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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part IV.

----- x
THE PEOPLE OF THE STATE OF
NEW YORK

against

THOMAS H. WALKER.
----- x

: Before:

: HON. THOMAS C. T. CRAIN, J.,

: and a Jury.

New York, January 24th, 1910.

Indicted for grand larceny in the second degree.

Indictment filed September 29th, 1908.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY REUBEN LESLIE
MAYNARD.

For the defendant, R. J. HAIRE, ESQ.

A jury was duly empanelled and sworn.

James E. Lynch,

Official Stenographer.

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The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Tuesday, January 25, 1910.

New York, January 25, 1910.

TRIAL RESUMED."

Mr Maynard opened the case on behalf of the People.

W I L L I A M J. M c C A F F R E Y, being called and duly sworn as a witness in behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MAYNARD:

Q What is your business, Mr McCaffrey? A Insurance.

Q You are General Manager of the New Amsterdam Casualty Insurance Company? A I am.

Q How long have you held that position? A Five years, I believe.

Q Five years, and you are thoroughly familiar with all the details and workings of that company? A I am.

Q I ask you if that--to state what that paper is (indicating)? A This is the charter of the company.

Q A certified copy? A A certified copy of the charter of the company.

MR. MAYNARD: I offer it in evidence.

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(Marked People's Exhibit 1.)

Q I show you, or I wish you would examine this and state what it is? A This is the payroll register of the New Amsterdam Casualty Company.

Q And was it in use in July, 1905 and '06? A It was.

Q Among the customers of your company, in the year 1906, or state whether among the customers of your company in 1906 was G. Robitzek & Brothers? A They were.

Q Examine those papers and state what each of them is?

A They are records--

MR. HAIRE: Well, I object. He is telling what they are.

THE COURT: Yes.,

Q Well, you know what they are? A Oh, yes.

Q Well, I ask you to state what they are?

MR. HAIRE: I object to that as incompetent. The papers speak for themselves.

MR. MAYNARD: Well, I will offer them in evidence.

MR. HAIRE: I object to that.

THE COURT: Ask him if he has ever seen them before, and where.

BY THE COURT:

Q Have you ever seen those papers before? A Yes, sir.

Q Where were they when you last saw them? A Among the records of our company.

Q That is, the New Amsterdam Casualty Company? A The New Amsterdam Casualty Company.

BY MR. MAYNARD:

Q At 74, 76 and 78 William street? A At No. 1 Liberty street now.

MR. MAYNARD: I offer them in evidence.

THE COURT: Well, is there objection to the reception of the papers?

MR. HAIRE: Well, I object to them. My client informs me that there were other papers attached to them. They are not complete. If they are complete we will have no objection.

Q Well, I ask you if those papers under their present form are each and every of them complete? A Yes, sir, complete schedules, yes.

MR. HAIRE: Ask him if the payroll has not been taken from them which properly belongs with them?

MR. MAYNARD: Well, I shall prove that no payroll was ever attached to them.

MR. HAIRE: We have no objection, except that we claim there were other papers.

THE COURT: Well, if you have no objection, then they are received.

(Marked People's Exhibit 2 in evidence.)

Q Now, will you state what the papers are, for the bene-

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fit of the jury?

MR. HAIRE: I object to that, what the papers are.

THE COURT: Well, you have offered them in evidence, and you can read them to the jury, if you see fit.

A They are. . . .

Q Now, that is all.

THE COURT: They are in evidence, and you can read them to the jury, Mr Maynard.

(Mr Maynard reads to the jury.)

Q Mr McCaffrey, during the years 1905 and '06, did you have in your employ Mr Walker, this defendant? A Yes, we had in our employ Mr Walker.

BY THE COURT:

Q When you say in your employ, do you mean in the employ of the company? A Of the company, yes, sir.

BY MR. MAYNARD:

Q Will you state what were the duties of Mr Walker in connection with the work of the New Amsterdam Casualty Company?

A He had charge of our inspections. He also had charge of our payroll, auditing, and also audited payrolls.

BY THE COURT:

Q Was there a written contract between your company and Mr Walker? A No, sir.

Q No written contract of employment? A No, sir.

BY MR. MAYNARD:

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Q Can you state what salary was paid Mr Walker for his services? A Well, we started him, I think, with \$60 a month, and when he left the company he was getting \$125, getting \$125 when he left.

BY THE COURT:

Q A month? A A month.

BY MR. MAYNARD:

Q When did he start with your company at \$60 a month, if you can state? A 1903, I believe.

Q And do you know when he closed his connection with your company, about when? A 1907, I believe, in August, I believe, 1907.

