock exchange to split commissions? A I do.

Q Is it or isn't it? A I have heard so. I don't know. I never read the rules.

Q That is your understanding? Is it against the rules or not, to split commissions? A My understanding is that it is.

BY THE TWELFTH JUROR:

Q How much salary did you get during the year? A I was drawing twenty dollars a week and then, I had my expense account.

Q How much was that? A Well, it would run from twelve to fifteen dollars a week on the average, somewhere.

Q That expense account was for your own use? A Yes sir, for the customers and expenses etc.

Q Then, you really only got twenty dollars salary for yourself? A Yes sir, twenty dollars for myself.

Q The fifteen dollars had nothing to do with you? That was for the customers? A Yes sir, for the customers, or anything, and so forth.

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Q I don't understand you. You got twenty dollars a week?

A Yes sir.

Q You had twenty dollars a week for yourself? A Yes sir.

Q Fifteen dollars you expended for your customers? A Yes sir.

Q That didn't come to you? A No sir.

Q Is that right? A Yes sir.

BY MR. MAYNARD:

Q You got no part of the expense account? A Yes sir, I got -- when I was entertaining customers, I would get a dinner etc., and things like that, what money I spent when I was out with them, I would put on the account.

Q That is you charged fifteen dollars to the expense account during the week and that represented disbursements made by you with customers? A Yes sir.

Q You didn't profit by any part of the fifteen dollars, did you? A No sir.

Q All that you got was twenty dollars a week? A Yes sir.

BY MR. HERTZ:

Q You got a cigar out of the disbursements when you paid for a customer's dinner? A Yes sir.

BY THE TWELFTH JUROR:

Q Were you engaged the last time you were with the firm

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before Mr. Safford was engaged? (No answer).

Q Were you in the employ of Mr. Williston before Mr. Safford came there? Was Safford, the manager when you came to J. R. Williston & Company, the second time? A Mr. Safford was there.

Q Before you? A Yes sir, I think so -- I mean I don't know. I think it was Mr. Safford came afterwards, I don't know.

Q Were you always on good terms with everybody in the office? A Yes sir.

Q No frictions? A Yes sir.

BY THE SEVENTH JUROR:

Q Was Mr. Weber's handwriting familiar to you? A No sir, it was not. I have seen some of his initials or something like that.

Q I mean his handwriting? A No sir, I never saw any of it.

BY THE COURT:

Q Will you sit down and write the name of Murray?

A To write it in his handwriting, as he writes it?

Q Let the witness make a copy of the signature, "Murray" similar, if he can to the writing on the receipt?

A (The witness does so).

Q Now, write your own name? A (the witness does so).

Q Write the name "E. B. Murray?" A (The witness does so).

Q Write your own name? A (Witness does so).

Q Take a sit down at the desk there (indicating). Now, get a sheet of legal cap.

MR. HERTZ: I have no objection to this procedure but I ask the Court to state to the jury that it is an extraordinary method. The proper way would be to call an expert.

THE COURT : It is not an extraordinary method.

Q Write the word "Murray?" A (Witness does so).

Q Write "hurry?" A (Witness does so).

Q Write the word "way?" A (Witness does so).

Q Write the word "easy?" A (Witness does so).

Q Write the name "E. B. Whitney?" A (Witness does so).

Q Write the word "E. B. Murray?" A (Witness does so).

Q Write the word "E. B. Buxton?" A (Witness does so).

Q The word "mother?" A (Witness does so).

Q The word "meter?" A (Witness does so).

Q Write "E. B. Murray?" A (Witness does so).

Q I show you the signature "E. B. Murray" written in your handwriting and I ask you to compare it with the "E. B. Murray" written twice on this sheet. Will you kindly tell

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the jury whether the "B" in this sheet is different in form from the B's in this sheet? A I think they were meant to be just the same.

Q I show you People's Exhibit 1 in evidence, and ask you where the loop in E. B. Murray on this sheet, People's Exhibit 4 -- I show you People's Exhibit 1 and 4 and ask you whether or not the "B" in People's Exhibit 1, whether the loop in the "B", in People's Exhibit 1 is similar to the loop of the "B" in People's Exhibit 4? A Something; I was trying to copy this signature.

