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

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

-against-

LOUIS E. JULIAN.
-----X

Indictment filed the 23rd day of July, 1906.

Indicted for Grand Larceny in the Second Degree.

A P P E A R A N C E S.

For the People,

ASSISTANT DISTRICT ATTORNEY ISIDOR WASSERVOGEL.

For the Defendant,

GEORGE B. HOLBERT, ESQ., WALTER L. RATEBONE, ESQ.,

and JOHN T. LITTLE, ESQ.

Tried before HON. JAMES T. MALONE, JUDGE, and a
Jury, on the 16th day of May, 1910, etc.

Thomas W. Osborne,
Official Stenographer.

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FRANCIS H. WIGGINS, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you reside? A Hotel Imperial.

Q What is your business at the present time? A Assistant Manager of Hotel Imperial.

Q Were you employed in the same capacity in July, 1905?

A Yes, sir.

Q The Hotel Imperial is where? A 32nd street and Broadway.

Q That is within the county of New York? A Yes.

Q Who owns the Hotel Imperial? A The Goelet estate.

MR. HOLBERT: I object as incompetent. The witness is not competent to prove ownership -- a mere clerk. They cannot prove ownership in that manner.

BY THE COURT:

Q What is your occupation? A Assistant Manager.

BY MR. WASSERVOGEL:

Q Who employed you in the month of July, 1905?

A Mrs. Robert Stafford.

Q That is Mrs. Jennie E. Stafford? A Jennie K.

Q She was the proprietor of the hotel? A The proprietress at that time.

Objected to as incompetent, immaterial.

Overruled and exception.

Q Do you know the defendant? A Yes.

Q Did you on the 20th day of July, 1905, have a conversation with him at the hotel? A Yes.

Q Tell the Court and jury what the conversation was, what you said and what he said? A He asked me to let him have \$50 on a check.

Q I show you a paper and I ask you whether that paper was shown to you at that time? A Yes, sir.

Q Is that the paper you refer to as the check?

A As the check, yes.

The paper is marked for identification People's

Exhibit 1.

BY MR. WASSERVOGEL:

Q Tell us what the conversation was? A He asked me to o.k. a check for \$50 which I did, and passed it in to the cashier with instructions to let Mr. Julian have \$50 on his check.

Q Was the \$50 paid to him? A Yes, sir.

The check is offered in evidence, received and marked People's Exhibit 1.

Q Was the check deposited the next day, do you know?

A I am not sure of that, but either the next or the following day.

Q In what bank was it deposited? A New Amsterdam Bank.

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Q. Was the check paid? A No.

Q. Has it ever been paid? A No.

CROSS EXAMINATION BY MR. HOLBERT:

Q. Did you deposit the check in person? A No, sir.

Q. Your testimony on that point is simply from hearsay, just what you heard other people say? A No, my testimony is from the ~~fact~~ fact that the runner bringing it back and saying that there was not sufficient funds to meet the check.

Q. He reported that to you in person? A The bank runner.

Q. The bank runner? A Yes.

Q. How long have you worked for the Hotel Imperial?

A 19 years.

Q. You say you are employed by Mrs. Jennie Stafford?

A Yes.

Q. You know, do you not, as matter of fact, that the Hotel Imperial is owned by the Robert Stafford estate? A No. The hotel is owned by the Robert Goelet estate, and it is rented by Mrs. Stafford. The hotel is run by Mrs. Stafford.

Q. As an individual? A As an individual.

Q. How long have you known Mr. Julian? A Between 10 and 12 years I should imagine.

Q. During that period of time, did Mr. Julian have dealings with the Hotel Imperial? A He had an account there, yes. He was a patron of the hotel.

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Q And during about what period of time was he a patron of the hotel? A Oh, I should say seven or eight years prior to this -- prior to the time of cashing the check.

Q prior to 1905? A Yes, sir.

Q You knew him well, personally? A Yes.

Q During all the eight or nine years he was a patron of the hotel, tell the jury in what manner he dealt, whether in cash or on credit?

Objected to as immaterial.

THE COURT: What is the purpose?

MR. HOLBERT: To show this was merely one of the credit transactions between the hotel and a man they well knew, and that they not only treated it as such at the time but ever since have so stated it.

THE COURT: Do you object to it?

MR. WASSERVOGEL: Yes.

THE COURT: I sustain the objection.

Exception.

BY MR. HOLBERT:

Q Did Mr. Julian, at this time, have a running account with the hotel?

Objected to.

THE COURT: At this time?

MR. HOLBERT: Yes.

THE COURT: I will receive it.

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MR. WASSERVOGEL: I ask that counsel be more specific.

BY MR. HOLBERT:

Q At the time this check was given you, did he have a standing open account with the hotel? A Yes.

Q For how long had he had a standing and open account with the hotel prior to the giving of this check? A Mr. Julian had an account there for years.

Q Eight or ten? A Well, I don't know as long as that -- quite a number of years.

Q To what amount would this account raise at times?

A All the way from \$30 to \$125, sometimes possibly more than that.

Q Was this check, the Cuba supply check of July 20th, the only check that Mr. Julian had ever cashed at this hotel?

A No, he has cashed several checks.

Q Had he ever cashed other Cuba Supply Company checks at the hotel? A I think there was one or two.

Q Were they paid? A Yes.

Q When they went through?

Objected to as immaterial. Overruled.

A Yes.

Q It is true, is it not, that about a week or ten days or two weeks prior to this time, you cashed a check for Mr. Julian on the Cuba Supply Company for \$35, and that was paid?

A I don't remember that, no.

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Q You don't remember the exact date? A I don't remember the date of cashing checks.

Q It was some little time prior to this? A Yes, I think so.

Q And that check went through and was paid? A I suppose so.

Q Mr. Julian at this time had a personal credit with yourself? A Not with me.

Q What I mean is this, he had a personal credit with you, that is that you took him for accounts? A I passed judgment on him as I do probably fifty or a hundred a day.

Q I will put my question in a different form -- at and prior to this time Mr. Julian had, had he not, to your knowledge, frequently procured money from the Hotel Imperial on a mere I.O.U.? A I think so, yes,-- in fact pretty sure of it.

Q And on this particular day, when he cashed this check, he could have procured that same amount of you on his naked I. O. U.?

Objected to. Sustained and exception!

Q I will put it in a different form -- at the time of cashing this Cuba Supply Company check, did you extend the credit to the name of the Cuba Supply Company or to Louis E. Julian?

MR. WASSERVOGEL: I object; there is nothing to show there was any credit extended.

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MR. HOLBERT: It is one of the elements of this crime -- that the party was misled into doing something he would not otherwise have done, and if he would have loaned Julian this money on his I. O. U., certainly he was not misled in loaning this money on this check.

Objected to. Objection sustained and exception.

Q After the check came back, what did you do with reference to this sum of money? A Placed it to his account -- placed it on his account.

Q And sent him a notice of it? A Yes -- there were several notices sent -- in fact every month.

Q Did you, at any time, after this check was placed with you and sent through and marked returned unpaid, did you feel at any time that Mr. Julian had robbed you or wrong you in any way?

Objected to. Sustained and exception.

Q Did you at any time, or to any person, make any complaint of this transaction?

Objected to. Sustained and exception.

Q Did you at any time accuse Mr. Julian of having swindled or robbed the Hotel Imperial or yourself?

Objected to. Sustained and exception.

Q Are you the complainant in this action?

MR. WASSERVOGEL: I object; the record speaks for itself.

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Objected to. Sustained and exception.

Q You say Mr. Julian asked you to O.K. his check, what do you mean by that? A Well, to O.K., so the cashier would give him \$50.

Q You did place on it o.k., with your initial? A I don't believe I did. I simply passed it in to the cashier and told him to give Mr. Julian \$50.

Q You say you did or did not o.k.? A By word, yes.

Q You did o.k. it by word? A Yes, sir. My o.k. may be on the check for all I know -- it would be "O.K.,W" -- it would be on the back.

