

START

746

CASE

INDICATOR

CASE 746

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

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

-against-

H E R R Y M A G N U S .

: Before

: HON.T.C.T.CRAIN, J.,
: and a Jury.

-----X
The defendant is indicted for forgery in the second
degree.

The indictment was filed December 3rd, 1907.

New York, January 14th, 1908.

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

HARFORD T. MARSHALL, ESQ., Assistant District Attorney,

for the People.

SAMUEL MARKOWICH, ESQ., for the Defendant.

A jury was duly impaneled and sworn.

The Court then admonished the jury in accordance
with the provisions of Section 415 of the Code of Crim-
inal Procedure, and an adjournment was taken to Wednesday,
January 15th, 1908.

CASE # 746

The People vs. Henry Magnus.

New York, January 15th, 1908.

TRIAL RESUMED.

Mr. Marshall opens the case for the People.

S I M O N N A C H T I G A L L, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q What is your name? A Simon Nachtigall.

Q Mr. Nachtigall, you are in business at 130 Greene Street in the county of New York, are you not? A Yes, sir.

Q What is your business? A Converters of cotton goods.

Q What does the firm consist of? A S. Nachtigall & Company, it is nominally S. Nachtigall.

Q You are the concern? A I am the concern, yes, sir.

Q Do you know this defendant, Henry Magnus? A Yes, sir.

Q How long have you known him? A About four and a half months.

Q Was he employed by you? A Yes, sir.

Q In what capacity? A Bookkeeper and general manager.

Q How many people are there in the office there?

A Two or three.

Q That is, yourself? A Myself.

Q And the defendant, Mr. Magnus? A Yes, sir.

CASE 746

3
Q And a stenographer? A And a stenographer.

Q Do you know the firm of Walter Aronstein & Brothers?

A Yes, sir.

Q Previous to July 30th, 1907, did you have an account with them? A Yes, sir.

Q What was that account? A We sold them goods and he used to pay his bills.

Q Did you have an outstanding account with him at the time in the sum of \$19.87? A Yes, sir.

Q I show you a check on the Northern Bank of New York and ask you if the signature on the back of that is your signature? A No, sir.

Q Do you know whose it is, do you know who wrote that? A Yes, sir.

Q Who is that?

THE COURT: Pardon me a moment. The witness is now referring to a paper which you have handed him.

MR. MARSHALL: A paper which I handed him.

MR. MARKOWICH: In order to avoid a lot of questions, I will make the issue very plain, I will concede that the endorsement on that check was made by Mr. Magnus.

MR. MARSHALL: In his own handwriting?

MR. MARKOWICH: And that Mr. Magnus has received the money.

MR. MARSHALL: And that Mr. Magnus has received that

CASE 746

money?

MR. MARKOWICH: Yes, sir.

THE COURT: The paper is offered as an exhibit?

MR. MARSHALL: Yes, sir; I offer it in evidence.

MR. MARKOWICH: I will eliminate the latter part of my concession, and will say that we have endorsed that check, for the present I will not say that we have received the money.

MR. MARSHALL: You admit that the handwriting on the back of the check, "S. Nachtigall & Company, S. Nachtigall," is in the handwriting of the defendant?

MR. MARKOWICH: Yes, sir.

The paper is received in evidence and marked People's Exhibit 1 of this date.

Q Did you ever authorize this defendant in any way, shape or form to sign the name of S. Nachtigall & Company, or S. Nachtigall? A On a check, yes, sir.

Q In what way? A With my stamps for deposit to the bank.

Q Well, now, if you will kindly listen to the question, you will get it straighter. Did you ever authorize this defendant to write your name on the back of a check, S. Nachtigall & Company, or S. Nachtigall? A No, sir.

Q Did you ever authorize him to collect any checks drawn to S. Nachtigall or S. Nachtigall & Company? A Yes, sir.

CASE 7-746

Q What was he to do with it? A Return them to me and one of the boys takes the check and gives it to the office girl.

Q I cannot hear you.

THE COURT: No use your talking, Mr. Nachtigall, unless you make yourself heard to the twelve men that are in that box.

A Thank you, and he used to receive any checks, he used to return it to me personally, and I, if I was not there, he used to give it to the girl in the office, to pass it through the bank. We have a private book, every check that comes in --

MR. MARKOWICH: I object to that part of his testimony and ask that it be stricken out, in which he said what would take place during his absence in the office.

MR. MARSHALL: He didn't say that, he said he had a book there and you interrupted him.

THE COURT: He is merely testifying, as I understand it, what the course of business was, and what he instructed this defendant to do.

Q Go ahead. He used to collect the checks for me; he was the general manager.

Q That is, he collected the checks? A Yes, sir.

Q Took the check and was supposed to bring it back to the office? A Yes, sir.

Q That is, he did not collect the money on the checks,

CASE 746

6
he collected the checks? A Only, yes, sir, and bring it to me, and I used to send it to my girl in my private office, which I have a private book, put the name --

Q Enter up the check? A Yes, sir, and used to return it back to him. He used to make up the deposit on -- for instance, my bank is the Central Citizens National Bank, which we have a rubber stamp, every check had a stamp on S. Nachtigall, and ~~every~~ very seldom he used to endorse it, might be once or twice he did endorse it, but my girl in the private office used to do it.

BY THE COURT:

Q When you say endorsed it, you mean put the stamp on?

A Yes, sir.

Q And do some writing besides the stamp? A Yes, sir.

BY MR. MARSHALL:

Q What did he write on it? A Nothing but the stamp.

BY THE COURT:

Q When the stamp was used, was any writing required in order to complete the endorsement? A Yes, sir.

Q What writing was required? A For my girl or myself in my private office.

Q What writing was necessary in order to complete the wording of the endorsement when the stamp was used?

A S. Nachtigall & Company, per S. Nachtigall.

Q Those words were on the stamp, were they not?

CASE 7746

A No, sir.

Q What words were on the stamp? A It is according to whatever bank I used to deposit, different bank, I used to deposit, I had a different stamp.

Q In other words, your stamp only indicated the bank the deposit was to be made in, and the words "S. Nachtigall & Company", had to be written on the check, underneath the stamp to complete the endorsement, is that so? A Yes, sir.

Q Did you authorize the defendant at any time to write the words "S. Nachtigall & Company", under the stamp on any check of yours? A No, sir.

BY MR. MARSHALL:

Q And you did not authorize him to sign your name on this particular check at all? A No, sir.

Q Where did you first see that check?

THE COURT: Referring to People's Exhibit 1?

MR. MARSHALL: People's Exhibit 1.

A I seen it after I had -- I had some trouble with him before.

Q When did you first see it, if you remember? A It was the day before I had him arrested.

Q Do you remember when it was you had him arrested?

A Between two and three months ago.

Q Can you remember the date? A No, sir.

Q How many times did you have him arrested? A Only once, but I excused him before.

CASE 746

THE COURT: No, no; never mind about that.

Q Do you remember when it was? A It must have been in the month of November, what date I could not tell you.

Q It was after that that you first saw this check?

A Yes, sir.

Q The first time you ever knew there was such a check in existence? A Yes, sir.

Q Did you ever receive the \$19.87 which this check calls for? A No, sir.

MR. MARSHALL: You may cross examine.

THE WITNESS: Your Honor, if you will allow me --

THE COURT: No, I will not.

CROSS EXAMINATION BY MR. MARKOWICH:

Q How long was the defendant in your employ? A A period of about four months.

Q Did he come in your employ in the month of June, or July? A Later than that.

Q Sir? A I think it was later than that.

Q Later? A Yes, sir.

THE COURT: Try to keep your voice up, Mr. Witness, so the jury will hear you; they want to hear what you have to say.

Q Aren't you sure of the month he came into your employ?

A No, sir, I cannot remember.

CASE 746

Q And he was employed in your place of business until about what date? A Two months after he was with me I discovered things didn't go right --

Q Never mind that.

THE COURT: Strike that out; just ask him for the date.

A I could not remember, your Honor.

Q You don't recall? A No.

Q Was it a week before he was arrested, a month before he was arrested? A Well, it was in the month of November.

Q In the month of November? A Yes, sir, I guess so.

Q He left your employ? A Yes, sir, or before, may be; may be before, I could not tell you; I don't remember.

THE COURT: Try to keep your voice up, the jury want to hear you.

THE WITNESS: I could not remember.

Q About how long before he was arrested did he leave your employ? A Well, about two weeks before.

Q And it took you about two weeks to discover that your name was endorsed by Mr. Magnus, is that right?

A No, sir; here is a paper which --

THE COURT: No, no.

MR. MARSHALL: Answer the question; don't drag in any papers.

THE COURT: Just answer the question.

CASE 746

THE WITNESS: All right.

Q Now, in answer to a question put by Mr. Marshall to you a moment ago, you said that the defendant perhaps once or twice had endorsed your name, is that right? A With a stamp on, yes, sir.

Q Never endorsed your name? A No, sir, without the stamp, no, sir.

Q Was any one in the office authorized to endorse your name?

MR. MARSHALL: That is objected to as immaterial.

THE COURT: I think I will sustain the objection.

MR. MARKOWICH: Exception.

THE COURT: No, I will reconsider that. I will allow him to ask it. "Any one" includes the defendant.

MR. MARSHALL: I withdraw my objection.

THE COURT: very well.

A He could sign my name on goods received or in a letter, corresponding, but not on checks without the stamp on.

BY THE COURT:

Q And the stamps were only stamps for deposit?

A Yes, sir.

BY MR. MARKOWICH:

Q But once the stamp was on, some one in the office could endorse the name? A Providing, if my girl was not there, and I didn't have the time, I probably would allow somebody else

CASE 746

to do it.

Q Who, for instance, would you allow to do it?

A Well, it is according to who I will have near me.

Q Sir? A It is according to who I would have with me.

Q Sometimes you would allow Harry Steinberg, the book-keeper, to do it? A Yes, sir.

Q Sometimes you would allow Miss Elias, the stenographer, to do it? A Yes, we will allow that.

Q But sometimes you would allow Mr. Magnus to do it?

A Very seldom.

Q But you did? A I will say very seldom; I don't remember.

Q Did it ever occur in your place of business that you would run short in your bank account? A Yes, sir.

Q And that you would not draw your own checks on the bank? A Regarding to what?

Q Because you were short? A What checks?

Q Checks for petty cash or for salary? A No, petty cash I always used to give my own private, used to advance to him -- we will allow for it, yes; once in a while, yes.

Q Did you ever send out one of your employees to cash a check for you, a check that had come from one of your debtors?

A No, sir.

MR. MARSHALL: I cannot see the materiality of this; we are wandering from what we are trying here.

CASE 746

THE COURT: I do not see that it is material, counsel-
lor.

MR. MARKOWICH: It is, if your Honor please.

THE COURT: I will allow it to go a little further.

MR. MARKOWICH: What is the question?

(The stenographer reads the last question and answer)

Q You never did? A No, sir.

BY THE COURT:

Q You understand what is meant by that question?

A Yes, sir.

BY MR. MARKOWICH:

Q You claim that all checks that came from your debtors
were deposited in your bank? A Yes, sir.

BY THE COURT:

Q Or in other words, it was your intention that they
should be? A Yes, sir.

BY MR. MARKOWICH:

Q Did you ever, while short of money, ask Mr. Nahtigall,
or some one else in the office --

THE COURT: Mr. Magnus.

Q Mr. Magnus, or some one else in your office, for the
loan of some money? A Yes, a dollar or two sometimes.

Q A dollar or two? A Yes, sir.

Q Did you ever get any money from Mr. Magnus? A Yes,
a dollar or two, sometimes; I didn't have change, and of

CASE 746

course, used to get the amount from him.

Q Now, did Mr. Magnus ever advance any money for petty cash? A Yes, sir.

MR. MARSHALL: What do you mean by petty cash?

MR. MARKOWICH: What is meant in the ordinary term.

MR. MARSHALL: What is meant in the ordinary term in a business house?

THE COURT: Well, to buy stamps or to buy office supplies.

THE WITNESS: Sometimes we used to get an express package and needed a dollar; I asked whoever had it.

BY THE COURT:

Q The ordinary petty cash account in your office?

A Yes, sir.

THE COURT: Proceed as rapidly as you can, counselor, will you?

BY MR. MARKOWICH:

Q Now, when would you repay that money to Mr. Magnus?