MR. HERTZ: Does your Honor ask him to pass upon the handwriting in that receipt or on his own handwriting?

THE COURT: I have just asked him to pass upon his own handwriting.

THE WITNESS: They look something alike.

BY THE COURT:

Q Is the E. B. Murray joined in the receipt? A It looks so.

Q Is the E. B. Murray joined in your handwriting -- are the letters "E. B." joined? A Yes sir.

BY MR. MAYNARD:

Q Did you ever on any occasion tell Mr. Safford that

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fifty dollars which you drew on April 6th charged to the account of Murray was given to Weber?

Objected to.

Q What is the answer?

MR. HERTZ: Objected to. You have the record there that he never told Mr. Murray.

THE COURT: You have that on page 47.

MR. MAYNARD: If your Honor please, I read from the testimony the question. "Q. Did you on that occasion tell Mr. Safford that you had drawn fifty dollars from the cashier at the request of Mr. Murray? A Yes sir." To-day, he testified that he did not. Now, I want to know which he stands by, because I may have to call Mr. Safford back.

Q Did you tell him or didn't you tell him? You have ~~had~~ testified both ways? A My recollection is that I am not positive on it. I might have told him or I might not -- but I think possibly that I did, and then, I thought afterwards that I had not. I don't know just whether I did or not just now, I don't remember.

BY THE TWELFTH JUROR:

Q When you met Weber six months after that, did you ask him to make good the fifty dollars which you drew for him and which the trouble arose about? A Oh, no sir, I couldn't

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say anything about drawing or getting the fifty dollars.

Q Well, the fifty dollars was obtained for him; he had no right to draw it, as we see by the indictment. Did you ask him to give back the fifty dollars or not? A I don't remember.

MR. HERTZ: I offer in evidence two letters that I have written to J. R. Williston & Company. They have the originals and I am going to prove them.

R O B E R T D. M c K A Y; a witness called on behalf of the defendant, being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. HERTZ:

Q Mr. McKay, where is your place of business? A 44 Exchange Place.

Q What is your business? A I am the manager of the Kelly Iron Ore Corporation, whose mine is at Boston Corners.

Q In this state? A Boston Corners, one hundred miles up on the Harlem Road. The office is down in Exchange Place.

Q Is the office in Boston? A No sir. The mines are at Boston Corners on the Harlem Road.

Q Do you know Frank J. Buxton? A Yes sir.

Q How long have you known him? A About fifteen years.

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Q Do you know people that know Buxton? A Yes sir. I know a number of them.

Q Did you have conversations with people that know Buxton? A Yes sir, very often.

Q Do you know of any people, of having spoken to any people, who lived with Buxton or in Buxton's neighborhood, either in Boston or in New York? A Why, I know people intimately that know him. I have known him quite intimately for fifteen years. Mr. Buxton has often been on visiting terms at my home and I considered him as one of my friends.

Q From your own knowledge and the information received from people who know him and from people among whom he lived, will you tell this jury what his reputation is for honesty? A His reputation is first class. He is considered a good, all around, square man, and that is the way ^{he was} looked upon as a business man, and ^a good level headed business man and I have always considered him so.

(No cross examination).

J O S E P H M. C U R R I E; a witness called on behalf of the defendant, being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. HERTZ:

Q Mr. Currie, what is your business? A Miscellaneous

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stock broker in Wall Street.

Q Where is your office? A 52 Broadway.

Q In business for yourself? A Yes sir.

Q For yourself? A Yes sir.

Q Do you know the defendant, Frank J. Buxton? A Yes sir, I do.

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

Q Have you met people who know Buxton? A Well, I have met people who know Mr. Buxton.

Q You met people among whom Buxton resides and meets socially? A No sir, I don't think that I have. I merely have met him in a business way.

Q Have you met business people who know Buxton? A Yes sir.

Q From your own knowledge and from knowledge derived from conversations with business men as to Buxton's character, will you state to this Court and jury what your opinion is as to Buxton's honesty and reliability? A (No answer).