Q Then you passed it to Mr. Julian's account you say and it has been carried on the account ever since? A When it was returned from the bank for the second time.

Q You say he has been sent monthly statements since covering this account, and he was sent such monthly statements during the months of August, September, October, November and December of that year -- the remainder of the year?

Objected to. Objection overruled.

A There was a statement sent Mr. Julian to his last address the first of every month.

Q The first of each month thereafter -- I will ask you to examine the paper I hand you and state to the Court and jury whether or not that is a statement of the account of Mr. Julian with your hotel as it appeared on the books of the hotel

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on and after September 1st, 1905?

MR. WASSERVOGEL: Anything after July 20th I object to. This question calls for an answer as to something that occurred after September, 1905.

MR. HOLBERT: It appears on the account on the 28th of August, and that is the reason I say September 1st.

THE COURT: You may show anything prior to this time -- the 20th of July, 1905. Anything subsequent to that I will not receive.

MR. HOLBERT: I have an authority which holds everything that occurred following this transaction with reference to the particular transaction is proper to come into evidence. I will call your attention to the case. It is directly in point, on the same kind of question. The case of the People against Lipp, 111 Appellate Division, page 504.

THE COURT: Have you the case?

MR. HOLBERT: I have not the authority here but I have a statement of it.

THE COURT: I will send for the case. I want to get the facts.

(The question is repeated)

MR. WASSERVOGEL: I object.

THE COURT: I sustain the objection.
Exception.

The paper is marked Defendant's Exhibit A for identification.

BY MR. HOLBERT:

Q I will ask you if the statement of account which you have in hand, which you have heretofore testified is a copy of the account between the Hotel Imperial and the defendant Julian -- I will ask you if that account anywhere shows on it the charge of this item \$50 on account of this check?

Objected to, sustained and exception.

Q I will ask you to state if the accounts of the Hotel Imperial have been examined by you in the last day or two to ascertain whether on the books of account this item of \$50 appears as a charge against Mr. Julian?

Objected to. Sustained and exception.

Q You have already testified that prior to this time Mr. Julian had frequently had a running account with you; for what periods of time would his account run prior to the 20th day of July, 1905 -- how long a time would his account run before being settled up? A Sometimes run two or three months -- possibly longer than that.

Q In o.k'ing this account of Julian's, did you make yourself personally liable for it under your arrangement with the Hotel Imperial?

Objected to. Sustained and exception.

Q Have you as an individual or as manager for the Hotel Imperial ever at any time treated this item, this \$50 item, as anything but a simple debt of Mr. Julian?

Objected to. Sustained. Exception.

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Q After this check was returned unpaid and charged to the account of Julian, as you have testified, when did you next hear from anybody with reference to the check -- from anybody?

MR. WASSERVOGEL: I object to the form of the question from anybody. Let him be more specific.

THE COURT: If he wants it -- he may answer it.

THE WITNESS: Well, it was some time after that.

Q Who did you hear from with reference to it first?

A Mr. McCabe.

Q Do you know what his first name is? A No, I do not.

Q Do you know what position he held at that time?

A I understood he was connected with the Metropolitan Street Railroad.

Q As their attorney? A I think so.

MR. HOLBERT: Will Mr. McCabe stand up.

(A gentleman arises in the court room.)

Q Is this the gentleman that came to see you first about this check? A I don't think it is.

Q Can you see him plainly? A I think it is -- yes.

MR. WASSERVOGEL: If this is after the check came back from the bank marked account closed, I object to it.

THE COURT: What is the purpose of this?

MR. HOLBERT: I wish to follow it up by showing that

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Mr. McCabe came to see about this check.

THE COURT: Suppose he did.

MR. HOLBERT: (Continuing) And this man was summoned to court to bring the check and he was making no complaint -- to start a proceeding against Julian something he did not want done.

THE COURT: Put another question. There is no question now unanswered.

BY MR. HOLBERT:

Q When did you next hear from this check after McCabe's visit or hear anything about it?

MR. WASSERVOGEL: I object.

THE COURT: If that be the purpose as outlined by counsel for the defendant I will sustain the objection.

MR. HOLBERT: That is the purpose.

THE COURT: Anything connected with the defendant I will permit you to go into -- anything he did or said in reference to it, but what somebody else may have done or said has no relevancy, as I view it, to the accusation here.

Exception.

BY MR. HOLBERT:

Q Along in March or April 1906, you were given a subpoena in a John Doe proceeding, were you not, and required to bring with you under that subpoena this check before Magistrate Wahle

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of the city of New York.

Objected to.

THE COURT: If I understand the purpose as outlined by counsel, of the inquiry, I take it it is the same.

MR. HOLBERT: The same thing.

THE COURT: I sustain the objection.

Exception.

MR. HOLBERT: I merely want to get my record right.

Of course there is no need to urge upon the court that we also seek to show that Mr. Wiggins as manager treated it as a simple debt --

THE COURT: I do not care how he treated it. It is what was done on this day.

Exception.

BY MR. HOLBERT:

Q You did attend proceedings before Magistrate Wahle in which L. E. Julian and the People of the State were plaintiff, in a John Doe proceeding -- in which John Doe was the defendant?

Objected to. Sustained. Exception.

Q Were you complainant in that prosecution before Magistrate Wahle?

Objected to. Sustained. Exception.

Q Were you complainant in that proceeding either as manager

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for this hotel or assistant manager or in your individual capacity, before Magistrate Wahle?

Objected to. Sustained. Exception.

The Court admonishes the jury in accordance with section 415 of the Code of Criminal Procedure and takes a recess until two o'clock.

AFTER RECESS.

Trial resumed.

FRANCIS H. WIGGINS resumes the stand.

CROSS EXAMINATION CONTINUED BY MR HOLBERT:

Q On the day you cashed this check for Julian, as I understand you he merely came to the window where you were standing and presented a check and said "Frank, let me have \$50 on this"? A Something to that effect.

Q was there anything else said by Mr. Julian at that time? A I don't remember, no.

Q Did Mr. Julian at that time make any representation concerning the check?

MR. WASSERVOGEL: I object. The check speaks for itself.

Objection overruled.

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A No, sir.

Q Did he at that time say anything to you as to the character or standing of the Cuba Supply Company, upon whom the check was drawn? A No.

Q Had he at any time prior to that made any such representation to you or said anything to you on the subject who the Cuba Supply Company was or what they were? A I don't think so. It would not interest me.

Q Why wouldn't it interest you? A Well, because ---

BY THE COURT:

Q The question is was anything said upon the subject?

A No, not to my knowledge.

MR. HOLBERT: I would like to have him answer me why it would not interest him.

MR. WASSERVOGEL: I object. There is no use arguing with the witness.

Objection sustained. Exception.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What hour was this that Julian came to the Imperial Hotel and you gave him the fifty dollars? A To the best of my recollection it was around about seven o'clock at night.

Q Of what did this account consist that you spoke of, in answer to questions of the Defendant's counsel?

MR. HOLBERT: What account was that?

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MR. WASSERVOGEL: The account that you questioned him about.

THE WITNESS: Restaurant charges and carriage charges.

BY MR. WASSERVOGEL:

Q Small ones, \$1.25 and \$1:50, items like that?

A Large amounts too.

MR. HOLBERT: I object as not the best evidence.

MR. WASSERVOGEL: I withdraw the question.

BY MR. WASSERVOGEL:

Q What was the last item prior to July 20, 1905?

MR. HOLBERT: I object as not the best evidence.

The account is the best evidence.

THE COURT: I think in view of your cross examination I will take it.

MR. HOLBERT: I except.

THE WITNESS: I think it is in August.

BY MR. WASSERVOGEL:

Q August of the prior year 1904? A Yes sir.

Q And you have no separate book in which you make a record of the check returned "No good" ? A No, sir, it is on one book, what we call the petit ledger.

Q In making an entry of this matter, it was simply to keep a record of it, is that correct? A Yes.