A Sometimes I used to make out a check, pay him in cash back again, sometimes I used to give him a check, for instance, \$2, \$3, made out my check and gave it to him.

Q You never had an accounting with him at the end of a

week? A Once in a while, whenever I had change, I gave it him back.

Q Those occurrences were so numerous that you could not

CASE 746

repay him that every day, or every two days? A Oh yes, that is nonsense; a dollar or two, yes, sure.

Q Did Mr. Magnus ever pay any plumbing bills for you on the houses that you owned?

MR. MARSHALL: I object to this as utterly incompetent.

THE COURT: I will allow it. There is an element of the intent to defraud.

MR. MARSHALL: We are wandering a long ways around to get at that.

THE COURT: You are trying to show that there was an indebtedness on the part of this --

MR. MARSHALL: Then ask him, did you owe Magnus any money when this check was cashed.

THE WITNESS: No.

Q Did Mr. Magnus go out collecting bills for you on your houses? A Yes, sir.

Q What houses? A Well, I gave him one house, in 134th street, 311.

Q Another house? A That is all I gave him.

Q Mr. Magnus had charge of the repairs? A No, sir.

Q Didn't he? A No, sir.

Q Who had charge of the management of that house?

A Anything what was needed he used to report to me and I told him what to do, many a times, I had it repaired myself.

CASE 746

Q Who paid the small bills? A I did.

Q You never asked Mr. Magnus to pay a bill of a dollar or two? A If he laid out a dollar, I gave him the money back.

Q To your knowledge, he has actually laid out money at times for you? A Yes, sir, small amounts.

THE COURT: Now, you have got that, counsellor.
Proceed to something else.

MR. MARKOWICH: That is all.

BY THE COURT: Q Mr. Nachtigall, just in a few words, tell the jury what ~~is~~ the general scope of the work of the defendant was in your employ, what did you employ him to do?
A Sir?

Q What did you employ this defendant to do? A As a bookkeeper and manager in the office.

Q That is to say, he was to write in certain books that you kept in your office and in your business, a ledger, cash book, day book? A Yes, sir, day book; not in the return book.

Q Now, besides writing in those books, what else did he have to do, if anything, for you? A Check the credit and correspond with the salesmen, anything serious came up, of course he used to tell me, and I told him what to do.

Q What do you mean by checking the credit? A For instance, a salesman brings in an order for \$500 or \$1,000, and he used to tell me, "The party owes so much money, do you want

CASE 77-746

to check him off", and I used to tell him what to do.

Q So that this defendant's work was mainly indoor work inside of your office? A Indoor, and sometimes a customer would not pay; I used to send him and other people to collect the money.

Q To collect it, either in cash or checks? A Yes, sir.

Q And sometimes this defendant would make deposits for you in the bank? A No, sir; he used to bring me the checks or the cash.

Q After, but he would make the deposits for you in the bank? A No, very seldom; very seldom; I used to have a boy for that, because I never cared to trust him that much.

BY MR. MARKOWICH:

Q Now, Mr. Nachtigall, about how much money during the week did Mr. Magnus handle for you? A Well, it is according what week; some week more, some week less.

Q What was the average? A You could not tell; sometimes may be \$200, \$300, \$500, a thousand; you can't tell.

BY THE COURT:

Q When you say that, you mean that was the aggregate amount of either checks or cash? A Very seldom cash, your Honor.

Q Mostly checks? A Yes, sir.

Q That came to your place in payment of goods being sold?

A Yes, sir.

CASE 746

BY MR. MARKOWICH:

Q The rents were paid in cash, weren't they? A The rents were paid in cash, yes, sir, but I didn't get it.

Q Sir? A But I didn't get it.

BY MR. MARSHALL:

Q What do you mean by "I didn't get it"?

MR. MARKOWICH: I object, to that, if your Honor please. I have simply asked this witness, if your Honor please, if the rents were collected in cash.

BY MR. MARSHALL:

Q Who collected the rents in cash? A He did, but I didn't get it.

Q How much was he short on that? A I think somewhere -

THE COURT: I don't think we will go into that; we had better not.

BY MR. MARKOWICH:

Q How many months did he collect rents for you?

A About four or five or six months; I cannot remember that.

THE COURT: We will not go into that question of rent. That is all.

BY MR. MARKOWICH:

Q You have kept him there four or five or six months?

A Yes, sir.

Q Did you ever ask Mr. Magnus to let you have a couple of hundred dollars and you would let him go? A Never.

CASE 746

Q Sir? A Never.

Q Weren't you at his house? A At his house?

Q Yes. A No, sir, I was never there.

Q Did you send your manager, Mr. Kemp, around to see him?

A I sent him around on account, if your Honor will allow me, this will settle it easily --

THE COURT: No, just answer the question.

THE WITNESS: All right, your Honor; I will do it.
I never was there.

MR. MARSHALL: If your Honor please, I have a right to go into these things.

THE COURT: Certainly.

MR. MARSHALL: At length.

THE COURT: Well, we will see how far.

BY MR. MARSHALL:

Q What did you say to this defendant about the rents, if anything? A It was on the 10th or 12th.

Q What did you say to him?

MR. MARKOWICH: That is objected to as immaterial and not part of the issues.

MR. MARSHALL: Counsel brings this out on cross examination.

THE COURT: You are trying, counsellor, to create a favorable impression from the circumstances, if you please, that this defendant was permitted to collect rents, and I

CASE 746

think it is only fair to allow the District Attorney to question the witness regarding that subject, and I do allow him to so question.

MR. MARKOWICH: I take an exception.

Q What did you say to him? A On the 10th of the month I asked Mr. Magnus "Why didn't you collect the balance of the rents, the balance of it", he said, "Well, they are out of employment" and so on, "they promised me to give it on the 20th," and so on; that was either the 12th or the 14th or the 15th, or around there.

Q What month was that? A The month before I had him arrested.

Q What month? A November, I think; I cannot remember; November month, what is the difference, October month, may be.

Q October or November? A Yes, sir.

MR. MARKOWICH: I object to that on the ground that it is incompetent, immaterial and irrelevant.

MR. MARSHALL: What are you objecting to?

MR. MARKOWICH: To this line of testimony.

THE COURT: I have allowed it and I give you an exception.

MR. MARKOWICH: Exception.

BY MR. MARSHALL:

Q Was there any further conversation about the rents?

CASE 746

A I said, "I will go and see why you don't get the rents".

That scared him and he stayed away --

MR. MARKOWICH: That is objected to, and I move to strike it out.

THE COURT: Strike it out.

Q What else did he say about it, if anything?

A He didn't say nothing else.

Q Did you get it afterwards? A That same night, I didn't, but the next morning, he didn't appear in my place.

Q Who didn't? A Mr. Magnus.

Q What happened? A I wanted to find out what was going on.

MR. MARKOWICH: I move to strike that out.

THE COURT: Strike it out.

Q What did you do? A It happened so far that he collected several checks and money.

MR. MARKOWICH: I object to that and ask that that be stricken out.

MR. MARSHALL: The counsel opened the door. If the answer hurts him, he cannot complain at this time.

THE COURT: I think it is proper, on the ground that this witness has no personal knowledge of what this defendant collected.

BY MR. MARSHALL:

Q Did you have any conversation with him about money that

CASE 7-746

he collected, or about anything before you had him arrested?

A Yes, sir; here is his own signature.

Q Tell us what it was? A First off, he collected several checks and money from different people; then Miss Elias --

THE COURT: I will not allow you to say that. I will ~~strike~~ it out. You may testify to any conversation you had with this defendant, only.

BY MR. MARSHALL:

Q What did you say to Magnus and what did he say to you?

A When, when was it?

THE COURT: Any time.

A Any time before I had him arrested? I found out --

Q No, tell us what was said? A What was said, I asked him about certain money from different people --

THE COURT: What did you say to him?

MR. MARSHALL: What did you say to him?

(Continued)

A I said, "Didn't this man pay?" and so on and so on.

Q Don't tell us so on and so on, tell us what the conversation was? A The conversation, we discovered that he collected some cash money and some checks from other people.

MR. MARKOWICH: And I object to that and ask that it be stricken out.

MR. MARSHALL: I consent that it be stricken out.

THE COURT: Mr. Witness, you pay attention to me.

CASE 7-746

22
THE WITNESS: Yes, sir.

THE COURT: You may testify to what you said to the defendant, what the defendant said to you, do not you testify to anything else. Now, do you understand that?

THE WITNESS: Yes, your Honor I am telling you, your Honor --

Q What did you say to him? A For instance --

Q What did he say to you? A For instance --

Q No, no "for instance". A A customer owed me an amount, by the name of Mr. --

BY MR. MARSHALL:

Q I want what you said to Magnus, and what he said to you. A I asked him about some money he collected from some people.

Q What did he say? A He said he didn't collect it, and we found out --

MR. MARKOWICH: That is objected to.

THE COURT: Objection sustained.

Q Did you have any further conversation? A Yes, about other people, the same thing, why he didn't collect it.

MR. MARKOWICH: I object to that as being too indefinite.

THE COURT: I will overrule your objection.

MR. MARKOWICH: Exception.

THE COURT: You can testify to anything you said to

CASE 746

this defendant and anything he said to you, but you cannot testify to anything else, in answer to the question.

MR. MARSHALL: That is very simple.

Q Cannot you tell me what you said to him and what he said to you? A Yes, sir.

THE COURT: If you cannot do it, say so.

Q Tell us. A We were supposed to ask him "Did you collect some money from Mr. Cort, and so on, and so on; he said, "No".

Q Well, what happened then? A Afterwards we discovered --

MR. MARKOWICH: That is objected to.

Q No, no, not what you discovered, did you go to see the people from whom he said he collected money? A Yes, sir.

Q Did you have a conversation with them? A Yes, sir.

Q As a result of that conversation, did you have a further conversation with the defendant? A No.

Q What did you ~~later~~ do after you had seen these people?

A I discovered --

Q What did you do, what did you say to the defendant?

A I could not, he was away for a week.

Q What did he say when he did come back? A He made some arrangement.

Q What did he say? A He said, "Mr. Nachtigall, that is the first thing I have done this, will you excuse me?" I

CASE 7-746

did excuse him. That is his signature here (producing paper.)

Q What did he say? A I should not bother him and should not bother myself, I should not arrest him.

Q What did he say to you? A I said, "Tell me the truth, what have you done?" He said, "Around \$50". I said, "You get me the money; I don't want to bother with you." He agreed to get the money and I leave him alone. Two days later-- he -- he swore to me he didn't do anything wrong -- two days later, I discovered this check.

MR. MARKOWICH: I move to strike that out.

THE COURT: Strike it out.

Q Two days before he was arrested, did you have a conversation with him? A Yes, sir, on a Sunday.

Q What did he say? A He didn't do anything else wrong.

Q What did he refer to when he said nothing else, if you know? A Well (witness produces paper).

Q Let me see that? A Yes, sir (handing paper to Mr. Marshall). Here is his own signature.

Q Who drew this up? A One of my men.

Q Who drew this up?

MR. MARKOWICH: I will ask your Honor to please caution the witness not to be exhibiting his books to the jury in the manner that he does; he is try to create an impression, if your Honor please, that that book contains a lot of mysterious things.

CASE 746

MR. MARSHALL: He has dropped the book now.

THE COURT: I do not think any caution is necessary.

MR. MARKOWICH: Will you consent to mark this in evidence?

MR. MARSHALL: Certainly.

MR. MARKOWICH: Mark it in evidence.

MR. MARSHALL: It is received in evidence by consent of both parties.

The same is marked People's Exhibit 2 in evidence of this date.

Q Did you have a conversation on the day that was drawn up, with this defendant? A Yes, sir.

Q Tell us what it was, what you said to him and what he said to you? A He came down with Mr. Kemp.

Q I know he was there or you could not have talked to him, so just tell me what was said. A He said to me, he says, "Mr. Nachtigall", he says, "I have done wrong, and I hear, Mr. Kemp tells me you will excuse me, and I asked to come down with Mr. Kemp and here is so much money I collected, and if you will excuse me", he says, "I am very well much obliged to you," and finally I had to go away somewhere else and Mr. Kemp fixed up with him; that is all.

Q Did he state to you at that time whether there was anything further out? A I asked him myself personally if he done anything else, collected any money which he didn't explain;

CASE 746

he said, "No," and he swore to that.