Q What is the general reputation among these business men with whom you have spoken? A Well, I have known Mr. Buxton --

Q As to Buxton's honesty and reliability? A During

my acquaintanceship with Buxton during a period of about four or five years, I have never heard anything said that was at all detrimental to Buxton. So far as I have been concerned personally, I have known him to do nothing that was looked upon as wrong in any way. Buxton in my estimation is a man, I have always looked forward to, as capable of truthfulness in doing what is right and honest. I never believed for a minute that he would stoop to do anything that wasn't honest.

Q Did you go to the office of J. R. Williston & Company with Mr. Scott at 7 Nassau Street? A I don't remember the date. I did go with Mr. Scott, yes sir.

Q Is that a carbon copy of a letter, the original written on my letter head and signed by me, that you gave to the firm of J. R. Williston & Company? A (No answer).

Q Do you know whether that is a copy of a letter you handed to J. R. Williston & Company? A To the best of my knowledge.

Q Have you any knowledge about it? A Yes sir, I have.

CROSS EXAMINATION BY MR. MAYNARD:

Q Did you make it? A No sir.

Q Did you make the copy? A No sir, I did not.

Q Did you see it made? A I saw the original.

Q Did you see it made? A No sir.

Q You don't know anything about it, personally? A I know that is the letter that I gave to J. R. Williston & Company.

Q You know that he took the letter there? A Yes sir.

Q Whether this is a copy or not, you don't know? A No sir.

Q You never compared it? A No sir, I didn't compare it.

MR. HERTZ: I can bring the letter press copy.

BENJAMIN ABRAMS; a witness called on behalf of the defendant, being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. HERTZ:

Q Mr. Abrams, where do you reside? A 127 Grand Street, Brooklyn.

Q What is your occupation? A Law clerk.

Q In my office? A Yes sir.

Q Did you on the 16th day of May this year call at the office of J. R. Williston & Company, 5 Nassau Street and hand them a copy of a subpoena, that is an original subpoena duces tecum? A Yes sir, I did.

Q Is this the original subpoena of which you served a copy? A Yes sir, this is the original.

MR. HERTZ: I ask to have it marked in evidence.

MR. MAYNARD: I consent.

(Admitted in evidence and marked Defendant's Exhibit 5).

MR. HERTZ: I want to show the efforts that I made to get J. R. Williston & Company to produce its books and papers in which, I have not succeeded. I asked them to bring their book, covering the E. B. Murray account.

THE COURT: Isn't that book here?

MR. HERTZ: All the books are not here. I wanted the firm ~~bring~~ to bring down their book containing the account of E. B. Murray and I think I am entitled to it.

THE COURT: Wasn't the Murray account offered in evidence or a part of it?

MR. HERTZ: Yes sir; but the preceding ledger isn't here. They came here with one book in the morning and then in the afternoon they brought two more books.

THE COURT: Well, you are entitled to have the books in view of the defense interposed.

MR. HERTZ: Then, I asked for this letter and they didn't send it here.

THE COURT: Remarks of counsel should be disregarded by the jury.

MR. MAYNARD: A copy of the letter being offered in evidence does not prove that there was a demand for the original letter. Now, I have permitted that to be offered

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in evidence and to be read to the jury.

THE COURT: Does the subpoena show what papers were called for?

MR. MAYNARD: No sir, it asks for all books of accounts showing entries with reference to the transactions had with E. B. Murray.

THE COURT: Have you got that letter?

MR. HERTZ: I have got a copy of that letter in my letter press copy book.

THE COURT: Have you got the account here?

MR. MAYNARD: I don't know whether we have all these books or not, but in the books that we have there is the entire account of Murray.

MR. SAFFORD: According to my best recollection that is the case.

THE COURT: Do those books contain the entire account?

MR. SAFFORD: From start to finish.

MR. HERTZ: Under the circumstance, your Honor, I repeat my demand for the original letter and I now offer a copy.

THE COURT: You cannot offer a copy of a letter in evidence.

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MR. HERTZ: I don't think I will do my case justice, your Honor, if I proceed without the evidence of this other witness.

THE COURT: What witness?

MR. HERTZ: Mr. Scott. He was here for two days and for some reason or other he is not here now. He will identify these letters and he will testify to one additional item. I will ask, if the District Attorney does not want to proceed, for an adjournment; but if he does proceed, I will ask permission to call that witness when he does come.

MR. MAYNARD: For what purpose?

MR. HERTZ: To identify these letters.