Q Did you ever send the defendant any letters after this check came back no good? A I wrote him a personal letter,

one letter.

Q That letter -- A I notified him his check had been returned protested, and asked him to call in and take up the same.

Q Have you seen him at any time after that? A No, sir.

RE-CROSS EXAMINATION BY MR. HOLBERT:

Q Have you in your possession now a copy of the account I handed you before adjournment? A I think -- no, sir, I have not.

Q Mr. Wasservogel asked you if the account did not consist of a lot of small items -- is it not true that there is one other item of \$22.10 on this account? A Yes.

Q It is one item \$22.10?

MR. HOLBERT: In connection with the witness's examination and cross examination I offer in evidence copy of the account about which we have been examining.

THE COURT: Is it objected to?

MR. WASSERVOGEL: I object.

Objection sustained. Exception.

BY MR. HOLBERT:

Q Is it objected to on the ground it is not the book itself. If so I will produce the book.

MR. WASSERVOGEL: It is absolutely immaterial.

MR. HOLBERT: Does your objection go to the fact that it is not the best evidence?

MR. WASSERVOGEL: It is absolutely immaterial.

MR. HOLBERT: Do you object to it upon the ground it is a copy?

MR. WASSERVOGEL: I object to it upon all grounds.

MR. HOLBERT: All right then, we will have to produce the original.

J O H N B. R I E G E R, called as a witness in behalf of the People, affirmed, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 346 Chauncey street, brooklyn.

Q What is your occupation? A At present receiving teller Commercial Trust Company.

Q On July 20, 1905, where were you employed?

A Note teller of the New Amsterdam National Bank.

Q Did you ever see this paper marked People's Exhibit 1?

A Yes.

Q When? A That first came into my possession on July 21st. It was deposited with our bank and charged with me, to my department, by the receiving teller.

Q What was done with the check? A The check was given to my downtown messenger the next morning.

Q What was the name of the messenger? A Mr. F. J. Porcupile.

Q Was the check returned to the bank? A The check was returned by the messenger and all checks of this kind were always returned to me specially.

Q Paid or unpaid? A Unpaid.

No cross examination.

FRANK J. PORCUPILE, called as a witness on behalf of the People, being duly sworn and examined testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 683 Greene avenue, Brooklyn.

Q In the month of July 1905 where were you employed?

A New Amsterdam National Bank.

Q As what? A Messenger.

Q Bank messenger? A Bank messenger.

Q On the 22nd day of July of that year 1905, did you see the paper I now hand you, People's Exhibit 1? A Yes.

Q What if anything did you do with this paper People's Exhibit 1 at that time? A What is that.

(The question is repeated).

A It was given to me for collection by the note teller Mr. Rieger and with other matters downtown and I took it and presented it at 135 ---

MR. HOLBERT: We object to the witness telling any-

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thing that occurred not in the presence of the defendant or as to anything said to him when he presented it for collection not in the presence of the defendant.

BY THE COURT:

Q What did you do with the exhibit? A I presented it for collection.

BY MR. WASSERVOGEL:

Q Where? A A room I think on the fifth floor, 135 Broadway.

Q Whose office was that? A Cuba Supply Company.

Q Whom did you see there, do you recall?

Objected to as incompetent, irrelevant and immaterial, unless it is shown the defendant was present.

Objection overruled. Exception.

Q Do you recall whom you saw there? A I saw a man by the name of Julian, as I understood, and a man by the name of Judson.

Q What was said there at that time?

BY THE COURT:

Q Is that the defendant Julian?

MR. HOLBERT: I object unless it is shown the defendant in this case was present at the time.

MR. WASSERVOGEL: I wish to call your Honor's attention to the fact that by giving the check to the Imperial Hotel this defendant constituted the Imperial Hotel as his

agent for the purpose of collecting this check, and in the regular course of business this man who was the messenger of the New Amsterdam Bank where the check was deposited, presented it for payment, and we have a right to show whatever occurred there at that time.

MR. HOLBERT: The ground of the objection is that a declaration by a third party not made in the presence of the defendant would not show the true state of affairs.

BY THE COURT:

Q Was the defendant at the bar there?

(The defendant Julian stands up.)

THE WITNESS: I saw him there, yes.

BY THE COURT:

Q He was there at that time? A Yes.

Q Now you may state anything that was said in his hearing and presence.

BY MR. WASSERVOGEL:

Q Tell us anything that was said at that time? A I presented the check for payment and he -- the man there told me that he had no account. I marked that on the back of the check and at the same time I left a notice, a bank notice stating that the check would go to protest unless paid by a certain time.

BY MR. WASSERVOGEL:

Q Is this the memorandum you made at that time? A Yes.

MR. WASSERVOGEL: I offer the back of this check in evidence -- although I suppose the whole thing is in evidence for all purpose and I will now read to the jury this check.

(Mr. Wasservogel reads the exhibit to the jury.)

CROSS EXAMINATION BY MR. HOLBERT:

Q Were you acquainted with Mr. Julian at that time?

A Not any further than in a business way.

Q What? A Not any further than in a business way.

Q How long have you known him as an individual? A I have been there a number of times on collections of checks.

Q Been where? A At the Cuba Supply Company's offices.

Q I did not ask you that -- I asked you if you knew Mr. Julian, the defendant in this case -- did you ever know him personally? A No, sir.

Q Had you ever see him prior to the time you went to the Cuba Supply Company to present this check for payment, to your knowledge? A Yes, I presume I have.

Q What? A I have.

Q Where? A At the Cuba Supply Company.

Q When? A Well, I couldn't tell you -- I was there a number of times for collections on different checks.

Q You saw Mr. Julian at the office of the Cuba Supply Company on those particular times? A Perhaps not every time. I can't recollect.

BY THE COURT:

Q Did you see him there? A I have saw him there, yes.

BY MR. HOLBERT:

Q You have seen him there before the day you presented this check? A I would not swear that I have, no, sir; I think I have.

Q Have you ever seen him since the day you presented this check until to-day? A That was in July -- yes.

Q When and where? A At the same place, on other checks.

Q Can you fix any day or any time, or any check, when you saw Mr. Julian at the Cuba Supply Company? A I cannot.

Q How did you know it was Mr. Julian? A Well, he had been -- I had talked with him as Mr. Julian and understood him to be Mr. Julian.

Q When and under what circumstances did you talk to him as Mr. Julian? A Only in regard to different checks when I had them there for collection.

Q You mean to tell this jury when you went to the Cuba Supply Company with the checks, that you met this defendant and talked with him, at the Cuba Supply Company? A I saw him there, yes.

Q And that you talked with him about checks against the Cuba Supply Company? A Presented the checks to him or anybody that was there, for payment.

You mean by him, the defendant, that you presented checks to this defendant, drawn against the Cuba Supply Company for payment? A No, sir, I do not. I took the check there.

If I saw him there -- I took the check there for payment and if I saw him there in all probability I presented it to him.

Q Now, you understand you are testifying here under oath, do you not? A I do.

Q Do you meanto say to this jury that you ever at any time presented to Mr. Julian at the office of the Cuba Supply Company a check that was drawn against the Cuba Supply Company, to be paid, and asked him to see it was paid? A I do not think I ever presented Mr. Julian's own check to him for payment. I presented to the Cuba Supply Company for payment.

Q What? A I presented it to the Cuba Supply Company for payment, and I had seen Mr. Julian there at different times.

Q You do not say to this jury that you ever presented any checks to him for payment? A No.

Q Let us go a step further in the matter -- cannot you be mistaken about ever having seen Mr. Julian in the office of the Cuba Supply Company? A I don't think so.

Q Who else was there besides Julian, the defendant, the day you saw him there? A There was a man there by the name of Judson.

Q More than one man by the name of Judson? A Well, I don't know as there was more than one man by the name of Judson.

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It seems to me that there was two brothers by the name of Judson, but I am not positive.

Q You saw them there at the office of the Cuba Supply Company? A Yes, sir.