Q How long after that was it that you discovered about this check? A Two days later.

Q It was then you had him arrested? A It was then I had him arrested.

MR. MARSHALL: That is all.

BY MR. MARKOWICH:

Q Mr. Nachtigall, wasn't it you that had said to Mr. Magnus, there is the sum of \$54 that you owe me, and I want you to straighten that out? A I don't remember anything about it ; I don't remember if I did or didn't.

Q I mean the amount evidenced by the paper in evidence?

A That is the paper; I didn't write it.

MR. MARSHALL: Here is the paper; it speaks for itself, \$39.43.

Q And other small amounts there? A I don't know.

MR. MARSHALL: I don't know; whatever it is, here it is.

Q Didn't you tell Mr. Magnus, "Mr. Magnus, here is an amount of money that my bookkeeper cannot account for and I want you to straighten that out with me"? A Mr. Magnus?

Q Yes, to Mr. Magnus? A Mr. Magnus?

Q Yes. A I said this to him?

Q Yes. A No, sir.

CASE 7746

BY THE COURT:

Q Did you say anything? A No, sir.

BY MR. MARKOWICH:

Q You mean to say that Mr. Magnus came to you himself and said he had committed those wrongs and was ready to pay that? A Yes, sir; my man can prove it, too.

Q Who was the one that made a proposition about drawing up this paper? A Mr. Kemp.

Q You were willing to take that paper, weren't you?

A He told me to take it, yes, sir; I was willing to take it.

Q And you took that paper in settlement of all those items? A All those, yes, sir.

BY THE FIFTH JUROR:

Q Did you, at any time, give the defendant power to sign or endorse a check or checks? A Without the rubber stamp or with the rubber stamp? Without the rubber stamp, no, sir.

Q To endorse, that means to write? A No, it must be the rubber stamp.

Q To your knowledge, was there any checks placed on deposit endorsed by the defendant? A Without a stamp or with a stamp?

Q Yes, sir. A No, without the stamp.

BY THE COURT:

Q Did you ever know of checks being placed in your account, to your credit, that bore upon them the name "S. Nach-

CASE 746

tigall & Company" written in the handwriting of this defendant?

A No, not without a stamp, no.

BY THE SEVENTH JUROR:

Q Was it usual for Mr. Magnus, in making collections for rent, to settle with you at any stipulated time, and deduct from that amount little items that he made out? A Whenever he used to collect the money he used to give me, and whatever expense he had, he could not do anything without my permission.

Q No, I don't mean that in the regular dealings, where he assisted you with your petty cash, did that relate to the money he collected, or was that outside? A No, that was outside; this check is different entirely.

BY MR. MARKOWICH:

Q I just want to ask you, in reference to what Juror No. 5 asked you, I think you said a moment ago, when I questioned you, that at times when you were busy, you would ask some one near you to endorse the check for you, and you also said that sometimes you asked Mr. Magnus to do it. Was that testimony that you gave correct? A With the stamp, yes, sir.

Q But there was some writing, too? A Without the stamp, I never allowed it.

Q But there was some writing after the stamp, under the stamp? A Yes, sir/ S. Nachtigall & Company.

Q Did you ever ask him to write that? A Yes, sir, but never without the stamp.

CASE 746

W A L T E R A R O N S T E I N, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

MR. MARSHALL: It is admitted by the defendant that the People's Exhibit 1 is a check drawn by the witness, Walter Aronstein, and it was given to this defendant in payment of an account owed S. Nachtigall & Company.

MR. MARKOWICH: Yes, that is conceded.

MR. MARSHALL: That is all. Mr. Aronstein, you do not need to wait.

C H A R L E S S T I C H W E H, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q What is your name? A Charles Stichweh.

Q Mr. Stichweh, you are in business where? A Corner of Prince and Greene Streets.

Q What is your business? A Cafe.

Q Do you know the defendant, Henry Magnus? A Yes, sir.

Q I show you People's Exhibit 1, and ask you if you have ever seen that before? A Yes, sir.

Q When did you see that first? A Well, I don't exactly remember, it was in the month of June or July, isn't it?

CASE 746

Q Yes, July, who had this check when you first saw it?

A Mr. Magnus.

Q What did he say to you and what did you do in regard to that check? A Just asked me to cash it.

Q Did you cash it? A Yes, sir.

Q Gave him the amount it called for \$19.87?

A Yes, sir.

Q In your saloon on the corner of what? A Prince and Greene Streets.

Q Prince and Greene Streets? A Yes, sir.

MR. MARSHALL: That is all.

CROSS EXAMINATION BY MR. MARKOWICH:

Q Did you ever cash any checks for Mr. Magnus that were not made out by S. Nachtigall & Company, of which he was not the maker?

MR. MARSHALL: I object to that as utterly incompetent.

MR. MARKOWICH: Very well; I will withdraw the question.

Q Were any checks of Mr. Nachtigall's cashed in your place ever returned, short, or, "N. G."?

MR. MARSHALL: That is objected to as utterly incompetent and immaterial.

THE COURT: I will sustain that objection. He has

CASE 746

admitted it on the stand; you have shown it.

Q Did Mr. Magnus ever come in to get cash loans from you? A Yes, sir.

MR. MARSHALL: That is objected to as utterly incompetent, whether Magnus ever borrowed money from this witness or not.

THE COURT: I will sustain the objection.

MR. MARKOWICH: That is all.

MR. MARSHALL: The People rest.

MR. MARKOWICH: If your Honor please, I move that the indictment be dismissed upon the ground that the People have failed to make out a case.

THE COURT: Motion denied.

MR. MARKOWICH: Exception.

Mr. Markowich opens for the defense.

THE DEFENSE.

HENRY MAGNUS, the defendant herein, called as a witness on his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARKOWICH:

Q Mr. Magnus, where do you live? A 316 East 80th street.

Q With your family? A With my wife and children.

Q What is your business? A Bookkeeper.

CASE 746

Q Now, you were convicted about 13 years ago? A About 14.

MR. MARSHALL: I will concede that he has been convicted, but I think it very strange that the counsel puts his witness on the stand and then proceeds to discredit him.

Q And served a term in the Elmira Reformatory?

A Yes, sir.

Q 13 months? A Yes, sir.

Q How long ago was that? A 13 years ago, sir.

Q What have you done since you left the Elmira Reformatory? A Always worked in the City of New York.

Q Tell me the places? A I worked for Leon Wilder & Son, East Broadway.

Q How long? A Six years.

Q In what capacity were you? A Peters & Heinz, 503 East 82nd street, manufacturers of wagons, police patrol wagons.

Q How long were you employed there? A Two years and one month.

Q You were also employed in Mr. Nachtigall's place for how long? A For eight months from the 1st day of April to November.

Q In what capacity were you employed in Nachtigall's?

A I started as a bookkeeper.

CASE 746

Q From that to what did you develop? A Then I went up as a credit clerk and while I was a credit clerk I have had to do the work as bookkeeper also.

Q How many duties were you to perform in the employ of Mr. Nachtigall? A I was supposed, only one, but it went up as four.

Q What were they? A Bookkeeper, credit clerk, collector and office assistant. The office assistant consisted of charging the daily sales, whereas when I got into the office on the 1st day of April, we had a young man to do that work.

Q Now, will you tell us what the average rental per month is that you have collected? A On one house?

MR. MARSHALL: One moment. That is objected to as incompetent, irrelevant and immaterial.

THE COURT: I sustain the objection.

Q Did you ever advance any money to Mr. Nachtigall?

A Always from week to week.

Q And when did Mr. Nachtigall return that money to you?

A Whenever I had asked him two or three times; sometimes in a week, sometimes in two weeks; whenever I asked him.

Q You would try to get that money at times? A Yes, sir.

MR. MARSHALL: Don't lead him, ask him.

Q When you would return some rents to Mr. Nachtigall, would you have an accounting? A I had no accounting; that is, I had no book accounting.

CASE 746

Q You just -- he took your word and you took his word?

A Yes, sir.

Q What do you mean by having no book accounting?

A I had no book account; I merely, when I collected rent at several periods during the month, I gave Mr. Nachtigall whatever rent I collected; there was never no certain day, because I didn't get it a certain day.

THE COURT: I think we understand what he means by no book accounting.

Q Were you authorized to endorse any checks for deposit, for deposit to Mr. Nachtigall? A I endorsed everything in that office, checks and correspondence, whenever they came in.

MR. MARSHALL: No, answer the question, we don't want a history of your life.

Q Did you write the name of Nachtigall & Company on the back of checks? A Yes, sir.

Q Without the stamp? A Yes, sir.

BY THE COURT:

Q While you were employed by S. Nachtigall & Company, did you ever write the name of "S. Nachtigall & Company", upon the back of a check, and thereupon was that check deposited to the credit of S. Nachtigall & Company in any bank, without the use of the stamp? A No, sir; when it was deposited in the bank it had to have a stamp.

Q Did you at any time write the name of S. Nachtigall &

CASE 746

Company on the back of a check and thereupon go out and get the cash upon it and thereupon return and give the cash to Mr. Nachtigall? A Several times.

BY MR. MARKOWICH:

Q Will you relate the circumstances during which you had received the \$19 check and cashed it? A Yes, sir.

Q Tell the jury, make yourself clearly understood?

A Mr. Nachtigall came to me and said, "Mr. Magnus, have you got \$5?" "No, sir". "I got to have it, I am going to my home, Arverne, I have got to have it in a hurry". I said, "I haven't got it, Mr. Nachtigall." "Well, get it". "How can I get it, all I have got is this check here which came ~~reached~~ in; it is in the safe yet." "Get it, no matter how you get it." I endorsed the check and went over to Charley Stickweh without any trouble of getting the money, gave Mr. Nachtigall \$17, \$2 I kept for the \$2 I had, expenses, and he run off to Arverne.

BY THE COURT:

Q What day of the week was this? A I could not tell you, sir.

Q About what hour of the day? A About two or three.

Q Who was present when you and Nachtigall had this conversation, if any one, if you know? A I do not know.

Q Where did the conversation take place? A In my office.

CASE 746

BY MR. MARKOWICH:

Q What did you do with the money when you brought it back from Stichweh? A Gave it to Mr. Nachtigall, except \$2.

Q What did you retain those \$2 for? A For expenses I had during the two days previous, for car fare and such as that, which I have every day.

BY THE COURT:

Q Did you say anything to Mr. Nachtigall about the amount of the check? A Yes, sir.

Q Did you say anything to him about writing your name on the back of the check? A Yes, sir.

Q What did you say to him in regard to that? A I endorsed it and went over-- he seen it --

BY MR. MARSHALL:

Q Did he see you endorse it? A Certainly.

BY MR. MARKOWICH:

Q Does Mr. Nachtigall --

THE COURT: A juror wants to ask a question.

BY THE TENTH JUROR:

Q May I ask the witness whether the employer, Mr. Nachtigall, ever authorized you to put your name behind a check, your signature on any other check you had or cashed for him, outside of this here? A Yes, sir.

Q To his knowledge? A I could not get any check cashed in Mr. Stichweh's place unless my name was endorsed.

CASE 746

MR. MARKOWICH: We will show that to you, gentlemen.

BY MR. MARKOWICH:

Q Tell the jury under what circumstances you gave that written guarantee to pay Mr. Nachtigall \$54? A On a Sunday morning, I had made an appointment with Mr. Kemp to go to Mr. Nachtigall's, -Mr. Nachtigall's place of business was open on a Sunday morning, with Kemp down to him, and seemed Nachtigall claims that I have collected --

BY MR. MARSHALL:

Q Not what Nachtigall claimed, what did you say?

A I said nothing; I didn't owe him anything.

BY THE COURT:

Q What did he say to you and what did you say to him?

A Mr. Nachtigall said to me that I collected \$19. and \$10, he charged me, for expenses, going to Philadelphia, warning the people there that I could not collect any money. I said, "I have nothing to do with your \$10 expenses you had, to Philadelphia." "I didn't send you there," but he threatened to arrest me, and finally I did not want to be arrested and I asked him, "What can we do?" Well, he says, "give me some writing and then I will let you go" and the amount amounted to \$54. I says, "Where do I come in with this \$54? You owe me \$10, you owe me \$2 that I laid out, you owe me 50 cents that I laid out, and you owe me \$1 that I laid out". He considered, and said, "That is right". We brought the thing

CASE 746

down to \$39. I have signed it, and he said, "What good is this note for, if you don't pay me? I want a guarantee for that", and Mr. Kemp says, "Will you take my guarantee?" And he says, "Yes, sir". With that, Mr. Kemp signed that paper. With that I walked out, thanking him, and I walked out.