Q When Mr Walker audited the payroll of any of your assured, what duty did he have to perform in connection with the books of your company? A He should figure the premium shown to have been earned and make a record of his audit in the books of the company, in this particular book here at that time (indicating).

Q In this payroll register? A In the payroll register.

MR. MAYNARD: I will offer in evidence page 62 of the payroll register, bearing date July, 1906.

MR. HAIRE: Do I understand you to say Mr Walker kept that?

MR. MAYNARD: He said it was part of his duty to make

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entries in that.

BY THE COURT:

Q Are there entries in that book, that payroll register, in the handwriting of this defendant Walker? First, I will ask you, if you have ever seen Mr. Walker write? A Yes, sir.

Q Are you familiar with his handwriting? A I am.

Q Are there any entries in that book in his handwriting?

A There is some handwriting of his (indicating).

Q Now, the answer is yes? A There is part of it in his writing.

Q In the handwriting of this defendant? A In the handwriting of this defendant.

MR. HAIRE: On page 62, is that his handwriting?

MR. MAYNARD: On page 62, his handwriting.

MR. HAIRE: No objection.

THE COURT: I will receive it.

(Marked People's Exhibit 3, in evidence.)

BY MR. MAYNARD:

Q I ask you to examine this book, and state whether that is a book belonging to the New Amsterdam Casualty Company?

A It is.

Q I ask you to examine the writing and state whether you know in whose hand the writing in that book contained is?

A This is in the defendant's handwriting.

Q What is the defendant's name? A Thomas H. Walker.

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Q Do you find any entry that is not in his handwriting?

A Yes.

Q Well, beginning with what page? A Page 182.

Q All prior to that? A All that I have seen was in his handwriting.

MR. MAYNARD: I offer the book in evidence down to page 182.

MR. HAIRE: No objection, except that it is immaterial.

THE COURT: I will receive it.

MR. MAYNARD: I will limit the offer, if your Honor please, to pages 104--no, I will not limit the offer at all. Mark the book.

MR. HAIRE: Well, the book, where not in the handwriting of this defendant, I certainly object to that.

THE COURT: Well, we will receive that part in evidence which is in the handwriting of the defendant, and no other part.

(Marked People's Exhibit 4 in evidence.)

BY MR. MAYNARD:

Q Mr McCaffrey, was Thomas H. Walker authorized in any way by the New Amsterdam Casualty Company to make collections of premiums for it?

MR. HAIRE: I object to that, unless this witness has personal knowledge of all the authorized agencies

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given to the defendant.

THE COURT: I will allow the witness to state whether he personally instructed Walker to collect.

MR. HAIRE: To that I have no objection.

A On specific occasions.

Q On specific occasions you, as general manager, authorized him to make collections? A Yes.

Q Did you ever authorize him to make a collection of any premium whatever from G. Robitzet & Brothers? A No, sir.

BY THE COURT:

Q Mr Witness, can you tell me what your position in the New Amsterdam Casualty Company was from January 15, 1903, to August 2d, 1907, and just talk up loud? A I was general superintendent for part of the time, and general manager for the rest.

Q Now, you were general superintendent for what part of that time, beginning when and ending when? A From January--
~~fr~~ from the beginning I was superintendent. In October, 1903, or '04, I was made general manager.

Q What was the position that you held on the 13th of October, 1906? A General manager.

Q What were your duties as general manager? A General supervision of the office.

Q When you say the office, you mean the office in New York? A Of the company's business too.

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Q This company was a company having its chief office in the city of New York, is that so? A In the city of New York, that is so, yes, sir.

Q And you were its general manager in this New York office? A I was, yes, sir.

Q At that time who was president of the company, that is to say, on October 16th, 1906? A William F. Moore.

Q Who was treasurer of the company? A George C. Pratt.

Q Who was secretary of the company? A George E. Taylor.

Q Did this company have written by-laws? A Yes, sir.

Q And was there, on October 16, 1906, any by-law of the company providing as to what officer should employ subordinate employees of the company, including the auditor, yes or no to that? A No.

Q At the time that this defendant was hired by the company, what officer of the company personally had a conversation with the defendant which led to the defendant's being hired?

A George E. Taylor, the secretary.

Q Were you present at that conversation? A Not at the first.

Q Was this defendant hired originally by the company to act as auditor? A No, to take charge of inspections, I believe, your Honor.

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Q When did this defendant become an auditor of the company? A Some time shortly afterwards, as near as I can recollect.

Q With what officer did this defendant have a conversation, if any, resulting in this defendant being employed by the company as an auditor? A That I can't remember.