THE COURT: You have first got to show that the original is not in existence. You haven't served any notice to produce them.

MR. HERTZ: This is the only notice to produce I could find in this court.

THE COURT: You could served them with a notice to produce certain letters which they received.

MR. HERTZ: I could take the stand and swear that these letters are copies. I now, ask the District Attorney, before two o'clock to produce the original letters.

MR. MAYNARD: You know that is not a proper request.

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Your duty was to subpoena the letters duces tecum, sufficiently in advance of the trial.

THE COURT: Will you have any letters here by two o'clock?

MR. MAYNARD: We can produce them.

MR. HERTZ: With the exception of Mr. Scott, that is the only witness I have.

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

AFTER RECESS

LORNE A. SCOTT; a witness called on behalf of the defendant, being duly sworn testifies as follows:

DIRECT EXAMINATION BY MR. HERTZ:

Q What is your business? A Real estate.

Q Where is your office? A 45 Pine Street.

Q With yourself or with somebody else? A Office in the firm of E. S. Willard & Company, real estate brokers.

Q Do you know Frank J. Buxton? A I do.

Q How long have you known him? A Five years.

Q Do you know people who know him, business people?

A I do.

Q Do you know people in his social acquaintance, who

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know him? A Yes sir, I do.

Q Did you ever converse with those people, with regard to Buxton? A I don't understand the question.

Q Did you ever speak with those people about Buxton, what sort of a person Buxton was? A Well, in a certain way. I don't know exactly what you mean.

Q Did you ever speak with those people about Buxton, what sort of a man he is? A I know what sort of a person Buxton is personally.

Q Simply yes or no? A Yes sir.

Q Do you know whether he is honest or dishonest?

THE COURT: That is sufficient. He can testify to the general reputation of Buxton, to his general reputation from conversations he had with other people.

BY MR. HERTZ:

Q What is his general reputation from conversations you had with these people as to honesty and reliability?

A It is creditable. It is good.

Q Is he honest? A Supposed to be.

Q Among those people? A He is honest.

Q What is his general reputation, your opinion about Buxton's honesty?

Objected to.

MR. MAYNARD: I have no objection to his stating Buxton's reputation for honesty among his acquaintances.

THE WITNESS: It is good.

BY MR. HERTZ:

Q Do you remember the early part of June 1909? A I do.

Q Were you in this court, yes or no? A Yes sir.

Q Did you meet Frank Tint across the way, on the corner of Lafayette and Franklin Street? A Yes sir.

Q In front of the court? A Yes sir.

Q Did you have a conversation with Tint in reference to Buxton? A I did.

Q Tell the Court and jury what Tint said to you or what you said to him? A I said to him, "Why don't you bail this man out." At this time Buxton was arrested and was in the -- he had been examined in the Magistrate's Court, and the examination was then adjourned and so after that, I don't know exactly what disposition was made, only I know he was held in one hundred dollars bail. I had known Frank Buxton, as I had known Tint and I said to Tint, "Why don't you bail this fellow out. What has he done?" He said, "Bail him out, nothing. He is a blame fool. Why don't the sucker turn around and tell me what I want to know. Why don't he tell out what he knows. Let him tell us what he knows. He and his gang in my office, cost our firm twenty thousand dollars."

Q What else did he say? Did he say anything about prosecuting him? A He said, "I have nothing specially against him."

Q Is that all that was said? A In substance that was all.

Q Did you say anything to Tint? A I asked Tint to bail him out.

Q Did you say anything to Tint after he made that statement, if anything? A Why, the conversation was more or less general. I don't remember what it was.

MR. HERTZ: I call upon Mr. Williston to produce those two letters which the District Attorney promised to produce at two o'clock.

MR. MAYNARD: I made no such promise.

MR. HERTZ: That is what you were instructed to have here.

MR. MAYNARD: I requested you to get copies of the letters that you wanted from their office.

MR. HERTZ: Which I did. Now, I want to know if they have their books here.

MR. MAYNARD: Put Mr. Safford on the stand and find out.

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MR. HERTZ: I will take his word for it, Have you produced them or haven't you?

MR. SAFFORD: I have produced one letter.