BY THE COURT:

Q This was while you were still in Mr. Nachtigall's employ, or was it after you left? A It was a week after I left, your Honor.

Q This was while you were still in Mr. Nachtigall's employ, or was it after you left? A It was a week after I left, your Honor.

BY MR. MARKOWICH:

Q Did Mr. Nachtigall take you back in his employ and deduct that amount of money from your salaries? A Yes, sir, if I don't pay him that, he will deduct it.

Q Did he take you back in his employ? A No, sir.

BY THE COURT:

Q While you were at Mr. Nachtigall's, was any bank account of Mr. Nachtigall's balanced? A Every two or three months, your Honor.

Q While you were there? A Yes, sir.

Q And checks were returned on that balancing? A Yes, sir.

Q Now, among any of those checks returned was there any

CASE # 746

check bearing an endorsement by you, that is to say, in your handwriting, the words "S. Nachtigall & Company"?

A I suppose so; there are notes or checks every month, your Honor, that Mr. Nachtigall issues.

Q When I say that, I mean to say, bearing that writing, without a stamp? A I think so; I cannot be positive of that.

Q Those would be checks drawn upon Mr. Nachtigall's own bank account? A Yes, sir. I beg your pardon --

Q Checks returned on the balancing by the bank would be checks drawn by Mr. Nachtigall on his own bank account, naturally? A Certainly.

Q And you say that on some of those checks you think that you wrote the name S. Nachtigall & Company and collected the money? A I don't understand that question, your Honor. I did not have any checks from Mr. Nachtigall. There are lots of them that Mr. Nachtigall give me personally that I signed, but they didn't require his signature.

Q I don't want to confuse you at all. What I mean is this, Mr. Nachtigall himself had a bank account? A Yes, sir.

Q Now, checks would at times be drawn by Mr. Nachtigall upon that bank account, isn't that so, while you were there?

A His private bank?

Q Mr. Nachtigall in his business had a bank account?

A Yes, sir, two.

Q Two bank accounts? A Yes, sir.

CASE #746

Q Now, checks would from time to time be drawn upon this bank account, upon those bank accounts, isn't that so?

A Yes, sir.

Q Some of those checks would be drawn for the purpose of petty cash, would they not? A No, sir.

Q Some of those checks would be drawn for the purpose of obtaining cash on them, would they not? A No, sir.

Q Would any of those checks, drawn upon either of those bank accounts, bear an endorsement in your handwriting?

A No, sir.

Q Then the checks that you endorsed in the name of S. Nachtigall & Company were checks paid by customers of S. Nachtigall & Company and not checks drawn by S. Nachtigall & Company upon their own private account? A Yes, sir.

MR. HANNOVICH: Let me make that clear, if your Honor pleases.

THE COURT: I think that is perfectly clear. I do not think there is anybody in the jury-box who does not understand it.

MR. HANNOVICH: I want to show that he had also endorsed, if your Honor please, checks that he had received from Nachtigall & Company, drawn on their bank account.

THE COURT: He says not.

THE COURT:

Q Did you ever receive any salary checks? A Yes, sir,

CASE # 746

every wekk.

THE COURT: He means, outside of his own salary check.

Q Did he ever send you out to get cash on his other checks? A On his checks, and on other people's, S. Rosenthal & Company.

BY THE COURT:

Q Mr. Nachtigall had a private bank account, is that so?

A He had two private bank accounts, I believe, and two business bank accounts.

Q On those private bank accounts, did you ever endorse your name? A Yes, sir.

Q In other words, checks given to you for the purpose of obtaining cash on them? A Yes, sir.

Q Did you ever endorse on any of those checks the name of S. Nachtigall & Company? A No, sir, I didn't need to.

Q Well, did you? A No, sir.

BY MR. MARKOWICH:

Q Because they were not made out to the order of Nachtigall & Company? A Because they were not made out to the order of Nachtigall & Company.

MR. MARSHALL: If counsel wants to testify, I would prefer him to take the stand and not lead the witness.

Q Did you have any conversation with Mr. Nachtigall -- where were you arrested? A At 316 East 80th street, my resi-

CASE # 746

dence.

Q At your residence? A Yes, sir.

Q At the Jefferson Market Police Court did you have a conversation with Mr. Nachtigall? A Yes, sir.

Q Did Mr. Nachtigall tell you anything about money?

A Asked me if I make restitution, pay his expenses, he withdraw this case.

Q How much did he want? A About \$400, then \$200.

Q What did you tell him? A I could not think of it; I says, I would if I get out, pay him whatever he claims, go to work for him, and do anything I can, but I cannot go to work at the present moment and give him 400 cents, because I did not have it.

Q Did you, at any time, admit that you owed money to him?

A No, sir.

Q And when you had given him that writing for the \$54, it was on his statement?

MR. MARSHALL: Objected to. One moment, objected to, already, as leading.

Q Was that writing given at Mr. Nachtigall's request?

A Yes, sir.

MR. MARSHALL: If your Honor please, I wish counsel would not lead the witness.

THE COURT: Counsellor, if you would only appreciate, the testimony of a witness is of infinitely greater value

CASE #746

where the answers are not suggested to him by leading questions.

Q How did you ascertain that that was the amount?

A I took Mr. Nachtigall's word for it.

MR. MARKOWICH: That is all.

CROSS EXAMINATION BY MR. MARSHALL:

Q Do you know what that book is, you have seen that book before? A Certainly, sir.

Q What is it? A A credit book.

Q What is entered in that? A Credits.

Q That is where goods are returned the credits are entered in, aren't they? A Yes, sir.

THE COURT: The book is a book of the firm of S. Nachtigall & Company?

MR. MARSHALL: Yes, sir; I am leading up to what the book is.

Q Did you ever make any entries in there in your own handwriting? A Yes, sir.

Q Tell us what that is?

THE COURT: He is shown what page?

MR. MARSHALL: He is shown page 177.

A Do you want the whole page?

Q No, sir, I want that one there, to Aronstein, what is that? A Ten pieces, in their bill, of \$20.28.

CASE 746

Q Who made that? A I did.

Q How did you come to do that? A I was told to by the clerk.

Q What is the clerk's name? A It might have been Miss Elias, it might have been Harry Steinberg.

Q Don't you know that is a credit amount, for the amount of this check that you entered? A No, sir, I did not at the time.

Q What does that entry represent? A That entry represents the credit, that the goods were returned.

BY THE COURT:

Q What date appears there, if any, as the date?

A 28th day of June.

Q June? A Yes, sir.

BY MR. MARSHALL:

Q You made that entry then? A Yes, sir.

Q Does that represent this: \$19.87? A I could not tell you, sir.

Q You ought to know, you say you understood the whole business there?

MR. MARKOWICH: How could a man know?

Q Do you know what that represents? A I told you, sir.

THE COURT: Yes or no.

BY MR. MARSHALL:

Q Yes or no, do you? A What do you mean, what it repre-

CASE 7746

sents?

Q What does it represent?

THE COURT: What is the meaning of that?

A The meaning is that this man has returned ten pieces of goods.

BY MR. MARSHALL:

Q To whom? A To us, S. Nachtigall & Company.

Q Did you ever make any other entries in this book?

A Yes, I think so, more than one.

Q That is the best explanation you can give us of that answer? A Yes, sir.

Q Do you know what this bill was that Aronstein paid \$19.87 for? A No, sir.

Q Don't know what the goods were? A No, sir, I don't have anything to do with the goods, when I go to a man to collect for the goods, sir.

Q You went up and got this check from Aronstein, didn't you? A Yes, sir.

Q What did you say to Aronstein when you got the check? A Nothing at all.

Q Didn't you present him with a bill? A A statement, "There is a statement."

Q Showed you had the statement? A I did.

Q What did it call for, if you remember? A \$19.87.

Q For what goods? A I do not say for what goods.

CASE 746

Q In the statement, it does not say anything, but just \$19.87? A That is all.

Q You made that out yourself? A Yes, sir.

Q You say that you gave \$17 of this back to Mr. Nachtigall? A Yes, sir.

Q And that Mr. Nachtigall asked you for \$600 in the Police Court? A No, sir, I didn't say \$600.

Q How much? A \$400 and then \$200, "as soon as you make restitution."

Q 400 and 200 is 600? Isn't it? A No, sir, I didn't say 600.

Q What did Mr. Kemp say when he made that out, People's Exhibit 2? A Mr. Kemp said, "If Mr. Magnus does not pay this, I will."

Q You didn't believe that you owed Nachtigall any money, did you? A No, sir, I didn't owe him any money.

Q What did you sign that for? A Because he said, "If you don't, you will be arrested".

Q You had not done anything, what were you afraid of being arrested for? A I would not want to give my people the disgrace of being in a Police Court.

Q You had been in a jail before? A Yes, that was years ago.

Q What was that for? A For forging a note for \$22.

Q Who did you forge the note on? A I could not remember

CASE # 746

that to-day, if I wanted to.

Q Too long ago? A Certainly.

Q Wasn't there any more conversation except that Mr. Kemp said if you didn't pay it he would -- A Allow me to say what Mr. Kemp said. Mr. Kemp said to Mr. Nachtigall, "Go and dictate and I will sign that after, and I will be good for it, that is the use", and Mr. Kemp was the man that took me to Mr. Nachtigall and said, "You don't want to worry for anything, Mr. Magnus, I am your friend; I will stick to you, you don't have to worry for anything." I said, "Why should I worry, I didn't do anything wrong." He said, "Come on, any way", and we met Nachtigall on a Sunday morning, and he made that for Saturday.

Q This \$19.87 was that in there at the time?

A I could not tell you that at all.

Q What made up the amount of \$39.43? A \$54 it was, but I wanted my money also that Mr. Nachtigall owed me, as I mentioned before.

Q How did you get to the sum of \$39.43, tell me that?

A I cannot tell you that, I do not know what this amount is.

Q Why, you wrote it, and you signed it? A I signed it for \$39.43 and Mr. Nachtigall claimed for \$54 and when I said, "I cannot sign for \$54, you want everything, give me my money you owe me", he said, "All right, I will do that," and then

CASE #746

he took it off and that remained \$39.43.

Q That you owed him?

A I do not know.

Q You don't know what you owed it for?

A I do not.

BY THE COURT:

Q When you say you do not know, do you mean to say you didn't owe it?

A Yes, sir.

BY MR. MARSHALL:

Q You say, no, you didn't owe it?

A Mr. Nachtigall claimed several things I owed him, he claimed \$10 for expenses to go to Philadelphia. I certainly did not owe it to him, but I said, "All right."

Q Can you tell us what Mr. Nachtigall said you owed this \$39.43 for?

A I just told you.

CASE 77-746

1

Q Try and tell me again. A I don't remember anything more; I have told you there was \$19 rent, that he claims, out of \$214 --

Q Wait a minute. Rent from where? A From 134th street that I collected.

Q Did you collect it? A Yes, sir.

Q What did you do with it? A I gave it to Mr. Nachtigall. He said, "I didn't receive it." I said "All right; let it go at that."

Q Then there is \$20.43? A There was more than \$20.43, there was \$40 more than the \$19.87, Mr. Nachtigall cannot deny the note was made out for \$54.

Q If you will answer my question and not get excited or mad -- A I won't get excited. It is a case here, Mr. Nachtigall wants to --

Q Wait a minute until I ask you a question.

THE COURT: Keep perfectly quiet. Don't get excited. Pay attention to the question, then answer it in as few words as you know how, and if you don't understand the question, say so.

THE WITNESS: Thank you.

Q I am asking you questions that are very simple.

A All right, sir.

Q \$19 of rent that you say you collected and gave to Mr. Nachtigall, who did you collect it from? A From a ten-

CASE 746

2

ant.

Q What is the name of the tenant? A I cannot tell you sir; a tenant in the house, one on the first, one on the fourth, one on the tenth, or on the eleventh; I cannot tell you the name of the tenant, sir, if I tried to. It is immaterial what the name of the tenant is, as long as it is \$19.

Q What was the other \$20 that made up the \$39.43?

A Mr. Marshall, if you please, the note there accounts for \$39. \$19 you have accounted for for the rent; there was \$54; I cannot tell you where the \$54 came in, if I tried to.