Q Was it with you? A I can't remember.

Q You have no recollection on that subject? A I have not got a recollection specifically on that matter.

BY MR. MAYNARD:

Q Who, in the employ of the New Amsterdam Company was authorized to collect the premiums and receive the moneys for the company?

MR. HAIRE: I object to that.

THE COURT: Yes, I think I will sustain the objection.

MR. MAYNARD: All right. You may examine.

THE COURT: You cannot prove what this defendant's duties were in that way.

CROSS-EXAMINATION BY MR. HAIRE:

Q I do not remember when you said you became general superintendent of this company? A I said that I was general superintendent, or intended to say so, in January, as his Honor asked me, January, 1902 or '03. 1903.

Q Well, Superintendent or manager then? A Superintend-
ent.

Q Well, which are you now, superintendent or manager?
A Manager.

Q Manager? Well, as general superintendent, I don't sup-
pose you looked after all the auditors, did you? A In a gen-
eral way.

Q In a general way? Had you anything to do with the
bookkeeping? A In its supervision.

BY THE COURT:

Q Suppose you describe, now, in your own way, and just as
briefly as possible, what your duties as superintendent of the
company were, and then tell us what your duties as general man-
ager of the company are and were in October, 1906? A I was
chiefly--

Q Talk so that the jury hear you. Twelve men there
want to hear you, Mr Witness? A I was, my chief duties were
to take care of the underwriting of the liability department,
as well as the burglary insurance department.

Q Try and be just as detailed now and plain as possible,
because no one of us knows anything about it, and we want to
hear it. Tell the jury what your duties as superintendent
were? A As superintendent I was to see that the heads
of departments saw that the clerks did their work.

Q In the first place, as superintendent, were your duties

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office duties or outside duties? A Office duties.

Q As superintendent did you personally keep any book of the company? A No, sir.

Q As superintendent did you hire anybody who was in the employ of the company? That is to say, did you make a contract of hiring? A At times, yes, sir.

Q When you became manager of the company, what were your duties, in 1907? A Practically the same as those of the superintendent.

Q No difference or distinction? A No difference or distinction, only I became an officer.

Q Is the office of manager provided for in the by-laws of the company? A General manager, I believe it is. I am appointed by the directors, not an elective officer.

THE COURT: Now, proceed, Col. Haire.

BY MR. HAIRE:

Q I understood you to state that this defendant had no right to collect any moneys?

THE COURT: No, that was not allowed.

MR. HAIRE: I understood the question to be that it was not allowed as to who had authority. I will withdraw the question, however. If it becomes material later, I will ask your Honor then.

Q Did you ever have any direct business dealings in connection with Mr Walker and his duties for the company? A Yes,

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sir.

Q What dealings did you have directly with him? A To tell him what his work might be, look over him, as I would any other employee of the company.

Q Yes, you had no direct charge of telling him where to go or what to do, did you? A Not alone, no.

Q No, not alone, and as a general rule, you did not designate what he was to do, did you? A No. A good deal was left to himself, of course.

Q Yes, he was known there as Chief Auditor, wasn't he? A He was Chief Auditor? He was payroll auditor. I don't recollect that he was chief auditor.

Q Don't you know that the stationery was issued with his name on it as chief auditor? A It may be. I don't recall it.

Q You don't remember about that? A No, I don't recall it.

Q And he never turned any moneys in to you? A Personally, no.

Q It was not his business to, was it? A Not to me.

Q Then it was not your business to instruct him, was it, to collect moneys or not collect them? A At times, yes.

Q Did you ever instruct him to collect any? A I may have. I am not sure. I probably did.

Q You know that he did collect large sums of money, don't you? A He was instructed at times to collect money. I be-

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lieve that he did collect sums of money.

Q Is it not true that hundreds of thousands of dollars passed through his hands as chief auditor of the company?

A It is not.

Q How? A It is not.

Q How do you know? A I would have known that.

Q Were you cashier? A No.

Q Do you know of any of the claims that he audited and money he collected? A No specific amount, no, nor assured.

Q How? A Nothing from any particular assured that I recall.

Q Do you know anything about his auditing the claim against the Fort Pitt Bridge Company? A He never audited that claim.

Q Didn't he audit the claim there amounting to over \$10,000? A He did not.

Q Didn't he do it, he and his subordinates do it?
A His subordinate did it.

Q His subordinate then, acting under his instructions, didn't he?

MR. MAYNARD: I object to that, unless he knows.

A Unless I know positively?

Q Yes. A No, I don't know positively.