BY MR. HERTZ:

Q I show you this letter, Mr. Scott, and I ask you whether you gave the original, or handed it to J. R. Williston & Company, yes or no? Did you hand that letter to a member of the firm of J. R. Williston & Company on that day? A Yes sir.

(Offered in evidence and marked Defendant's Exhibit 6).

MR. HERTZ: (Reads the letter to the jury).

Q Whom did you speak to in that office? A To Mr. Bagnall.

Q What did Mr. Bagnall say? A Mr. Bagnall called for Mr. Williston.

Q You were not permitted to examine any books? A No sir.

(No cross examination).

LOUIS SAFFORD; a witness for the people being recalled, testifies as follows:

BY MR. HERTZ:

Q You were asked to produce before recess a letter dated June 8th, directed to J. R. Williston & Company. I ask

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you whether you have produced that original letter? A I have not.

Q Were you unable to find that? A We were unable to find any such letter in our files.

BY MR. MAYNARD:

Q Tell the jury what search you made for it if any?

A I had three clerks, all of whom are familiar with the filing and it is their duty to file these letters -- it is our custom, when a letter is received, which letter naturally would have required an answer, for that letter to be answered and the answer press copied on the day that the letter is received. We looked carefully through our press letter books of that day and the day following, and the day following that and could find no press copy of any answer to such a letter.

Q What search did you make for the original letter?

A We looked through our files that day and around that day and could find no such letter ever having been received in our office. We cannot find it and cannot find any trace of it.

MR. HERTZ: Will you consent that a copy of a letter go in?

MR. MAYNARD: Not under those circumstances. I don't know that any letter was sent to them.

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MR. HERTZ: I will have to take the stand.

Q Could you recognize the letter if I showed you the copy? A No sir.

Q Did you ever receive such a letter? A I, personally did not receive such a letter to the best of my knowledge and belief.

BY MR. MAYNARD:

Q While, the writer --

MR. HERTZ: I offer in evidence the copy of that letter which has been destroyed forwarded to J. R. Williston & Company.

MR. MAYNARD: I object to it on the ground that there is no proof that the letter was forwarded to J. R. Williston & Company. The proof being that on search of their files, it is shown there is no such letter there. They also searched in their letter books and they show that no such answer, in accordance with their custom was ever made to such a letter.

THE COURT: How can you offer in evidence a document without proof of the fact that the original was ever received.

MR. HERTZ: I called for the original and it is not produced. I have the copy of the original showing that

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the letter was mailed and I know that the answer was received.

THE COURT: No, that will not do. You will have to show that the letter was mailed, you will have to go a step further and show that the letter in the letter press copy book was a copy of the original, which was put in an envelope and mailed.

EMANUEL HERTZ: a witness called on behalf of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. HERTZ:

Q What is your profession, Mr. Hertz? A I am an attorney.

Q Where is your office? A 320 Broadway.

Q Did you on the 8th of June 1909 dictate a letter -- dictate and sign and have copied a letter addressed to J. R. Williston & Company, 7 Nassau Street? A I did.

Q Did you see that letter copied into the letter press copy book? I did.

Q Did you personally enclose that letter in the envelope, seal it, stamp it and drop it into the letter chute in the building, 320 Broadway? A I did.

Q Have you a copy of that letter in the court with you?
A I have it on page 8 of the letter book, number 11 of June 8th, 1909.

Q Read it? A (No answer).

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BY MR. MAYNARD:

Q One question. You say you dropped the letter into the letter chute? A Yes sir, of my building on the ninth floor.

Q Stamped? A Yes sir, put a stamp on it, sealed it and dropped it into the letter chute in my building.

MR. MAYNARD: There is still one element lacking.

BY MR. HERTZ:

Q Did you make a demand upon the District Attorney or upon J. R. Williston & Company to produce that letter?

MR. MAYNARD: Not that.

BY MR. HERTZ:

Q Please read that letter?

MR. MAYNARD: I object to the reading of the letter.

THE COURT: What element is lacking?

MR. MAYNARD: No proof that the letter was addressed to J. R. Williston & Company.

Q State what address was on the letter, on the envelope? What was the address on the envelope? A The address on the envelope was J. R. Williston & Company, 7 Nassau Street, New York City.

Q Was there anything else on the envelope? A A two cent stamp and the return, my return address in the upper left hand corner.