Q Do you say to this jury that the two persons, Judsons, were at the office of the Cuba Supply Company on any day when you saw Julian there? A I couldn't tell you.

Q What? A I couldn't tell you.

Q If you can remember that Julian was there, why can't you remember if the Judsons were there? A I don't remember that Julian was there on this special day.

Q I said on any day when you presented a check for settlement? A I undoubtedly saw Julian there and undoubtedly saw Judson there at different times.

Q You do not remember seeing Julian there on any special date? A On no special date, no, sir.

Q Not even on the 21st of July, 1905? A No, sir.

Q You would not swear to this jury that he was there on that day, would you? A No, sir.

Q Why did you do so awhile ago? A I did not. I did not understand it so.

Q What? A I did not understand that I did so. I understand that I -- as I say, I had seen Judson, and at different times when I was there for collection of checks.

Q What did you mean, when the defendant was asked to

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rise in the courtroom -- what did you mean by identifying him as the man you found there when you presented a check for payment? A I don't understand that I did.

Q You do understand that you did not? A I understand-- I understood it this way, that I saw this man there at any time that I went there to present a check.

Q He was always there? A Not always -- perhaps, but at different times.

Q You mean some day when you went in there you think you saw Julian there? A I am positive I saw him there.

Q But you cannot fix any particular date? A I cannot fix any particular date.

Q You do not say to this jury that you saw him there when you went in to present this check for \$50? A No.

MR. HOLBERT: We move, if your Honor please, to strike out all the testimony of this witness as to what was said at the time the check was presented, upon the ground it is incompetent, the defendant not being present, and it would not be binding upon the defendant nor show the true state of his account. I wish all that part of the witness's testimony stricken out which relates to what he said to the Cuba Supply Company or the party there found, or what they said to him with reference to the defendant's account with them, and his statement stricken out that he put the words "No account" on the

back of the check, because of what they had said to him.

THE COURT: I will hear you, Mr. Wasservogel.

MR. WASSERVOGEL: It seems to me that in giving a check to the Imperial Hotel that this defendant constituted the Imperial Hotel his agent for the purpose of collecting it. This check was put through the New Amsterdam Bank in the regular course of business, and in the same way it was presented by this witness, who at that time was a messenger in the employ of the Amsterdam Bank, to the Cuba Supply Company for payment, and it seems to me that this man as the employe of the New Amsterdam Bank was the agent of this defendant for the purpose of collecting this check. In giving the check, under the Negotiable Instruments Law, he constituted the Imperial Hotel his agent.

BY THE COURT:

Q You went down there for what purpose? A To collect the check.

Q What did you do? A I presented the check for payment.

Q Was it paid? A It was not.

THE COURT: I will let it stand in that way.

MR. HOLBERT: Do you strike out the rest of the testimony on that subject as to what was said?

THE COURT: Anything he said in the presence of the

defendant, in view of his later testimony, I will strike out. He went there, presented it for payment and it was not paid.

MR. HOLBERT: That part we make no objection to.

MR. WASSERVOGEL: Won't you let him go a step further and state the conversation he had with the person in authority at that place?

THE COURT: No.

MR. WASSERVOGEL: I now offer in evidence an exemplified copy of the certificate of the incorporation of the Cuba Supply Company, organized under the Laws of the State of Delaware.

(Objected to as incompetent, irrelevant and immaterial.)

THE COURT: Is that the only objection?

MR. HOLBERT: Yes.

THE COURT: I will receive it in evidence.

Exception.

(Received and marked People's Exhibit 2.)

MR. WASSERVOGEL: I also offer in evidence an exemplified copy of certificate of amendment of the charter of the Cuba Supply Company, also filed.

Same objection, ruling and exception.

(Received and marked People's Exhibit 3.)

MR. WASSERVOGEL: I also offer in evidence certifi-

cate of the Secretary of State, showing that no corporation of the name of the Cuba Supply Company has ever been organized or permitted to do business in the State of New York.

Same objection, ruling and exception.

THE COURT: If that is the only ground, I will receive it in evidence.

MR. HOLBERT: I object to it as incompetent.

THE COURT: How?

MR. HOLBERT: Because it does not tend in any way to show that the defendant was not authorized to draw a check against the Cuba Supply Company.

Objection overruled. Exception.

(Received and marked People's Exhibit 4.)

MR. WASSERVOBEL: I also offer in evidence certificate of the Secretary of State, showing that no foreign corporation of the name of the Cuba Supply Company has ever been authorized to do business in this State.

Same objection, ruling and exception.

(Received and marked People's Exhibit 5.)

MR. WASSERVOGEL: I also offer in evidence certificate of the Secretary of State showing that no corporation of the name of Cuba Supply Company has ever filed any annual report in this State.

Same objection, ruling and exception.

(Received and marked People's Exhibit 6.)

J O H N B. M O R I A R T Y , called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your business? A Private secretary to the Superintendent of Banks of the State of New York.

Q How long have you been employed in the office of the Superintendent of Banks? A I am in my twenty-eighth year.

Q Have you searched the records of your office for the purpose of finding out whether a corporation or any other concern known as the Cuba Supply Company has or had at any time a right to transact a banking business in this State?

A Yes, sir.

Q What did your examination disclose? A I do not find any such corporation.

MR. HOLBERT: I object as incompetent, irrelevant and immaterial, not binding upon the defendant.

Objection sustained.

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

THE COURT: Motion granted.

BY MR. WASSERVOGEL:

Q Has the Cuba Supply Company at any time had a right to do a banking business in this State?

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Same objection. Objection sustained.

Q Do you recognize the signature to this paper? A Yes, sir.

Q Whose writing is that? A That is Mr. Cheney, Superintendent of Banks.

Q Do you recognize the seal upon this instrument?

BY THE COURT:

Q The question is directed to the seal, whether you recognize the seal? A It is very indistinct. I cannot make it out myself -- yes, Superintendent of Banks.

AQ Do you recognize the seal? A Yes, I do.

Q As the seal of what? A Superintendent of Banks, State of New York.

MR. WASSERVOGEL: I offer this paper in evidence.

Objected to as incompetent, irrelevant and immaterial, not binding upon the defendant and not tending to show lack of authority on the part of the defendant to draw the check.

Objection overruled. Exception.

(The paper is received in evidence and marked People's Exhibit 7.)

MR. HOLBERT: I now move to strike out the evidence or to strike from the record the evidence offered by the District Attorney, as not binding upon the defendant and incompetent for that reason.

THE COURT: What evidence?

MR. HOLBERT: The two former certificates, offered in evidence from the State Insurance Department, as not binding upon this defendant.

Motion denied, and exception.

No cross-examination.

WILLIAM STEMPLER, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 728 Tinton Avenue, Bronx.

Q What is your business? A Stationer and printer.

Q In the month of July, 1905, were you employed by the firm of Findler & Weibel? A Yes, sir.

Q In what capacity? A Manager.

Q What else? A That is about all.

Q And to take orders for printing? A Yes.

Q Did you ever take an order for printing from the Cuba Supply Company? A Yes.

Q For the printing of what? A Checks.

Q Was an order of checks supplied to the Cuba Supply Company? A Yes.

Q Printed by Findler & Weibel? A Yes.

Q Those checks printed by Findler & Weibel had your name printed at the bottom, Findler & Weibel? A As a rule

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we always try to do that, yes, sir.

No cross-examination.

F E R D I N A N D J. F I C K E R , called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you reside? A 5 Moore Street.

Q What is your business? A Hollywood Company now.

Q What is your business? A Whiskey business.

Q In the month of July, 1905, were you in the printing business? A No, in the chocolate business.

Q Did you do any printing for anyone in the month of July, 1905? A Off and on, yes.

Q You were engaged in the printing business, as well as the other? A Indirectly.

Q Prior to that you were in the printing business altogether? A Yes.

Q Down in William Street? A Yes, sir; William Street.

Q Do you know the defendant, Louis Julian? A Yes.