THE COURT: Now, you are making the witness your own on all these matters, Col. Haire. Go on.

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Q In fact, you don't know about the auditing department much, do you? A Oh, yes.

Q Do you know what claims this man was authorized to audit? A I did not catch that question.

Q (Question repeated.) A He was to audit, he had charge of the auditors--he audited all the payrolls due the company under its contracts. He had charge of those audits.

Q In other words, that was his department, and he was at the head of the audit department? A That was his department.

Q That is all.

GUSTAVUS ROBITZEK, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MAYNARD:

Q Mr Robitzek, will you kindly speak loud enough so that each of the jurors can hear what you say? You are president of G. Robitzek & Brothers? A Yes, sir.

Q Is that a partnership or corporation? A Corporation.

Q In 1905 was it a partnership or a corporation?

A Partnership.

Q About when was it incorporated, if you recall?

A About two years ago.

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BY THE COURT:

Q Try and talk, Mr Witness, so that the twelve jurors hear you. They are not sitting very far from you. Now, talk so that they hear you? A Yes, sir.

BY MR. MAYNARD:

Q In what business is the corporation of G. Robitzek & Brothers engaged? A Coal business.

Q And where is their principal place of business? A 136th street and Ryder avenue.

Q Is that your sole place of business? A Yes, sir.

Q In connection with that business, you employ a number of men, teams and trucks? A Yes, sir.

Q And do you purchase casualty insurance to cover liability? A Yes, sir.

Q Did you ever purchase insurance from the New Amsterdam Casualty Company? A Yes, sir.

Q In the year 1905, did you purchase from them three policies of insurance? A I did.

Q Do you remember the amount of premium that you paid on those three policies at first? A I think about ~~\$170.00~~ one hundred and seventy odd dollars.

Q Do you remember--I ask you to look at these papers which are in evidence, and I ask you if those are applications for the insurance that you received? A Yes, sir, they are.

Q Those are the applications? And the premiums stated

in these columns were premiums that you agreed to pay? A Yes, sir.

Q Twenty-five for one, ten for another and one hundred and forty-four for another? A Yes, sir.

Q One hundred and seventy-nine for all? A Yes, sir.

Q Was that \$179 paid in advance? A I don't know.

Q Do you remember? A I don't remember. I paid them to the agent.

MR. HAIRE: If your Honor please, the jurors cannot hear, and neither can I.

BY THE COURT:

Q They are unable to hear you, Mr Witness? A All right, I will try and speak a little louder.

BY MR. MAYNARD:

Q To whom was payment made by you of that \$179? A I paid that to the agent, Mr Berman.

Q Mr Berman, the agent? A Yes.

Q Through whom you purchased the insurance? A Yes, sir.

Q Did you understand at the time that you purchased this insurance that you might, under certain circumstances, be required to pay additional premiums? A Yes, sir.

Q Under what circumstances would you be required, under your contract, to pay--

THE COURT: Why, it is a written contract, is it not?

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MR. MAYNARD: It is.

THE COURT: Just offer it in evidence, and that establishes it.

MR. MAYNARD: I do not know that I would need to put that in evidence. It is a long contract.

THE COURT: Very well.

MR. HAIRE: I think that, if your Honor please, there is no question about that. We agree that under certain circumstances--

THE COURT: You will admit that under certain conditions, this witness by the terms of the policies issued to him by the Casualty Company, would become obligated to pay to that company a sum additional to the premium paid by him at the time of the issuance of the policies?

MR. HAIRE: That is correct.

BY MR. MAYNARD:

Q Mr Robitzek, did you ever see Mr Walker, the defendant at the bar, at your place of business? A Yes, sir.

Q Did he come there to audit your payroll? A Yes, sir.

Q Did he audit the payroll? A Yes, sir.

Q Did he come there in the daytime? A Yes, sir.

Q Were you present? A I was.

Q When he made inspection of your books? A Yes, sir.

BY THE COURT:

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Q Can you fix the date when he did that? A Well, not exactly.

Q About when? A I did not suppose this thing would ever come up.

Q About when was it that you saw Mr Walker in your office engaged in auditing your payroll?

MR. MAYNARD: I can refresh the witness' recollection.

Q If you do not remember, say so? A I don't remember, no. I don't remember the date.

BY MR. MAYNARD:

Q I show you that paper (referring to paper)? A October 11th, 1906.

Q Is that your handwriting, Mr Robitzek? A Yes, sir.

MR. MAYNARD: I offer this check in evidence.

MR. HAIRE: No objection.

MR. MAYNARD: I offer the check and endorsements in evidence.