Q Was that letter ever returned to you? A No sir,
never returned to me.

MR. HERTZ: I offer this page 8 in evidence.

34 (Page 8 of the letter press copy book was admitted in
evidence and marked Defendant's Exhibit).

MR. HERTZ: (Reading).

"June 8th, 1909.

Messrs. J. R. Williston & Company,

7 Nassau Street,

New York City.

Gentlemen:

Your Mr. Frank Tint appeared as one of the complainants against Mr. Frank J. Buxton in the Tombs Police Court, on Thursday of last week. The question arose whether your firm is indebted to Buxton in any sum of money. Will you have any objection if I send a Certified Public Accountant in the employ of the Commissioner Accounts office in the City of New York, to-morrow Wednesday after four o'clock to your office, to examine your books during the entire period of Mr. Buxton with your firm to the end, that I may ascertain whether you owed him any money or whether you should not have refused his draft for fifteen dollars (\$15), which had been drawn

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against his account with you in the firm, believing that you were indebted to him in the amount of thirty-five dollars (\$35) at that time.

Mr. Buxton tells me that you have not had an accounting with him for some time and would like to find out, how much money you owed him at this time before going to trial. I should not like to subpoena all your books to the Court of Special Sessions and put you to all that trouble. If you consent to my sending a Public Accountant to examine your books at your office and at your convenience, as the time is so short, I would ask you to telephone me at 4596 Worth, your decision in this matter. If you refuse this request, you will have to produce your books in court and the matter will have to go over until such time as your books shall have been examined by some Certified Public Accountant and Mr. Buxton's claims against you, will thus be ascertained.

(No cross examination).

EDWARD BERNARD MURRAY, a witness for the people being recalled, testifies as follows:

BY MR. MURRAY:

Q Mr. Murray, I read from the testimony of the defendant Buxton, "Q. On the afternoon of April 5th, you called on

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Mr. Murray? A. I called on Murray. Q. 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 fifty dollars and that he thought that Mr. Murray would let him have it.' Mr. Murray said to him, 'Will my account standing drawing fifty dollars and I told him I thought so from what Mr. Murray said.' So he said, 'You can draw it and give it to Weber.' Did any such conversation take place between you and this defendant? A. No sir.

Q. Did you ever discuss these matters in your office with this defendant? A. Never.

Q. Did you discuss that anywhere with this defendant? A. No sir, never.

Q. How many times had you ever seen this man, Weber as near as you can recall? A. Never.

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

Q. Did Weber have any authority whatever to buy and sell on your account without your specific authorization? A. No sir.

Q. Did you know of his buying and selling anything for you on your account without your authorization? A. No sir.

Q. Did you go with this defendant to the office of one, Henningson? A. Yes sir.

Q. What day was that, in May? A. Yes sir.

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Q Will you state to the jury what was said by this defendant or by you at your own office before you went to Henningson's?

MR. HERTZ: I object to that as not in rebuttal.

THE COURT: That was gone into.

Objection overruled.

Exception.

BY MR. MAYNARD:

Q State what, if anything was said by this defendant to you at your office about going to Henningson's and what you said to him? A He said, "Do you think Henningson will help me out?" I said, "I don't know. Go around to his office and see. I will take you around to his office and see."

Q How far was his office from yours? A Right around the corner. He was in Duane Street near Greenwich Street and I was on Greenwich near Duane Street.

Q Did you meet this defendant there? A Yes sir.

Q Will you state what conversation was had between this defendant and Henningson in your presence? A We went into Henningson's office, and I said, "Our friend Buxton is in trouble;" and he said, "What kind of trouble?" and I says, "He better tell you;" he says, "Well, I got in trouble down in the office."

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Q Who was that? A Mr. Buxton. "By signing Murray's
I
name to a paper and got fifty dollars on it."

Q Did he say, "Murray's name to a paper?" A Yes sir,
signing my name.

Q He didn't sign your name? A He said, "Murray's name."

Q Tell us the rest of the conversation? A Well, he and
Henningson went into a conference and they walked to the window.

Q What was said by him to Henningson in your presence?
A I don't remember definitely enough.

Q You heard the conversation had between him and Henning-
son? A He said, he got in trouble by signing my name and Hen-
ningson and he got into a general conversation and I let him
talk it out.