Q There is not any mention -- A Because I was foolish enough to sign, Mr. Marshall, for \$39, or to sign anything, because I didn't owe him anything.

Q What did you sign it for if you didn't owe anything?

A Because I have told you before, Mr. Nachtigall threatened me with arrest.

Q You hadn't done anything? A I understood that, but when I see that which Mr. Nachtigall has done to me to-day, I have no redress, I didn't do wrong to-day, but I am nine weeks in the Tombs.

Q Where were you the week before you were arrested?

A In New York City, sir.

Q Where? A Right on Broadway.

CASE 746

Q What were you doing? A Selling goods.

Q What kind of goods? A Linen goods.

Q Who did you sell them to? A To whoever I
could get to buy.

Q Give us the name of one that you sold goods to?

A I cannot tell you, sir, because I sold to private people.

BY THE COURT:

Q Can you tell us by whom you were employed during
that week for the purposes of sale? A I was not employed,
I just want to tell you how, I was not employed by any one, I
simply went and bought some goods and sold it.

Q Can you tell us where you bought the goods? A Yes,
sir, Leon Wilder & Sons, for one, and a house on Walker
street, another.

BY MR. MARSHALL:

Q What was the name of the house on Walker street?

A I could not tell you.

Q Have you been there before? A Yes, sir.

Q What did you buy from Leon Wilder & Sons? A Linen
pock handkerchiefs.

Q Who did you sell them to? A Private people.

Q Give us some names? A I could not give you any
names; I might go into your house and sell ~~me~~ you.

Q No chance? A Perhaps not, but maybe somebody else,
I would not ask you your name, though.

CASE 746

BY THE COURT:

Q You concluded you would attempt to sell from house to house, certain goods? A Yes, sir.

Q You went to different places and bought these goods and then started out with these goods and went from house to house for the purpose of selling them? A Your Honor, that is right.

BY MR. MARSHALL:

Q What did you leave Nachtigall for? A I received, the reason I left Mr. Nachtigall for is this, I started to work on the 1st day of April at \$15 a week. After two months Mr. Nachtigall raised my salary to \$20 a week, and the 1st of November he said, "I am going to cut you down to \$15 a week." I said, "When I came here and worked for you first at \$15 a week, I told you I had to do night work, every night, keeping books for two or three different people," and you told me to leave that go, and, "I will raise your salary, because you cannot keep your mind on this work, I want you to drop that other work and I will give you \$5 more." When he said on the 1st of November he was going to cut me down \$5, that was the reason I left him; I did not go back any more.

Q When did you leave him? A About the 8th or 9th of November, I am not quite sure.

Q Did you leave him before you signed that paper or

CASE 746

5

afterwards? A I left him before I signed that paper.

THE COURT: Now, we are referring to People's Exhibit 2?

MR. MARSHALL: We are referring to People's Exhibit 2.

Q How did you come to go back there to sign that paper? A I had explained that, I had a conversation with Mr. Kemp, Mr. Kemp said, "Come down and see Mr. Nachtigall and you can get your work back."

BY THE COURT:

Q Where did you see him? A At his own residence.

Q Who is Mr. Kemp? A He is supposed to be the general manager of this concern, but he is salesman also. I went to Mr. Kemp's house on a Sunday morning. He said, "Come on, I will assure you you will get work again with Mr. Nachtigall."

BY MR. MARSHALL:

Q What did you go to Kemp's house for? A Because he came to my house a half a dozen times and seen my wife and said he wanted to see me.

Q What did you do? A He said, "Mr. Magnus, what did you leave there for?" I said, "Because of the \$5 business." He said, "Come back to my house and we will go downtown together and see Mr. Nachtigall and I guarantee you will get the work again and you will sell goods for him and you will make more money than \$15 a week, you will make \$30 or \$40."

CASE 77-746

6

and that is the reason I went with Mr. Kemp to Mr. Nachtigall on Sunday morning at ten o'clock.

Q When did Mr. Nachtigall first speak about this check, People's Exhibit 11? A He never spoke to me about that check that I know of.

Q Did he ever say anything to you about it? A Not one word, sir.

Q Didn't you know that was what locked you up? A After I was locked up, yes, but not before.

Q Did you ask him what you were locked up for? A I did not ask anything of the officers that arrested me. They came to my private residence. My son was going downstairs and he said, "Papa, there are two men want to see you." I said, "All right," I was sitting in my rocking chair. The two men came up. They said, "Are you Mr. Magnus?" I said, "I am." They said, "You worked for Mr. Nachtigall?" I said "Yes, sir." They said, "I am sorry, we are two General Office men and there is a complaint lodged against you by Mr. Nachtigall." I said, "As long as you are two General Office men I suppose I don't have to see it." They showed me a paper, a complaint sworn out, not by Mr. Nachtigall, but by S. D. Kemp, the manager. I said, "All right, I will go with you, and I went, and I have been there ever since, some weeks; I went there on Wednesday.

Q Can they tell you what you were arrested for? A No,

CASE 746

sir, they did not.

Q Did you ask them what the charge was? A I did not ask anything.

Q Did you ask anybody what the charge against you was? A I knew it Wednesday morning when I was in Jefferson Market Court.

Q That was when Mr. Nachtigall said if you gave him \$400 he would let you go? A No, sir.

Q When was it Mr. Nachtigall said that? A On a Friday, following the Wednesday.

Q How much did you make selling handkerchiefs? A About \$3 or \$4 a day, sir.

Q \$3 or \$4 a day? A Easy, yes, sir.

Q That is more than you made at Nachtigall's? A Yes, sir, but I don't like to go out selling goods if I can get a position at \$20 a week, which I had; I don't want to go selling goods, for various reasons, which I don't want to state to you, but I will, if you want me to.

Q Tell me? A I tell you why. By selling goods from house to house, it is natural for a man to drink, and my family is strongly against that, my wife begs me not to do that, but I cannot sell goods from house to house without drinking, and that makes my family unhappy.

Q You mean, when you tried to do that sort of business, you got drunk, is that right? A No, sir, I didn't say

CASE 746

I got drunk; I was never drunk.

Q In your life? A Never drunk in my life.

Q What do you call drunk? A I call drunk a man that staggers, a man that does not know what he is doing.

Q Well, just because there was drinking in this selling handkerchiefs, you didn't want to do it? A Yes, sir, that is positively the truth.

Q Were you afraid of drinking? A Yes, sir.

Q Why, you had never been drunk in your life? A Because it made my family unhappy for me to drink.

Q You were never drunk in your life? A Must be a man be drunk, Mr. Marshall, to make his family unhappy?

MR. MARKOWICH: That is objected to.

THE COURT: You have got it.

MR. MARSHALL: I think that is all.

BY THE FIFTH JUROR:

Q You stated to his Honor that you had endorsed and cashed other checks? A Yes, sir.

Q Had Mr. Nachtigall previously endorsed them, before you had? A Mr. Nachtigall, never --

THE COURT: Just answer that question.

A Endorsed a check?

Q If you endorsed them, did you put "per" your name, under it? A There is no check ever signed, "per".

Q You endorse the name how? A S. Nachtigall & Com-

CASE 746

pany, S. Nachtigall.

Q Did your name appear on the check at all? A Not unless I cashed it.

BY THE COURT:

Q You do not understand the juror? A Yes, your Honor.

Q After you wrote upon the check that you cashed the words "S. Nachtigall & Company", did you then write the name, "Magnus"? A Every time when I cashed the check.

BY THE FIFTH JUROR:

Q On all that you cashed? A Yes, sir, always.

BY THE COURT:

Q Why didn't you put the name, "Magnus, on this check?

A There is Magnus on that check, your Honor.

BY THE FIFTH JUROR:

Q Did you keep a ledger? A Yes, sir.

Q The credit items here, was that posted from the credit book in your ledger? A I presume so, I could not tell you.

Q You didn't keep a ledger? A I kept everything, I had to keep everything after a while, when I first came there I did not.

Q You cannot say positively whether that entry was posted in the ledger book or not? A I could not.

BY MR. MARSHALL:

Q You posted it yourself in your own handwriting?

CASE 746

A I beg your pardon, that is simply crediting, but not posting. What you see there, that is simply a record.

Q You cannot tell what this is for or who told you to put it there? A I have read it to you, there is ten pieces of percale, returned, that is all.

THE COURT: I think that will be all.

THE WITNESS: Thank you, sir.

MR. MARSHALL: That is all.

CHARLES STICHWEH, recalled.

BY MR. MARKOWICH:

Q Mr. Stichweh, did you ever cash any checks for Mr. Magnus without his endorsement on them? A No, sir.

Q About how many checks did you cash for Mr. Magnus? A, Lots of them, plenty.

Q Nachtigall's checks? A Yes, sir.

Q And Mr. Magnus' name was always endorsed? A Yes, sir.

MR. MARKOWICH: That is all.

BY MR. MARSHALL:

Q Nachtigall's endorsement on it? A I could not say.

Q What do you mean by Nachtigall's checks, did you know Mr. Nachtigall? A No, I did not.

CASE 7746

11

Q Did you know him? A No, sir.

Q Well, do you mean that these checks that you cashed for Magnus had Nachtigall's name on them? A Made out by Nachtigall, yes, sir.

Q Made out by Nachtigall? A Yes, sir.

Q Were there any checks made out by Nachtigall that you ever cashed for him? A I don't remember.

MR. MARSHALL: I move that all this evidence be stricken out in regard to this.

BY THE COURT:

Q Did you ever cash any check drawn to the order of S. Nachtigall & Company and endorses S. Nachtigall & Company in the handwriting of this defendant, Henry Magnus? A No, sir, not to my knowledge.

BY MR. MARSHALL:

Q Never cashed any except this one? A Except this one.

BY MR. MARKOWICH:

Q You cannot remember it, you say? A I cannot remember.

Q Did you ever cash a check of A. H. Rosenbluth, to the order of Nachtigall? A I could not remember.

Q Sir? A I don't know, I don't remember.

BY THE COURT:

Q You don't remember, you have no recollection? A No,

CASE 746

sir.

BY MR. MARKOWICH:

Q You won't say, though, that you have not? A No, sir.

H E L E N E L I A S, called as a witness on behalf
of the defense, being first duly sworn, testifies as
follows:

DIRECT EXAMINATION BY MR. MARKOWICH:

Q What is your name? A Helen Elias.

Q Were you in the employ of Mr. Nachtigall at the
same time that Mr. Magnus was there? A Yes, sir.

Q What were your duties? A Stenographer and type-
writer and some little work.

Q Did you ever endorse Mr. Nachtigall's name on checks
for deposit?

MR. MARSHALL: That is conceded, Nachtigall swore
to it. What is this for?

MR. MARKOWICH: I just want to show the cus-
tom in business there.

MR. MARSHALL: Nachtigall swore that she did it,
Do you want her to swear to it again?

Q Who signed correspondence?

MR. MARSHALL: That is objected to as utterly im-
material and incompetent.

CASE # 746

THE COURT: I think I will sustain the objection.

MR. MARKOWICH: Exception.

Q Who had full charge of the office from June to October?

A Well, Mr. Magnus was manager, general manager of the office.

Q Did Mr. Nachtigall ask the help in the office for cash very often?

MR. MARSHALL: That is objected to as utterly incompetent and immaterial, and already asked and answered.

MR. MARKOWICH: I just want to show that he made a habit of that.

THE COURT: He has testified to that.

MR. MARKOWICH: Very well. That is all.

MR. MARSHALL: It is conceded that Mr. Steinberg will testify to the same thing.

MR. MARKOWICH: That is the case for the defense.

MR. MARSHALL: I call Mr. Kemp in rebuttal.

THE PEOPLE'S CASE IN REBUTTAL.

SAMUEL D. KEMP, called as a witness on behalf of the People in rebuttal, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q Mr. Kemp, who drew this up, People's Exhibit 2? A I did.

CASE 746

Q Did you have a conversation with the defendant before you drew it up? A I did.

Q Tell us what it was? A There were several conversations.

Q Well give us all of them?

THE COURT: Confine yourself in the first place to the first conversation. Tell us as nearly as you can what you said to the defendant at the first conversation and then what he said. Then take up the next conversation.