Q How long have you known him? A A great many years, over twenty years.

Q Did you ever have a conversation with the defendant about printing checks of the Cuba Supply Company? A No, sir.

Objected to as incompetent, irrelevant and imma-

terial.

THE COURT: He says he did not.

MR. HOLBERT: Then I withdraw my objection.

BY MR. WASSERVOGEL:

Q You say you did not? A No -- as I explained in my affidavit, I did not take any orders for printing -- the orders were left with Mr. Folan.

Q You had them printed by Mr. Folan? A I did not have them printed. They were left there for me, to my credit, to my account. I did not take any orders.

Q Did you ever speak to the defendant about checks printed by you? A No, sir.

Objected to as incompetent, irrelevant and immaterial.

THE COURT: He said he did not.

BY MR. WASSERVOGEL:

Q You made a statement to the District Attorney several days ago? A Yes, sir; that is right.

MR. HOLBERT: I object as incompetent. He cannot cross-examine his own witness.

MR. WASSERVOGEL: I am not doing so, but I want to refresh his recollection.

Objection overruled.

BY MR. WASSERVOGEL:

Q That statement was made under oath? A Yes.

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Q I show you a check marked People's Exhibit 1, and I ask you if you ever saw forms of blanks of checks like this one?

Objected to as incompetent, irrelevant and immaterial. Overruled and exception.

A Yes, I saw that.

Q Who printed them? A Mr. --

Objected to as incompetent, irrelevant and immaterial, upon the further ground that the witness has not shown he is competent.

THE COURT: If he knows he can say so.

BY MR. WASSERVOGEL:

Q Do you know? A Yes.

Q Mr. -- who? A Folan.

Q Where was his business? A He was the man that took the orders for me.

Q He took the orders for you? A Yes, sir; anybody who would leave an order there in the office there for me.

Q Do you know how many checks were printed for the defendant at that time?

Objected to as incompetent, irrelevant and immaterial.

THE COURT: If he knows he can say. If he does not know, he can say so.

THE WITNESS: I saw a package of about 100.

BY MR. WASSERVOGEL:

Q 100? A I wouldn't say 100 -- I would say a small package, about that size.

Q Did you ever send a bill to the defendant for this printing? A Yes.

Q You sent a bill to the defendant? A Yes.

Q Has the bill ever been paid? A No, sir.

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

THE COURT: Motion granted.

BY MR. WASSERVOGEL:

Q Do you know anybody connected with the Cuba Supply Company? A No.

Q Did you ever receive an order for printing of checks from the Cuba Supply Company? A No, sir.

Q Did you ever send a bill to the Cuba Supply Company for the printing of checks? A No.

CROSS-EXAMINATION BY MR. HOLBERT:

Q You say a Mr. Folan did certain work for you -- were you present at any time when the defendant Julian ordered checks printed? A No, sir.

Q Did you hear any conversation from him with reference to any checks? A No, sir.

Q Did you receive any written communication from him

with reference to any checks? A No, sir.

Q How do you know anything on the subject, then?

A Because orders would be taken to Mr. Folan's office for me, and you might bring the order and I will have to explain that --

Q That is all you know about it? A Anybody --

Q Is that all you know about it? A I know from the fact that the order was charged to me, and I had to pay Mr. Folan for the work.

Q Is that all you know about the matter? A Yes.

Q Merely that this bill came in to you from Mr. Folan?

A Yes.

Q You never heard the defendant say a word to anyone on the subject? A No, sir.

Q You did not talk to him on the subject? A No.
I wasn't downtown.

MR. HOLBERT: I move that all the testimony be stricken out as hearsay and incompetent and not binding upon the defendant in any way.

THE COURT: What do you say as to that, Mr. Wasservogel?

MR. WASSERVOGEL: I want to ask one question.

BY MR. WASSERVOGEL: Did you ever talk to Julian after that about these checks? A No, sir.

Q At no time? A No, sir.

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Q Did you ever ask him for money? A I sent my bill in the way way as I would for cards or envelopes or letter-heads.

Q Did you ever speak to him about these checks? A No, not particularly about the checks; no, sir.

Q About the printing of the checks? A No, sir.

Q You are very friendly with Julian? A That has nothing to do with it.

Q Answer me; you are very friendly with the defendant?
A Not to make me not tell the truth.

Q You went on his bail, or had bail obtained for him in the Magistrate's Court? A Yes.

MR. HOLBERT: I object. Mr. Wasservogel is trying to impeach his own witness before this jury.

Objection overruled. Exception.

Q Do you remember making a statement upstairs in my room a few days ago? A Yes.

MR. HOLBERT: I object, as having been already covered.

Objection overruled. Exception.

Q Do you remember having stated at that time that about five years ago Louis E. Julian went to the printing establishment conducted by one James K. Folan at 5 Dutch Street, City and County of New York, whom I formerly did business with, and there left an order and possibly two orders for checks

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to be printed --

MR. HOLBERT: I object to this.

THE COURT: Is that any different from what he has said now?

THE WITNESS: I thought I was telling the same thing. What I stated there is exactly the truth.

Q Do you remember making this statement, "I recall having seen one of the packages"? A Yes.

Q "They were all light blue checks, drawn on the order of the Cuba Supply Company"? A Yes.

Q "And there were at least 100 checks in the package to be delivered to Louis E. Julian" -- do you remember saying that? A Yes.

MR. HOLBERT: I object, as not binding upon the defendant.

BY MR. WASSERVOGEL:

Q You also remember making this statement, "I thereafter sent a bill for the printing to Louis E. Julian"; do you remember making that statement? A Yes.

MR. HOLBERT: I make the same objection and move to strike out the answer.

Motion granted.

MR. HOLBERT: I move to strike out all the testimony of this witness on the subject of the printing of the checks, on the same grounds.

Motion granted.

JAMES PARKER, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 62 East 120th.

Q What is your business? A I am not employed right now.

Q Do you know this defendant Julian? A Yes.

Q How long have you known him? A Since 1895.

Q On or about the 13th day of July, 1905, did you have a conversation with him? A I had.

Q Tell us what it was, please, what you said and what he said?

MR. HOLBERT: I object unless the District Attorney designates what the subject is about.

THE COURT: I take it it is about something that is relevant to the subject matter here -- is it not?

MR. WASSERVOGEL: In connection with it --

THE COURT: If not, I will strike it out and tell the jury to disregard it.

THE WITNESS: On the 13th of July?

BY MR. WASSERVOGEL:

Q Yes? A I had not any conversation with him on the 13th -- yes, I did.

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BY THE COURT:

Q What was the date? A The 13th of July.

BY MR. WASSERVOGEL:

Q What was it? A He gave me a check for \$100 -- no, a check for \$50.

Q What talk did you have with him?

Objected to as incompetent, irrelevant and immaterial.

Q What did you do with the check? A I took the check to 135 Broadway.

Objected to as immaterial.

BY THE COURT:

Q Did you have some talk with him about the check?

A I asked him for a check, and he gave me a check for \$50.

MR. HOLBERT: I know of a matter that renders this witness's testimony absolutely incompetent. The evidence will not develop that any value passed in the giving of that check. It was on an antecedent debt, and would not be competent for any purpose before this jury.

THE COURT: Proceed.

BY MR. WASSERVOGEL:

Q What was said?

Same objection.

A Mr. Julian owed me \$100 --

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BY THE COURT:

Q Just state what was said? A I asked him to pay me some money, and he gave me the check for \$50.

BY MR. WASSERVOGEL:

Q Upon what was that check drawn? A On the Cuba Supply Company.

Q Signed by whom? A L. E. Julian.

Q What did you do with that check afterwards?

Same objection.

THE COURT: You do not make yourself heard, Mr. Holbert.

MR. HOLBERT: The testimony shows it was not given for any present value, but simply on a past or antecedent debt, and would not sustain the charge of fraud in this case.

THE COURT: What is the purpose?

MR. WASSERVOGEL: The purpose is to bring home notice to the defendant showing intent and general course of conduct.