Q Did he ask Henningson to help him out in your presence?
A I don't recall whether he did or not. I let them talk it
out and I went to the window until they got through.

BY MR. HERTZ:

Q Do you read and write? A Yes sir.

Q Did you ever sign your name to a paper? A Yes sir.

Q Sign any checks? A Thousands of checks.

BY MR. MAYNARD:

Q Will you have the goodness to sign your name? A Yes sir.
Step right down here and do it.

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MR. HERTZ: I didn't ask him to sign his name. I want his checks.

THE COURT: For what purpose?

MR. HERTZ: To show the signature, whether it is similar to that or not. This man, ^{says he signed} thousands of checks and I want papers signed before to-day.

THE COURT: You didn't serve any notice.

MR. HERTZ: I don't have to, your Honor. I asked this man.

THE COURT: How is this witness to show you one of his checks?

MR. HERTZ: Why, this witness comes here and says, "This is not my signature, I never signed it." It is up to this witness to bring his signatures here and not to write now.

THE WITNESS: I will bring twenty-five checks here in five minutes.

(The witness writes his name).

MR. MAYNARD: I offer that in evidence.

(Admitted in evidence and marked People's Exhibit 6).

BY MR. HERTZ:

Q Have you got in your possession, here in court to-day a signature of yesterday or of last year or of any other day?

A Yes sir, there is a paper in the possession of the District

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Attorney.

Q Is there a piece of paper in the hands of the District Attorney with your signature? A Yes sir.

Q And he didn't know it? A Yes sir, there is.

Q You promised to bring me -- I ask you whether you had a complete set of statements and slips and I asked you whether you would bring them here this morning? A Yes sir.

Q Were you here when court opened yesterday? A Yes -- no sir. Not when court opened.

Q You got here at two minutes of four? A Yes sir. I have got the papers there.

BY THE COURT:

Q Is this your signature? A Yes sir.

THE COURT: You can have this if you desire it, Mr. Hertz. You can have the police court complaint.

MR. HERTZ: I offer in evidence the paper which he has been good enough to sign here. I will offer that in evidence.

(Admitted in evidence and marked Defendant's Exhibit 7).

BY THE TWELFTH JUROR:

Q Was Mr. Weber ever in your office? A About a month after he was discharged, he came to borrow ten dollars and I showed him the door.

Q Never before? A No sir, not during his occupation

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of a position with J. R. Williston & Company. He never was in my office.

MR. MAYNARD: The people rest.

MR. HERTZ: I move at this time that your Honor direct the District Attorney to elect upon which count of the indictment he will go to the jury.

THE COURT: I think you can go to the jury on the first count in the indictment. I will take away the second and third counts.

MR. HERTZ: I move to dismiss this case and move to dismiss the remaining counts in the indictment for the reason that, ^{indictment charges the} the ^{larceny} of fifty dollars, and the testimony offered on behalf of the people, by causing the defendant, Burton, to write his name, is likely to produce upon upon the mind of the jury, the idea that we are trying a forgery case -- that is why I ask that this case be taken from the jury.

THE COURT: Motion denied.

Exception.

THE COURT: The only purpose in asking the witness to sign his name was on account of the testimony given by some of the witnesses for the people to the effect that the defendant said to them that he had signed this receipt and

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the defendant on cross examination denied that he had signed this receipt. He was then asked to sign his name. There is no attempt made here to prove any other offense against this defendant except the charge laid against him in the indictment and the jury will so understand it.

MR. HERTZ: One final request. I ask that these exhibits, prepared by Buxton here in the presence of the jury be stricken from the record and I ask that the case be taken from the jury on the ground that the Court has no right to ask the defendant to testify against himself or create evidence against himself.

THE COURT: The rule of the law is plain, that if the defendant believes that any answer might tend to incriminate him or convict him of crime, he must decline to answer upon those grounds, and his failure to take advantage of the constitutional protection of the law is waived when he answers. Counsel should have advised the defendant not to answer, if that in his judgment were necessary.

MR. HERTZ: I simply want to protect the defendant on the record ^{not to let} though it may be used against him but I think the defendant is entitled to it.

(TESTIMONY CLOSED).

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