A On the Thursday prior to this here written statement being drawn up, I was called up at the telephone by Mr. Magnus, who requested me to meet him at the corner of Broadway and Bleecker street, so that we might talk over the trouble that he was in. This occurred about twelve o'clock. I went there and met him, at least I went there and waited for possibly three-quarters of an hour and he didn't come. The following Saturday night he came up to my house.

Q Had he been to the office in the meantime? A No, he had been away from the office for over ten days and I had gone up to his house and tried to find out where he was.

BY THE COURT:

Q He came to your house? A Yes, he came to my house.

Q What did he say to you and what did you say to him?

CASE 746

A I said, "Magnus, what have you done here?" He said, "I really don't know what I have done." He said, "I know I have taken some money, what it was I don't know; I have been drinking and I cannot account for what I have done." I said, "Magnus, there are several checks here that have come back, one for \$9.80, one for \$14, and you have collected \$19.50 rent. Is that all the money that you have taken?" He says, "I promise you, on my word of honor, that is all the money I have taken," I said, "Magnus, I will tell you what I am going to do. Mr. Nachtigall has got his mind bent on arresting you. Take my word for it, that I will intercede for you, if you will tell me the truth, that you have not taken any more money, I will intercede for you and promise you that you will not be arrested." He commenced to cry then and promised me faithfully then he would tell the truth, and said, "This is all I have taken", mentioning the two checks, "and \$19.50 that I know of, I don't know what I have been doing, I must have been crazy; I have been drinking the whole time." I said, "All right, you come down here to-morrow morning at nine o'clock and we will go to Mr. Nachtigall's office and I will see what I can do to square it for you." He said, "I will not go to Mr. Nachtigall's office; he will have me arrested." I said, "You can rely on it, you will not be arrested. I want to settle this thing, both for yourself and for your family; I know you have done

CASE # 746

something you will be sorry for; all I want from you is the truth and nothing else but the truth." On the following Sunday morning he came to my office and we rode down to Mr. Nachtigall's place of business, 130 Greene street, and before going into the door, I said, "Magnus, this is your last word; I want you to tell the truth; if you have taken any more than you say, I am going to be just as hard on you as Mr. Nachtigall wants to be, because I want to give you a fair chance to get out of your trouble." We went into Mr. Nachtigall's office, and this paper here was drawn up.

BY MR. MARSHALL:

Q Who drew that up? A I drew that up.

Q How did you arrive at the items which made up the \$39 and some odd cents? A The exact amount I would not be able to tell, unless I went to the office to refresh myself as to the amount. I know there was \$19.50 for rent collected, one check for \$14 and another check for \$9. and some odd cents.

Q Was there anything said at that time by this defendant of Mr. Nachtigall owing him money? A Well, he did owe him a half a week's salary, from Monday to Wednesday, because he never showed up after Wednesday, and he had a half week's salary coming to him, which was deducted from the \$54 that we figured up.

CASE 746

Q That was all that was deducted? A That was all that was deducted, and this thing was agreed and settled upon. He went out of that office. Everybody felt happy that he had got out of his trouble, and there was nothing further said. About four days later on we discovered this check of \$19.87, proving to me that he had lied, had not told the truth and had not acted square with me.

MR. MARKOWICH: I object to that and ask that it be stricken out, the characterization.

THE COURT: Yes, we will strike that out.

CROSS EXAMINATION BY MR. MARKOWICH:

Q When Mr. Magnus told you that he had been drinking hard, you believed him, didn't you? A Positively.

Q How long have you known Mr. Magnus? A Since he has been in the employ of S. Nachtigall & Company.

Q Was he ever drunk in the employ of Nachtigall & Company? A No, sir, not exactly drunk; he was under the influence of liquor.

Q Often? A Towards the latter part of his employ, yes.

Q What do you call under the influence of liquor? A A man that smells whiskey from his breath.

Q Do you ever drink? A Sir?

Q Do you ever drink? A Occasionally.

CASE 746

Q Any whiskey smell on your breath? A Sir?

THE COURT: Do not go into that, counsellor.

Q Is that what you call being under the influence of liquor?

THE COURT: You have got that, counsellor, you have got that.

A No, sir.

BY THE COURT:

Q What were your duties with S. Nachtigall & Company, briefly? A Manager.

Q You were down in the office? A Not office manager, no, sir; sales force manager.

BY MR. MARKOWICH:

Q For whom were you interested in that case, for yourself or for Mr. Nachtigall? A For Mr. Marcus.

Q Mr. Marcus solely? A Sir?

Q Mr. Marcus solely? A Yes, sir.

Q Did not care to see the interests of Mr. Nachtigall protected, did you? A Looking to see Mr. Magnus get a fair detail and at the same time Mr. Nachtigall protected.

BY THE COURT:

Q Now, People's Exhibit 1, here, is a check; when did you first see that check? A Four days after that statement here had been drawn up, the exact date I cannot recall.

CASE 746

Q Where was that check when you first saw it?

A In the possession of Mr. Nachtigall.

Q And under what circumstances did you see it in Mr. Nachtigall's office? A No, in the store proper; he came to me; he says, "Now, look here" --

Q No, not what he said to you, but you saw it four days after People's Exhibit 2 was written out? A Yes, sir.

BY MR. MARSHALL:

Q Did you have any conversation with Magnus about that check? A About this individual one, no, sir.

Q Did you go to the Police Court? A Yes, sir.

BY MR. MARKOVICH:

Q Before you had discovered that there was any money due at all from Mr. Magnus to Nachtigall, an expert accountant went over the books, is that so? A I don't know positively.

Q Didn't Mr. Nachtigall employ an expert accountant? A I don't know positively whether he did or not; there were some men working in the office; what their duties were I did not know; I had absolutely nothing to do nor did I know of the office work.

Q There were strangers in that office? A Yes, sir.

Q Didn't you tell the detectives prior to Mr. Magnus' arrest that Mr. Magnus had gotten away with about \$300

CASE 746

or \$400? A No, sir.

Q Did you tell them how much? A I didn't tell them any amount at all;; I told them we didn't know how much, that upon investigation at the present time he had taken \$50 or \$60.

Q You are sure it is not more? A That is my conversation with the detectives.

Q Do you know now exactly what amount? A No, sir.

Q How did you know then that it was \$54 at the time?

A Because there were two checks there, one amounting to \$9.85, one for \$14, some rent for \$19.50, and some check, I cannot recall exactly what it was, some other check; I cannot recall exactly what it was.

BY THE COURT:

Q I wish you could tell us in just as few words as you can how it was you ascertained, if you did ascertain, that these various amounts were due? A They were not due. Our bookkeeper had telephoned up to the firms in question and they claimed they had all paid those accounts.

MR. MARKOWICH: I ask that that be stricken out as hearsay and incompetent.

THE COURT: No. This witness has stated what purports to be a conclusion that he reached. Now, I think it is for the interest of the defendant to ascertain on what basis he reached it. If you want it

CASE 746

stricken out, I will strike it out, but I think it is to the interest of the defendant that it should appear.

MR. MARKOWICH: I will take your Honor's suggestion.

Q In other words, you heard or Mr. Nachtigall heard from various concerns? A Yes, sir.

Q That they had paid? A Yes, sir.

Q And if you heard no statements of that kind were made that you testified that certain amounts were owing by the defendant to Mr. Nachtigall? A Yes, sir, and also the two checks.

Q Those were two checks that you actually saw? A Those were two checks that I actually saw, yes, sir; yes, sir, and being told of the \$19.50 rent that had been collected.

Q By whom? A By Magnus.

Q So that you make up that amount by having checks? A Yes, sir.

Q And by a statement of Magnus as to an item of \$19? A No, sir, as to an item of the whole amount that is submitted in this statement here, because that was supposed to be a confession that he made to me, and after this confession had been written, these checks were discovered.

MR. MARKOWICH: I ask that that be stricken

out. MR. MARSHALL: It is consented that that be stricken out.

THE COURT: Strike that out. BY MR. MARSHALL:

Q After he wrote out that confession, you asked him about further matters? A Yes, sir.

Q What did he say? A I asked him if this was positively the truth, that this was all the money involved, and he told me, yes.

Q It was after this, this check was discovered? A Aft-

CASE 746

1 some others.
erwards, the following week, the check was discovered with
BY MR. MARKOWICH:

Q When you met Mr. Magnus, did you say to him Mr. Nachti-
gall had told you that certain moneys were due by him to the
firm? A No conversation regarding to anything being due.

Q Did you tell him that you had ascertained from Mr. Nachtigall and other sources that he had gotten away with money? A Yes, sir.

Q Did Mr. Nachtigall immediately say that he was guilty of it? A He immediately wanted to have him arrested, as soon as he discovered the fact that these checks were forged.

Q After you had apprised Mr. Magnus of your discoveries, did Mr. Magnus immediately say that he was guilty of the charges? A Yes, sir.

Q Didn't protest his innocence at all? A Absolutely not.

Q You didn't take the trouble of looking over the books to ascertain whether Mr. Magnus' admission was correct or not, did you? A No, I didn't have to; the checks were there for themselves.

Q Sir? A The checks were there in evidence for themselves.

Q You need not volunteer any testimony. Just answer the question. You don't drink so often --

MR. MARSHALL: If your Honor please, I think there is no reason for counsel insulting this witness.

CASE # 746

THE COURT: That is all.

BY MR. MARSHALL:

Q The defendant has testified the reason he left there was because he had some disagreement about his salary being reduced \$5? A No, he never left there at all.

BY THE COURT:

Q Was his salary reduced? A Not to my knowledge.

BY THE SEVENTH JUROR:

Q I would like to know whether the defendant left the position of his own accord or whether he was asked to go?

A He didn't leave it at all. On the Wednesday morning he didn't show up to business and we never saw him after that until the time I met him, at least ten or twelve days after that, when he came back to the store there.

THE COURT: I think that is all.

MR. MARSHALL: That is all. I will recall Mr.

Nachtigall.

S I M O N N A C H T I G A L L recalled:

BY MR. MARSHALL:

Q Mr. Nachtigall, is there anything on your books, is there any way you can show what the amount, what the goods were for which this check paid? A Yes, sir.

Q How can you show us that?

MR. MARKOWICH: I object to that, if your Honor

CASE # 746

please, unless some foundation is laid.

THE COURT: What is the ground of the objection.

MARKOWICH: First ask the witness if he can read.

Q Can you read and write, Mr. Nachtigall? A Yes, sir.

THE COURT: I will allow it.

Q How can you show us from your books what the goods were for which this \$19.87 was paid? A By charging, from the charge book.

Q Where is that charge book? A Downtown in my store, the ledger and the day book.

Q The amount of that bill? A Sure, yes, sir.

Q Can you produce them here? A Yes, sir; sure.

Q How long will it take you to get them here? A May be twenty minutes. If you will allow me, here is my man does the charging, is here.

Q What is his name? A Harry Steinberg; he can tell you all about it.

MR. MARSHALL: Mr. Steinberg.

THE COURT: Do you withdraw this witness?

MR. MARSHALL: Yes, I will withdraw this witness for the time being.

H A R R Y S T E I N B E R G, called as a witness on behalf

of the People in rebuttal, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q When did you go to work for Mr. Nachtigall?

CASE 746

A About 1903.

Q About 1903? A Yes, sir.

Q You have been working there ever since? A Well, I left for about three or four months.

Q Were you working there last June and July, for Nachtigall? A I was.

Q Did you have charge of his books? A I had at one time.

Q Well, did you have last June and July? A No, sir.

Q Who had charge of them then? A Miss Elias, who was here on the stand before.

Q Miss Elias had charge of them? A Yes, sir.

Q Who has charge of them now? A They have a man there named, a man there now, Mr. Goodman.

Q What do you do there now? A A clerk.

Q Can you tell us who has charge of Mr. Nachtigall's books now? A Mr. Goodman and another small girl.

Q Do you know anything about this particular account with Walter Aronstein & Brothers? A Yes, sir; I looked it up at the time.

Q Talk up, so the jury can hear you.

THE COURT: Talk up, do not be afraid, they all want to hear you.

A Right after this check was paid I sent the man a statement

CASE 746

for that very same account.

Q What was the account, what were the goods, do you remember? A I cannot remember just now; I know there was ten pieces of goods.

Q Ten pieces of goods? A Yes, sir.

Q On that account? A Yes, sir.

Q Were there any discounts on it? A I cannot remember.

MR. MARKOWICH: I object to this as incompetent.

THE COURT: I will allow it.