THE COURT: It is not remote -- the 13th day of July.

MR. HOLBERT: It is not on the question of remoteness, but simply there was nothing passed between these people -- in other words, he did not obtain the money from this man on this check and hence it was not a mat-

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ter that would tend to prove --

THE COURT: I will receive it and limit the proof to the subject of the intent of the defendant with reference to the check drawn on the 20th of July, 1905.

Exception.

BY MR. WASSERVOGEL: Tell us, please.

A I went to the Cuba Supply Company to have them pay the check.

Q Was it paid? A It was not paid that day.

Q After you found you could not get payment, what did you do, did you talk with Julian again at any time? A I spoke to him about not being able to get the money for the check.

Q How long after July 13th was it, do you recall?

A I couldn't give you the exact number of days.

Q How many days, about? A Perhaps several days -- within a week.

Q Less than a week? A About a week, I should say. I can't be exact.

Q What talk did you have with him then? A I simply told him I presented the check and could not get any money, and that is about as I remember it.

CROSS-EXAMINATION BY MR. HOLBERT:

Q Mr. Julian had been owing you \$100 for some time before this transaction? A He owed me \$20 and then \$100 from about the 12th of June, that made \$120.

Q You had loaned him \$100 about the 12th of June?

A Yes, sir.

Q 1905, and then you went to him about the 13th of July and asked him if he could pay you some on this loan?

A I asked him for some money.

Q And Julian said to you that he had no ready money, that the Cuba Supply Company was indebted to him and he would give you a check on them for part of it, is that true?

A I cannot remember if that was the exact conversation at that time, but I know he did give me a check for \$50 on the Cuba Supply Company.

Q Was that the substance of the matter -- was that the substance of it? A I cannot say that -- I don't remember. It is almost five years ago.

Q At the time he gave you the check, did you give him any money at all? A No, sir; not at the time he gave me the check.

Q He still owed you \$100 after the check was presented and unpaid -- he simply owed you \$100? A He owes it to me yet, I guess.

Q And when the check was not paid you merely went back and told him they would not pay the check? A I don't think I went back immediately and told him, because the people I had the check on were not in when I called, and I called a couple of days before I was able to get a definite answer.

Q Let us go into that -- when you first went down and presented the check, you say you did not find anybody in?

A That represented the Cuba Supply Company.

Q Then you went back a second time? A I went back a second time -- maybe next day or day after.

Q Did you find anybody in then? A I saw one of the Mr. Judsons.

Q What did he say to you then? A He looked -- I handed him the check and he looked at it and looked at me and said, "Well, are you James Parker?" And I said "Yes". He says, "I don't know you." I says, "There is a man right there that knowed me for years"-- addressing the man. I said, "Am I James Parker?" And he said, "Yes, you are James Parker all right", and then Judson said I would have to see his brother, and then of course I went out and later on I heard both the Judsons were in, and then I went and saw them both and one of the Mr. Judsons told me that the account had been overdrawn, and that he could not pay it.

Q Between the time you saw the first Judson and the time you met the two together, did you see the other Judson alone? A I don't know. I saw one of the Mr. Judsons -- no, I think it was after that. I went in several times after that and presented -- I did not present the check because I knew the Judsons knew what I wanted, and they would say they could not pay me, and sometimes one would refer me to the

other.

Q That is what I want to get at, on the first occasions when you went in and presented the check to one Mr. Judson, did he at that time claim or deny that Julian had the right to draw his check and had money coming to him? A Not the first time.

Q Did ^{the} other Mr. Judson, when you saw him, did he make any claim there was no right on the part of Julian? A They did not make any claim until I caught both together.

Q Then what was said? A Then one of them said -- the light-complexioned Mr. Judson -- he said that Julian had overdrawn his account.

Q How long was that after you had first taken this check from Mr. Julian before you finally got them together?

A It must have been three or four days, at least.

Q After that you went back and told Judson the situation? A Well, I don't know as I went back and told him particularly, but I did tell him -- I don't know if I met him on the street or went to his office, but I notified him sometime after that that I had not received the money on the check.

Q Your best judgment is that sometime, two or three weeks after? A No.

MR. WASSERVOGEL: He did not say that.

THE WITNESS: It was not two or three weeks. It

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might have been within a week.

BY MR. HOLBERT:

Q Might have been within a week? A Yes.

BY THE COURT:

Q From the 13th of July, when you received the check?

A Yes.

BY MR. HOLBERT:

Q At the time when this check had been down by the Judsons, and you went back to see Julian, was he at that time suffering with trouble with his eyes?

Objected to, objection overruled.

A I know he was suffering with his eyes, but I think I saw him before he was so badly or suffered so much that he could not see.

Q You know he was at that time in that condition?

A Somewheres around there he was suffering with his eyes, and I think he had to be led around.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q The day you received the check from him, he was not led around by anybody then? A No.

Q Or the day that you spoke to him? A No.

Q About the non-payment? A No, I don't think so.

Q His trouble with his eyes was after that? A Some time.

BY THE COURT:

Q How long a time after?

A Well, Judge, I really don't know, because the check was something that passed between friends, and I did not care whether I ever got the money or not, so I did not pay any particular attention as to the exact dates, or anything of that kind -- I did not care if I got the money.

Q Was it a month afterwards?

A It was less than a month, I think.

BY MR. WASSERVOGEL:

Q Counsel asked you regarding a conversation you had with Judson?

A Yes.

Q At the time you presented the check for payment; can you tell us the exact words said by Judson at that time?

A When he said the account had been overdrawn?

Q Yes?

A I happened to read over that testimony that was taken before the Magistrate, and that refreshed my mind to the extent that I remember now that one of the Judsons said that Mr. Julian had overdrawn his account, and he had done it two or three times and he was tired of it. That was as I read it taken before Wahle, Magistrate Wahle.

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MR. HOLBERT: I move to strike all the testimony of this witness out upon the ground that it does not prove or tend to prove any intent with reference to the check given the Hotel Imperial, because this check was not given for present value, and in itself shows no intent to defraud and therefore it does not tend to sustain the idea that he had that intent with the Hotel Imperial.

Motion denied. Exception.

JOHN B. CERRY, called as a witness on behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 127 Cedar street.

Q In the month of July 1905 what was your employment?

A Janitor Fulton Building.

Q Where is that? A 138 Liberty street.

Q Did you know the defendant Julian at that time?

A Yes.

Q Did he have an office in that building? A Yes.

Q Do you recognize the papers I now show you? A Yes.

Q I show you one dated July 20 1905 and I ask you if you had any conversation with the defendant regarding it?

Objected to as incompetent, irrelevant and immaterial.

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Overruled. Exception.

THE COURT: On the Cuban Supply Company?

MR. WASSERVOGEL: Yes.

THE COURT: You had better mark it for identification.

MR. WASSERVOGEL: I will as soon as he identifies

it.

A I guess I spoke to him about the whole three, not making them good.

Q One at a time, what was said about that one?

Same objection, ruling and exception.

A I don't know what was said about any one in particular.

Q What were the words? A I asked him to make good the checks.

Q Before that, who brought this check to you, if anyone?

A It was handed to me by one of Mr. Battersey's clerks.

Q When did you first see this check? A Probably three or four days after it was presented to Mr. Battersey.

Q Didn't you see it before it was given to Mr. Battersey?

A Yes.

Q That is what I asked you about? A I saw it when Julian handed it to me.

Q What did Julian say to you when he handed it to you?

A He asked me if I would get it cashed for him.

Q And what did you do? A I took it down and got it cashed.

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Q What was the amount of the check? A Fifty Dollars.

Q What did you do with the cash? A Brought it back and gave it to Mr. Julian..

Q Handed it to him yourself? A Yes.

MR. WASSERVOGEL: I offer the check in evidence.

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

The check is received in evidence and marked People's Exhibit 8.

Q I now show you a paper dated July 22, 1905, and I ask you if you ever had any conversation with the defendant regarding that?