MR. MARKOWICH: Exception.

Q What was the amount of the account? A \$19 and some odd cents; I am not sure.

Q In whose handwriting was the account made?

THE COURT: The bill made.

Q (Continued) In whose handwriting was the bill made?

A W. Aronstein & Brothers.

Q Whose handwriting was the bill in? A Miss Elias', I think it was.

Q She made the bill? A Yes, sir.

MR. MARKOWICH: I object to that and ask that all the evidence of this witness be stricken out.

BY THE COURT:

Q Do you know who wrote out the bill? A I am not positive.

THE COURT: Well, we will strike that out.

CASE 746

BY MR. MARSHALL:

Q Do you know when the bill was sent? A Sent with the goods.

Q When were the goods sent, do you know? A I don't know that.

Q Is there anything in your office to show when the goods were sent? A Yes, sir, we have a receipt for the goods.

MR. MARKOWICH: I object to this as immaterial.

THE COURT: objection overruled.

MR. MARKOWICH: Exception.

Q Can you bring that receipt here in court? A Yes, sir.

Q Which you got from Mr. Aronstein? A Yes, sir.

Q For the receipt of those goods? A Yes, sir.

BY THE SEVENTH JUROR:

Q I would like to know the terms on which the goods were sold?

MR. MARSHALL: How many days?

Q Was it net, or 2 per cent off, or what? A Different people get different terms.

Q I think what ought to be established is how much the bill amounted to on that date for those ten pieces of percale, and whatever it may be, so we can see if the credit is right?

MR. MARSHALL: Exactly so, that is just what I am trying to get at.

A I cannot tell you that just now.

CASE 746

Q Who is the main bookkeeper there? A I can get it for you in the morning.

Q Get it for me in the morning? A Yes, sir.

Q All the books? A Yes, sir.

MR. MARSHALL: Very well; get them.

BY MR. MARKOWICH:

Q Who is the bookkeeper? A Mr. Goodman.

Q Was Mr. Goodman in charge of the books in the month of July? A No, sir, Mr. Magnus was.

Q You have no personal knowledge of this entire transaction, have you? A I have; I was bookkeeper, after Mr. Magnus left.

Q of this transaction, of this Aronstein transaction, have you any personal knowledge outside of what you have been told? A I know by sending them a statement.

BY MR. MARSHALL:

Q In your own handwriting? A In my own handwriting.

BY MR. MARKOWICH:

Q That is all you know about this Aronstein transaction? A Yes, sir.

BY MR. MARSHALL:

Q Where was that statement taken from? A I got it from the ledger.

Q From the ledger? A Yes, sir.

Q Who made the entry in the ledger? A I don't remember;

CASE 746

this was a case where Mr. Nachtigall thought Mr. Magnus did some crooked work.

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

Q Who made the entry in the ledger, whose handwriting is it in? A In Mr. Magnus' handwriting.

Q In the defendant's handwriting? A Yes, sir.

Q Can you bring that ledger here in the morning?

A I can.

Q And it is from that you made out the statement?

A I am all rattled on this. I would like to go over it again, just a few words.

Q What is the matter, are you rattled? A Yes, sir.

Q Take it easy, then; may be I was a little bit hard on you. A I would just like to say a few words, what I know about the books.

Q I don't want you to say anything, any words, except in answer to questions either by me or the learned counsel for the defense. They were in the handwriting of the defendant, those entries on the ledger? A I remember now that there was an entry on the ledger for that amount and there was a cross entry, striking it out, claiming that the goods were returned.

Q Yes, and that is the entry here on page --

MR. MARKOWICH: Who kept those books?

MR. MARSHALL: Wait a minute.

CASE 746

MR. MARSHALL: If your Honor please, that is all I have to say.

THE COURT: I think we will leave the ledger here. I think I will strike out this witness' testimony as to what the entries on the ledger were; the ledger is the best evidence.

MR. MARSHALL: The ledger is the best evidence.

Q You can produce the ledger in the morning? A Yes, sir.

MR. MARSHALL: That is all.

THE COURT: Now, while you are about it, you had better have all the books here, all that you want.

MR. MARSHALL: I will have all the books from the office here to-morrow.

COURT: Counsellor, now is your chance, are there any books in that office that you want?

MR. MARSHALL: Are there any books in the office that you want for your side of the case?

PROSECUTOR: No, sir.

MR. MARSHALL: Now, we want the day book, ledger, receipt for goods, cash book, the day book or the journal entry, and the four bank books.

THE COURT: Yes, and I think you had better have the check books too.

MR. MARSHALL: Better have his vouchers too.

THE COURT: The vouchers, the returned vouchers.

CASE 77-746

MR. MARSHALL: If your Honor please, I think, in justice to both sides, we had better adjourn at this time and proceed with the case to-morrow morning.

The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, directed that all witnesses will return at 10:30 o'clock to-morrow morning without further subpoena, and the Court then adjourned to 10:30 to-morrow, Thursday, January 16, 1908, at 10:30 o'clock a.m.

CASE 746

PEOPLE vs. HENRY MAGNUS, continued.

New York, January 16, 1908.

TRIAL RESUMED.

S O L G O D D M A N , called as a witness in behalf of the
People, being duly affirmed, testified as follows:

DIRECT EXAMINATION BY MR. MARSHALL:

Q Mr. Goodman, you are connected with what concern?

A S. Nachtigall & Company.

Q In what capacity? A Taking charge of the office,
books, and so forth.

Q How long have you been there? A Three months.

Q Are you familiar with the handwriting of this defendant,
Henry Magnus? A Well, I have seen--

THE COURT: Yes or no.

A No, sir.

Q Do you know his handwriting when you see it? A Yes,
I know his handwriting when I see it.

Q I show you page No.2 of Ledger G and ask you if the
entries on that page are in the handwriting of this defendant?

MARKOWI CH: If your Honor please, before answering
that question, I should like to cross examine him as to
his qualifications.

CASE 746

THE COURT: As to handwriting, yes. I will allow that.

BY MR. MARKOWICH:

Q Did you ever see any handwriting of Mr. Magnus?

A Not very many.

BY THE COURT:

Q Did you ever see the defendant write? A Yes, sir.

BY MR. MARKOWICH:

Q How often, how many times did you see him write?

A Probably two dozen times.

THE COURT: I will allow it.

BY MR. MARSHALL:

Q I show you page No.2 of Ledger G, and ask you if the entries on that page are in the handwriting of this defendant?

A Yes, sir.

MR. MARSHALL: I offer page 2 of Ledger 2 in evidence.

MR. MARKOWICH: No objection.

MR. MARSHALL: The entry reads, "1907, W. Aaronsten & Brother, 71, F, 3, 10, 20, good", whatever that means.

THE WITNESS: That is the rating.

MR. MARSHALL: "1907, May 13th, to merchandise, 2, 60."

Q What does that mean? A 2 per cent. off, 60 days.

Q No.987, what does that mean? A That is the sales book.

Q That is the entry in the sales book? A Yes, sir.

Q \$20.28, and on the credit side is, "June 28th, by return,

CASE 746

177", what was that? A That is the credit book.

Q That refers to this journal? A Yes, sir.

Q \$20.28. 177. Now, Mr. Goodman, have you examined the accounts of Nachtigall & Company? A Yes, sir.

Q Are there any other accounts with W. Aaronstein in the year 1907? A That is the only account, and the only bill he purchased that year.

Q I show you page 177 of the journal, and ask you if the entry at the bottom of that page is in the handwriting of this defendant? A Yes, sir.

MR. MARSHALL: I offer page 177 of the journal, from January 1st, 1906, marked, "Credit Book, from June 1st, 1906", in evidence.

Q Page 987 of what? A That sales book; I have not got that sale here.

Q Is there any book here that will show what those goods were? A What the goods were?

Q Yes. A No.

Q What the amount of \$20.28, 2 per cent. off, would mean?

A That is the amount of the bill purchased.

Q Is there any entry among these books that would show what this stuff was? A No, sir; that is the same book; that is at the office. I can get them here.

Q How long will it take you to get it here, about twenty minutes? A I can 'phone up and get it here in twenty minutes.

CASE 746

MR. MARKOWICH: What is it? Do you want me to concede anything?

MR. MARSHALL: I want you to concede that the only account that Nachtigall had with Aaronstein in the year 1907 was for--

THE WITNESS: That may be an exact copy of the sale.

MR. MARSHALL: I don't know.

THE WITNESS: 10 pieces, No.26, something, I don't know, in their bill of 6, 13th.

Q Who would know what that was? A I don't know; I guess it is 10 pieces No.26 black sateen.

MR. MARSHALL: Will you concede that?

MR. MARKOWICH: No.

MR. MARSHALL: Then we will have to have the sales book here. I think that is all from Mr. Goodman.

CROSS EXAMINATION BY MR. MARKOWICH:

Q At the time you entered Mr. Nachtigall's employ, by whom were you sent there? A By the Merchants Audit & Accounting Company.

Q That was for the purpose of looking over the books, so as to ascertain if the surety company would issue a bond to Mr. Magnus, is that it? A I know nothing about a surety company.

Q By whom were the Merchants Audit & Accounting Company

CASE 746

retained? A By Mr. S. Nachtigall.

Q You are no more in the employ of the Merchants Audit Company? A No more, no.

Q Ever since you have rendered those services to Mr. Nachtigall, you were taken in his employ, weren't you?

A Yes, sir.

MR. MARKOWICH: That is all.

MR. MARSHALL: That is all.

W A L T E R A R O N S T E I N , recalled.

BY MR. MARSHALL:

Q Mr. Aronstein, I hand you a bill from S. Nachtigall, dated May 13th, 1907, and ask you if that is a bill you received from them? A Yes, sir.

Q Did you receive the goods? A Yes, sir.

Q Were the goods ever returned to S. Nachtigall & Company?

A No.

Q They never were? A No.

BY THE COURT:

Q Did you have more than one transaction during the year 1907 with S. Nachtigall & Company? A Only one.

MR. MARSHALL: I offer the bill in evidence.

BY THE COURT:

Q You bought only one bill? A One bill.

CASE 746

The paper is admitted in evidence and marked
People's Exhibit 3 of this date.

Q I hand you a statement of S. Nachtigall & Company, dated
July 12th, 1907, to merchandise, \$20.28, 2 per cent. off, \$19.87,
and ask you if you received that statement from them? A Yes,
sir.

Q That check, People's Exhibit 1, is in payment of that
account, is it not? A Yes, sir, it is marked on it paid.

MR. MARSHALL: It was conceded that this check was
delivered to the defendant, was it not?

MR. MARKOWICH: Surely.

MR. MARSHALL: That is all. The bill, People's
Exhibit 3, reads, "A lot of numbers on the side which I
don't believe amount to much, "W. Aronstein," the items
are, 5 8, one piece of liberty silk, and one piece of white
sateen, the whole amount being \$20.28. The statement is
to merchandise, May 13th, which is the date of that bill,
\$20.28, 2 per cent. off, \$19.87, the exact amount of
People's Exhibit 1, \$19.87.

MR. MARSHALL: Unless the jury wishes to ask some
questions, I think I am through.

THE COURT: I think that is the case.

MR. MARSHALL: This would cover the entry in the sales
book. We do not need any sales book now.

THE COURT: That is the case. Sum up, counsel.

746

CASE

MR. MARKOWICH: Sur-rebuttal, if your Honor please.

THE COURT: You want to recall the defendant, all right.

H E N R Y M A G N U S , the defendant, recalled

BY MR. MARKOWICH:

Q Mr. Magnus, will you state under what circumstances the expert accountant was called in?

MR. MARSHALL: Objected to as not sur-rebuttal and utterly incompetent and immaterial.

THE COURT: I sustain the objection. I will allow you to question this defendant upon one point, if you care to question him upon it, in other words, under what circumstances he made the entry which appears in that smaller book, the credit book, at page 177. Now, if you want to question the defendant as to the circumstances under which he made the entry on page 177, of the credit book, I will allow you to do it.

Q Yes, under what circumstances were those entries made?

A Those entries were made under these circumstances, that I asked at various times while I was in the employ of S. Nachtigall what became of that bill, because it was past due, "Well, return it", and I simply marked it returned, not once, but a hundred times. There was no system in the house, and never was, as I told you yesterday, I had four positions in that place.

CASE 746

BY THE COURT:

Q Turn around to me for a moment. A Yes, sir.

Q Pay attention to my question and answer it, if you can?

A Yes, sir.

Q How did you happen to make the entry which appears on page 177 of the credit book, reading, "M. Aronstein, 10 pieces, 26, entire bill, 6, 13, \$20.28". How did you happen to make that entry, why did you make it, what led to your making that entry, tell me in a few words? A Asking some one in the store whether those had been returned, and I was answered yes.

Q In other words, some one other than yourself in the employ of Mr. Nachtigall told you, in answer to a question put by you to that person, that merchandise had been returned and you thereupon made that entry in the credit book? A Yes, your Honor.

Q That is your explanation? A Yes, sir.

THE COURT: I think that is all.

MR. MARSHALL: Just a minute.

THE COURT: Now, Mr. Marshall, you can examine him on that.

BY MR. MARSHALL:

Q This date is June 28th, the date of the check is July 30th, a month and two days apart. When you got this check from Aronstein and cashed it, why didn't you go to the return book, you knew then that the goods had not been returned,

CASE 746

didn't you? A Because I didn't have time to do so, Mr. Marshall, every minute in the day, if I wanted to make an entry, I was called to something else.

Q That is all. I don't want a history of your life.

A Give me a chance to explain it, Mr. Marshall. Mr. Nachtigall came to me, as I said yesterday, and said, "I want \$5", and I didn't have time to do anything. These goods were returned one day, as I was told, and may have been sent back the next day, and there could not be any entry in the sales book or the credit book.

Q You were the bookkeeper there, weren't you? A Yes, sir.

Q Did you make any entry of that check in the cash book?

A I didn't have to.

Q Did you make any account in the cash book, yes or no?

A No, I don't suppose so; I don't know whether I did or not.

Q Oh, yes, you do? A No, I do not.

BY THE COURT:

Q How long had that check been in Mr. Nachtigall's place before you took it out to get it cashed? A About an hour.

Q During that hour, had you made any entry in any book kept by you as a bookkeeper for Nachtigall & Company of the receipt of that check? A I cannot do so, your Honor.

Q Did you? A No, sir.

THE COURT: That is all.

CASE 746

MR. MARSHALL: That is all.

BY MR. MARKOWICH:

Q Who else besides you had charge of those books?

A Everybody in the office made entries in those books.

BY MR. MARSHALL:

Q And all the entries in regard to this matter are made in your handwriting, aren't they, every one of them? A, Yes, sir; that is all.

THE COURT: Now, counsellor, you renew your motion?

MR. MARKOWICH: I do, if your Honor please.

THE COURT: Just specify the grounds, briefly.

MR. MARKOWICH: I renew my motion to dismiss the indictment upon the ground that the People have failed to make out a case beyond a reasonable doubt.

THE COURT: I deny your motion, and I give you an exception.

Mr. Markowich sums up for the defense.

Mr. Marshall sums up for the People.

CASE 746

THE COURT'S CHARGE.

THE COURT: Gentlemen of the jury, the defendant, Henry Magnus, is charged in this indictment with the crime of forgery in the second degree. It is charged in the indictment that on the 30th day of July last he forged the name of S. Nachtigall & Company upon an endorsement upon a check given to S. Nachtigall & Company by Walter Aronstein & Brother, the check being to the order of S. Nachtigall & Company and being for the sum of \$19.87 and being dated on the 30th day of July, 1907.

The law says that a person is guilty of forgery in the second degree who, with intent to defraud, forges an instrument or writing, being or purporting to be an act of another, by which a pecuniary demand or obligation is or purports to be or to have been created. The law defines the term forge and forging. It says that the expressions, forge, forged and forging, includes the false making of a signature. The check referred to in the indictment has been offered and received in evidence and is marked as an exhibit in this case.

It appears from the evidence as I recall it that on the 30th day of July, 1907 Simon Nachtigall was engaged in the business of a converter of cotton goods at 130 Green Street, in the County of New York, and that he did business there under the name of S. Nachtigall & Company.

CASE 746

It appears that he had three or four persons in his employ and that one of the persons in his employ at that time was the defendant, Henry Magnus; that the defendant, Henry Magnus, was employed primarily as a bookkeeper, but that he did some things not strictly pertaining to bookkeeping. That at times he was sent out to collect; in other words, to receive for Mr. Nachtigall checks payable by customers of Mr. Nachtigall to Mr. Nachtigall, and that in that capacity, he received the check which has been offered and received in evidence and which is known as People's Exhibit No.1, namely, the check referred to in the indictment.

It appears also that, from time to time, the defendant was employed by the complaining witness to collect rents for the complaining witness, and to do some other things in connection with some real estate owned by the complaining witness.

It appears that the complaining witness had four bank accounts, two of them what are called personal bank accounts, that is to say, not bank accounts containing moneys of the complainant in the complainant's business, and two of the bank accounts were business bank accounts of the complaining witness. In connection with those bank accounts, the complaining witness had certain rubber stamps, which were used for purposes of endorsement on

CASE 746

checks. Those stamps mentioned the name of the bank in which the check was to be deposited, and they contained other words, but they did not contain the name of S. Nachtigall & Company or of S. Nachtigall. They were used when a deposit was made. In other words, when S. Nachtigall, under the name of S. Nachtigall & Company, made a deposit, one of these rubber stamps was used, and then underneath that rubber stamp the name of S. Nachtigall & Company was written, and sometimes, when a rubber stamp was used, permission was given by S. Nachtigall to persons in his employ, to write the name, S. Nachtigall & Company underneath the rubber stamp. That, according to the testimony of the complaining witness, he gave at no time any permission to anyone to endorse any check in the name of S. Nachtigall & Company without the use of a rubber stamp, or, in other words, to endorse any check for any purpose other than the purpose of deposit to the credit of S. Nachtigall & Company in an account which S. Nachtigall & Company then had with the bank.

It is conceded, I think, by the defendant, that he did, as a matter of fact, write the name S. Nachtigall & Company, and then his own name, upon the back of a check which has been offered and received in evidence as People's Exhibit No. 1, namely, the check of Walter Aronstein & Brothers, dated July 30th, 1907, to the order of S. Nachti-

CASE 7746

gall & Company for \$19.87.

My recollection is that it is conceded by the defendant, that having so endorsed the name, S. Nachtigall & Company upon such check, and thereafter writing his own name upon the check, he obtained from one who has been a witness in this case the amount of money called for by the check, namely, \$19.87.

The complaining witness says that he did not receive any portion of the \$19.87 and that he did not authorize the defendant to sign the name, S. Nachtigall & Company, upon that check; he did not either authorize him in express language nor by any previous line of conduct to do so.

The defendant in his own behalf says that on several occasions, he did, with the knowledge and consent of the complaining witness, write the name, S. Nachtigall & Company, as an endorsement upon checks, and that without the use of a rubber stamp, and that he so wrote it because there were times when the complaining witness desired to cash such check and when he, the defendant, was sent out with such checks for the purpose of obtaining cash from them. That in regard to this particular check and this particular endorsement, on a certain occasion, and I think he says about an hour after the check was received, while the check was in the safe, the com-

CASE 746

plaining witness came to him and said to him in substance that he wanted the sum of \$5. The defendant did not have that sum. The complaining witness said to him, "Now, you get it." The defendant suggested that the only way to get it was to cash this check, and that he thereupon, in the complaining witness' presence, took the check out of the safe, wrote the name of S. Nachtigall & Company on the back of it, took it to a witness who has appeared here, obtained the cash on it, and turned over all the cash received on the check, excepting the sum of \$2, which, according to the defendant, he retained to reimburse himself for some petty cash which he had advanced.

It appears, as I recall the evidence, that the firm of Walter Aronstein & Brothers only had one dealing during the year 1907 with S. Nachtigall & Company. They made one purchase, and it was to pay for the goods so purchased that they gave the check mentioned in the indictment and which has been offered and received in evidence.

It appears that the defendant in his capacity of bookkeeper made certain entries in the books of S. Nachtigall & Company relating to this transaction, that is to say, relating to the transaction in which S. Nachtigall & Company sold merchandise to Walter Aronstein & Brothers, and one of those entries appears at page 177, I think, of the credit book, and that entry has been offered and

CASE 746

received in evidence, and I believe other entries relating to this same transaction appearing in the ledger and in the handwriting of the defendant have also been offered and received in evidence.

The entry in the credit book purports, as I understand it, to show that the merchandise sold by S. Nachtigall & Company to Walter Aronstein & Brothers had been returned by Walter Aronstein & Brothers.

Walter Aronstein has testified that that was not the fact, that it had not been returned.

The Prosecution claim that that entry in the credit book, and I believe also certain entries in the ledger relating to the transaction, were false entries and entries which were made by this defendant with the intent of covering up and hiding from S. Nachtigall the fact that the check, People's Exhibit 1, had in point of fact been received at the office of S. Nachtigall & Company from the drawers of the check, Walter Aronstein & Brothers.

The defendant says, respecting the entry in the credit book, as I recall his evidence, that he made it and that he made it responsive to directions which he had received from some person in Mr. Nachtigall's office, but who, he does not now recall. In other words, that he was told by someone that the goods had been returned and that he thereupon and because of the information so received

CASE 746

made that entry.

Gentlemen, I have not by any means stated all the evidence and I have possibly even not stated with entire accuracy that portion of the evidence to which I have alluded, but I have perhaps stated it with sufficient accuracy and in sufficient detail to bring to your attention the point to which the evidence must go. The point, in other words, that must be established before this defendant can be convicted of this crime.

The points to which the evidence must go are, first, that the defendant did write the name of S. Nachtigall & Company upon the back of People's Exhibit No. 1 at a time when he was not authorized and empowered to do it; secondly, that he wrote it with the intention of defrauding the complaining witness, and where you find an intent to defraud, coupled with the unauthorized writing by a person of another's name, there you have a forging, where the writing is an instrument in writing, as for example, the endorsement upon a check, there you have, where there is a forging and an intent to defraud, the crime of forgery.

You, gentlemen of the jury, are exclusive judges of the facts. You will decide this case upon the evidence and upon the evidence as you recall it. If your recollection of the evidence differs from anything that has been said regarding it by the counsel for the defendant or the

CASE 746

Assistant District Attorney or by myself, your recollection will control and not statements which are at variance with your recollection, if there be any such.

In reaching a conclusion as to what your verdict may be, you will bear in mind that the defendant comes to the bar with the presumption of innocence, that the burden of the proof is upon the Prosecution. That burden requires that you shall be satisfied of the defendant's guilt beyond a reasonable doubt, before you can bring in a verdict of guilty.

There are two contingencies, in either one of which the defendant is entitled, as a matter of law, to a verdict of not guilty. The first, is, where, upon the evidence, a jury believes the defendant to be innocent, and the second is, where, upon the evidence, a jury entertains a reasonable doubt as to the guilt of the accused.

You will not be influenced in the disposition of the case by any disposition which the Court has made of any motion during the pendency of the trial or by any colloquy between counsel or by any colloquy between Court and counsel. You will be guided by the evidence and by the evidence alone, applying to the evidence the rules of law as laid down by the Court.

The defendant it is conceded, I think, has been previously convicted, and that is a circumstance which you

CASE 746

may take into consideration in determining the degree of credibility which you will give to the statements and testimony of this defendant.

Are there any requests to charge?

MR. MARKOWICH: I respectfully ask the Court to modify that part of the charge in which your Honor has stated that the defendant had testified that he had made the entry under direction from a person unknown, upon the ground that it appears from the minutes that the defendant had testified that he had asked Miss Elias and Mr. Sanberg in the office.

THE COURT: I will withdraw my statement regarding the evidence on that point, although I merely stated it, as I recall it. You, gentlemen of the jury, will recall what the testimony is.

MR. MARKOWICH: I will ask your Honor further to charge that the failure of the District Attorney to call or question Miss Elias or Mr. Sanberg in reference to that, creates an assumption that, if they were called, the testimony must have been against the District Attorney.

MR. MARSHALL: If your Honor please, they were both on the stand here.

MR. MARKOWICH: It is a rule of law that where a witness can be obtained or procured--

MR. MARSHALL: They have both been on the stand

CASE 746

here.

THE COURT: I decline to charge it, counsel.

MR. MARKOWICH: I except.

THE COURT: Gentlemen, you may retire.

(The jury retired and returned with a verdict
of guilty as charged in the indictment.)

CASE 746