Same objection, ruling and exception.

A Yes, sir, he gave me this check and asked me to get it cashed.

Q Did you get it cashed? A Yes.

Q Well, did you give the cash to the defendant? A Yes.

Q How much was it? A Fifteen dollars -- I might have -- maybe I spent a little out of it when I got it --

MR. WASSERVIGEL: I offer the check in evidence.

Same objection.

THE COURT: I will admit it in evidence, subject to the intent with which the check of the 20th of July, made payable to the Imperial Hotel was made, and limit it to that purpose; as bearing upon the intention of the

defendant with reference to the check to the Imperial Hotel.

Exception.

Received and marked People's Exhibit 9.

BY MR. WASSERVOGEL:

Q Now I show you a paper dated July 24, 1905, and I ask you if you recognize that? A Yes.

Q Did you have a talk with the defendant about this paper?

A Yes, he handed me the paper and asked me to get it cashed.

Q Did you get it cashed? A Yes.

Q What did you do with the cash? A I turned it over to Mr. Julian.

Q How much was it? A Thirty-one dollars.

MR. WASSERVOGEL: I offer it in evidence.

Same objection, ruling and exception.

THE COURT: It will be received and limited to the question of the intent of the defendant with reference of July 20 1905 to the Imperial Hotel. It is not admitted for any other purpose. That applies to all these checks outside of People's Exhibit No. 1.

The check is received in evidence and marked People's Exhibit 10.

BY MR. WASSERVOGEL:

Q Now I understood you to say you had these checks cashed by a man named Battersby? A Yes, sir.

Q What is his first name, do you know? A Frederick.

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Q His place of business and where? A I think it is 11 Albany street -- corner of Albany and Washington.

Q In this city? A Yes, sir.

Q After the dates of these checks, did you have a talk with Julian, the defendant? A Yes, sir.

Q What did you say and what did he say? A The first check I got back -- brought it back to Julian and told him that -- said there was no funds.

Q How about the other checks? A They came back later, and brought the three of them back.

Q What did he say? A I believe Mr. Battersey brought two of them back to him.

Q Did you see him about the other checks yourself?

A Yes, sir.

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

Q What did you say? A I asked him to make good the checks and he told me he would if I gave him a chance.

Q What did you tell him about the checks? A Told him he should not have given me bad checks.

CROSS EXAMINATION BY MR. HOLBERT:

Q How long had you known Mr. Julian prior to this time?

A Probably six or eight months, something like that.

Q And you have on frequent occasions cashed check for

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Julian, had you not, before this time? A Yes, sir.

Q And you had cashed check for him before against the Cuba Supply Company? A Yes, sir.

Q And they went through and were paid in proper order?
A Yes, sir.

Q These three checks that the District Attorney has called your attention to are three out of perhaps forty or fifty checks or maybe more that you have cashed for Mr. Julian or procured to be cashed for him? A Yes.

Q And the rest came back all right and had no trouble, that is true? A I had no trouble with only three.

Q And these three all went through at the same time?
A That I do not know.

Q They all ^{came} back to you at the same time? A No, one came back first and then the other two later.

Q When you got the three checks you went and saw Julian and told him they were not paid? A I saw him when I got the first one.

Q What did he say to you? A He told me he might have overdrawn his account, but he would make good.

Q He said he might have overdrawn and he would make good, and when the other two came back --

THE COURT: That was the one of the 20th of July, the first one?

A Yes, sir, the first check.

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BY THE COURT:

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

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

BY MR. HOLBERT:

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

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

THE COURT: Strike it out.

BY MR. HOLBERT:

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

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

Objected to. Objection sustained.

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

Objected to. Objection sustained. Exception.

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

A Yes.

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

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

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

Objected to. Sustained. Exception.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

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

Q What is your business? A Liquor business.

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

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

A Yes, sir.

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

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

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

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

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Objected to as incompetent, irrelevant and immaterial.

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

I do not know. I will receipt it.

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

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

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

CROSS EXAMINATION BY MR. HOLBERT:

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

Q Told you that? A Julian.

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

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

A Yes, sir.

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

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

Objected to. Sustained. Exception.

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

Objected to. Sustained. Exception.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

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

Q What is your business? A Brewery.

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

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

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

THE COURT: What is the date?

MR. WASSERVOGEL: August 2nd.

BY MR. WASSERVOGEL:

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

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

Objection overruled. Exception.

THE WITNESS: What was the question.

(The question is repeated.)

A At the time of cashing the check?

Q Yes, that is the time? A Yes.

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

Q What did you do? A I did.

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

MR. WASSERVOGEL: I offer the check in evidence .

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

THE COURT: Sometime in August ?

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

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

Exception.

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

BY MR. WASSERVOGEL:

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

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

Same objection.

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BY THE COURT:

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

BY THE COURT:

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

BY MR. WASSERVOGEL:

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

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

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

CROSS EXAMINATION:

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

Q And have you given all the conversation that occurred at that time between you and himself, have you given all of it?

A Might have been some other topics to talk about.

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

A Yes, sir.

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

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

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

Objected to. Objection sustained. Exception.

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

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

Objected to.

A He was.

THE COURT: What difference does it make?

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

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

MR. WASSERVOEL: I object.

THE COURT: Objection sustained.

Exception.

BY MR. HOLBERT:

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

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

A Yes.

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

BY THE COURT:

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

A That was the only one.

BY MR. WASSERVOGEL:

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

THE PEOPLE REST.

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

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

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

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

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

New York, May 17, 1910.

Trial Resumed.

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

THE COURT: Yes.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you reside? A Ardsley on Hudson.

Q You are an attorney at law? A Yes.

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

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

Q Do you know this defendant? A Yes.

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

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

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

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

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

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

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

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

Q It had no banking powers? A No.

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

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

Objected to as not the best evidence and as incompetent.

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

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

Exception.

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

A I had always supposed that.

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

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

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

THE COURT: Strike it out.

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

Q Wait a minute.

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

THE WITNESS: Very well.

THE COURT: Reply to that and nothing else.

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

Objection overruled. Exception.

BY MR. WASSERVOGEL:

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

Q Did this defendant ever deposit any moneys with the

Cuba Supply Company? A No, sir.

Q Did this defendant have a bank account with you ?

A No, sir.

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

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

Q In storage? A In storage.

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

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

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

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

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

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

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

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

Objected to as incompetent, irrelevant and immaterial.

THE COURT: How has it any bearing.

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

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

THE COURT: I will sustain the objection.

BY MR. WASSERVOGEL:

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

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

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

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

Objection overruled. Exception.

Q You said no? A I said no.

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

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

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

BY THE COURT:

Q That is at what time?

THE WITNESS: During the month.

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

BY MR. WASSERVOGEL:

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

A I think so.

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

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

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

Objected to as immaterial.

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

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

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

MR. WASSERVOGEL: Which does your Honor strike out?

THE COURT: The three questions and the three answers.

BY MR. WASSERVOGEL:

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

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

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

so.

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

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

Objected to as a conclusion. Objection sustained.

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

THE COURT: I do not think you have.

BY MR. WASSERVOGEL:

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

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

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

BY THE COURT:

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

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

time the exact dates.

BY MR. WASSERVOGEL:

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

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

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

Q It is true? A Yes.

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

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

Q That was true? A Yes, sir.

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

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

A That is correct, sir.

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

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

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

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

Objected to as calling for a conclusion.

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

BY MR. WASSERVOGEL:

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

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

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

Objected to as calling for a conclusion.

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

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

BY MR. WASSERVOGEL:

Q Do you remember being asked this question by Magistrate Wahle, upon the preliminary hearing of this case as to any authority that this defendant had to draw checks, "Q. Down to when did he have such authority? A. I should say that continued until along, probably in May sometime 1965". Did you so testify? A I do not recall it.

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

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

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

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

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

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

A Yes, sir, I think so.

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

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

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

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

Q Yes. A For other things than this account?

Q Yes? A I think so.

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

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

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

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

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

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

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

ing? A Yes, sir.

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

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

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

A Did I?

Q Yes. A Yes, sir.

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

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

A I do not recall that they had any.

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

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

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

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

Q Dated June 20 1905? A June 19th.

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Q June 19, 1905? A Yes, sir.

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

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

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

THE COURT: What is the date?

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

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

THE COURT: I will take it.

Exception.

MR. WASSERVOGEL: I offer it in evidence.

Received in evidence and marked People's Exhibit 12.

BY MR. WASSERVOGEL:

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

Same objection.

THE WITNESS: It is marked paid.

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

Objected to as immaterial.

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

A Not about that check, no, sir.

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Q You do not recall that?

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

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

BY MR. WASSERVOGEL:

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

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

Q Upon the Cuba Supply Company? A Yes.

Q Dated June 20, 1905? A Yes.

MR. WASSERVOGEL: I offer this check in evidence. Objected to.

THE COURT: Is it made to the defendant.

MR. WASSERVOGEL: Made to the defendant.

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

THE COURT: But given to him.

MR. WASSERVOGEL: Given to him.

MR. HOLBERT: Given to him.

THE COURT: I overruled the objection. Exception.

Papers received in evidence and marked People's exhibit

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BY MR. WASSERVOGEL:

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

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

BY THE COURT:

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

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

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

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

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

Exception.

BY MR. WASSERVOGEL:

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

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

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THE COURT: What is the date of it?

MR. WASSERVOGEL: June 21, 1905.

BY MR. WASSERVOGEL:

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

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

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

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

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

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

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

Objected to as incompetent, irrelevant and immaterial.

THE COURT: To whom is it made?

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

THE WITNESS: I should say it was paid.

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

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

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

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

MR. HOLBERT: I desire to strike it out.

THE COURT: I will let it stand.

Exception.

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

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

BY MR. WASSERVOGEL:

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

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

Objected to as assuming that he ever told him that.

MR. WASSERVOGEL: He testified he did.

MR. HOLBERT: It is not in the evidence.

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

BY MR. WASSERVOGEL:

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

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

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

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

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

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

Q Yes. A That is my recollection.

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

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

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

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

MR. WASSERVOGEL: I will read it all.

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

MR. WASSERVOGEL: I will offer it in evidence.

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

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

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

BY MR. WASSERVOGEL:

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

Q You are a lawyer? A Yes.

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

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

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

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

was true.

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

Objection sustained.

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

THE COURT: Proceed.

BY MR. WASSERVOGEL:

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

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

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

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

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I do not recall testifying.

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

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

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

Objected to as argumentative and calling for a conclusion.

Q Do you say it is correct?

Objection overruled.

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

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

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

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

Objected to as immaterial. Objection overruled.

Q You realized that you were under oath before the Grand

Jury at that time? A I did.

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

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

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

Q Owed \$50? A To anybody?

Q To the defendant? A To Julian?

Q Yes. A What time?

Q July 20 1905? A I think it did.

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

Q Do you recall being asked this question "What is the entire amount he Julian ever claimed was due him for his services? A. We have never reached a position where we came to any definite knowledge as to how much the company owed him."

Do you recall that testimony? A I do not recall it.

Q That was correct? A But it was correct.

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

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

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

A That is correct, yes.

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

A Yes.

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

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

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

Objection sustained.

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

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

Q Yes? A No.

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

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

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

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

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

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

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

Objected to as calling for a conclusion. Objection sustained.

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

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

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

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

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

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

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

A Yes.

Q Who were they?

Same objection.

MR. WASSERVOGEL: I will connect it.

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

Exception.

THE WITNESS: Various persons and corporations.

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

same objection, ruling and exception.

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

pany? A At what time?

Q In the year 1905?

Same objection, ruling and exception.

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

Q In 1905? A In 1905.

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

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

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

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

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

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

Objection overruled. Exception.

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

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

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A I do not recall it.

Objected to. Overruled. Exception.

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

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

Objected to as incompetent.

THE COURT: If he knows he may say.

A I do not know.

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

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

Objection overruled. Exception.

A I do not recall it at this time.

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

Same objection, ruling and exception.

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

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

same objection, ruling and exception.

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

Same objection, ruling and exception.

A He drew drafts on it.

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

Same objection.

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

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

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

same objection, ruling and exception.

A I do not recall it.

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

Motion denied. Exception.

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

Same objection.

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

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

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

same objection. Objection overruled. Exception.

A Is that correct? A I do not know.

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

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

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

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

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

Q Marinelli did not? A No, sir.

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

Objected to as incompetent, irrelevant and immaterial.

A I do not.

THE COURT: Fix the time.

Q In the year 1905. A I do not.

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

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

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it close to this time.

BY MR. WASSERVOGEL:

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

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

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

Objected to as calling for a conclusion.

Objection sustained.

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

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

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

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

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

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

Objected to as immaterial. Sustained.

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

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

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

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

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

MR. WASSERVOGEL: He was president of the company.

Objection overruled. Exception.

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BY MR. WASSERVOGEL:

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

Q yes. A He did not.

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

Objected to as incompetent, irrelevant and immaterial.

OVERRULED. EXCEPTION.

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

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

CROSS EXAMINATION:

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

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

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

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

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

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

THE WITNESS: I do not recall any such testimony.

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

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

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

MR. WASSERVOGEL: I object to the question.

BY MR. HOLBERT:

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

Objected to.

THE COURT: Was that testimony taken?

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

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

BY MR. HOLBERT:

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

MR. WASSERVOGEL: What page are you reading from?

MR. HOLBERT: Page 34.

BY MR. HOLBERT:

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

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

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

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

A No.

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

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

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

BY MR. HOLBERT:

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

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

Q I will ask you further in answer to Mr. Iselin, in the same examination and immediately following the other examination did Mr. Iselin ask you this: "For much did you pay him" and you answered "I do not know. Q. Have you an idea? A No.

Q Have you any means of assuming? A I cannot swear to it. Your best assumption? A \$150 to \$175." Do you recall so testifying in the Magistrate's Court? A No, I do not.

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

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

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

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

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

Q It was a corporation? A Yes.

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

A Yes.

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

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

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

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

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

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

Objected to. Objection overruled.

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

Q In cash? A Yes.

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

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

Q Was the defendant Julian a stockholder of that company?

A No sir.

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

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

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

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

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

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

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

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

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

Q Did you discuss with him the question of whether you had filed articles of incorporation in the State of New York?

A No, sir.

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

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

BY THE COURT:

Q Did you or not tell him? A No.

BY MR. HOLBERT:

Q Did you tell him so? A No.

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

A As far as I know he did not.

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

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

DEPENDANT'S COUNSEL: It is very important.

MR. WASSERVOGEL: I object to the question.

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

THE COURT: Why cannot you ask him that.

BY DEFENDANT'S COUNSEL:

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

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

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

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

Objected to. Objection sustained.

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

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

Objection sustained. Answer stricken out.

Exception.

Q You wanted this woman shadowed in connection with a

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judgment that you held?

MR. WASSERVOGEL: I object.

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

BY DEFENDANT'S COUNSEL:

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

BY THE COURT:

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

A Yes.

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

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

A That had been rendered.

BY DEFENDANT'S COUNSEL:

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

Objected to. Sustained. Exception.

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

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

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A Substantially. I do not recall the exact words.

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

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

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

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

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

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

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

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

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

A No, I do not recall giving that testimony.

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

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

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

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

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

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

A Always.

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

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

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

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

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

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

Objected to. Objection overruled.

A Yes, sir.

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

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Q That is true? A Yes.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

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

A How do I know there was.

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

Objection sustained.

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

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

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

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

Objection sustained.

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

Objected to as immaterial. Sustained.

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

Objected to as not proper re-direct examination.

Objection sustained.

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

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

The defendant moves to dismiss the first count of the

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

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

banking corporations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The jury rendered a verdict of not guilty.

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