(Marked People's Exhibit 5 in evidence.)

BY THE COURT:

Q After you wrote or signed that check, People's Exhibit 5, what did you do with it? A I handed it over to Mr Walker.

Q To the defendant? A Yes, sir.

Q And did he leave with it? A Yes, sir.

BY MR. MAYNARD:

Q Did Mr Walker tell you how much additional premium was

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due as a result of his audit of your books on the 11th of October? A Yes, sir, he told me that was \$49 and some pennies there.

Q \$49.20? A Yes, and I made out the check.

Q To the order of the New Amsterdam Casualty Company?

A Yes, sir.

Q And delivered it to Mr Walker, the defendant? A Yes, sir.

Q Did that check as a voucher come back to you in due course of business? A Yes, sir.

Q Were the endorsements now upon the check on it when it was returned to you? A Yes, sir.

BY THE COURT:

Q Are you familiar, or did you ever see Mr Walker write?

A Well, I saw him write in my office, that's all.

Q Are you familiar with his handwriting? A No, sir.

BY MR. MAYNARD:

Q Are you familiar with his handwriting? A No, sir.

MR. HAIRE: We concede that that is in the defendant's handwriting, the endorsement on the back, his name.

THE COURT: Very well.

MR. MAYNARD: You may cross-examine.

CROSS-EXAMINATION BY MR. HAIRE:

Q Mr Walker was at your place quite a number of times,

wasn't he? A I think I saw him there two or three times.

Q Well, he audited your accounts more than once, didn't he? A Well, I don't believe he did, no, only that one time.

Q Don't you remember he audited your accounts upon two other occasions at least? A I don't remember that, no, sir.

Q You knew Mr Walker before that, didn't you? A Yes, I had seen him.

Q And he had been at your place? A Yes, sir.

Q Well, don't you remember that he audited your accounts before? A Well, I can't say positively. I am not sure.

Q When did you first hear that there was any trouble about this check, People's Exhibit 5? A Well, there was somebody come from the company and said we owed them some--
BY THE COURT:

Q (Interposing:) No, when was it. He just asked for the date? A When? Oh, about a year after, I guess.

BY MR. HAIRE:

Q A year after? A Yes, sir.

BY THE COURT:

Q That is to say, a year after the date of the check?
A Yes, sir.

MR. HAIRE: That is all.

REDIRECT-EXAMINATION BY MR. MAYNARD:

Q Had you ever taken insurance from the New Amsterdam

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Casualty Company prior to July 12, 1905? A Yes, sir.

Q Do you remember how many policies you had had before these particular policies? A I think two or three, two or three years, I think.

Q And was it in connection with those previous policies issued to you that Mr Walker was at your place auditing? A No, only for that one particular year.

Q Only for one particular year? A Yes.

Q You never saw him in connection with any other policies? A Yes, I think he was there before. I am pretty sure he was, because I knew him when he got there the second time, or the third time.

Q How many times did he come to your place of business to audit your payroll, in respect of the policies issued under the applications which you have identified? A Well, I only saw him there once, for this particular case.

Q For this particular case? A He may have been there before and I was not present.

Q Then you do not know that? A No, I don't know.

Q So far as you know, he was there once, and that was on the 11th of October? A Yes.

Q The date of that check? A Yes, sir.

Q And it was in the daytime? A Yes, sir.

RECROSS-EXAMINATION BY MR. HAIRE:

Q Now, when you say that this one time, you refer to

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this special transaction, do you not? A Yes.

Q Well, as a matter of fact, he audited claims for you in 1902, didn't he? A Well, that is possible. I am not-- I don't remember that, but I know, I remember him; I seen him before.

Q Yes, but they were on other policies? A Yes, probably, yes.

Q But for the same company? A Yes.

Q Well, is not that true of 1903 and '04? A Well, it must have been, because I can remember now that he was there,

Q And your son was secretary of your company, wasn't he?

A He was not then, because we were not incorporated at that time.

Q Well, your son did some of the business? A My son was in the office, yes.

Q And do you know whether ^{or not} ~~the~~ checks were given to Mr Walker on previous occasions?

MR. MAYNARD: I object unless he knows of his own personal knowledge.

A Well, I am not sure about that.

MR. HAIRE: I am asking if he knows.

A (Continuing:) I would not want to say, because I am not sure.

Q You are not sure of that? That is all, Mr Robitzek.

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FRED S. GARRISON, being called and duly sworn
as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MAYNARD:

Q Mr Garrison, I will ask you to speak as loud as I am talking now, if you can, so that all the jurors will hear what you say. What is your business, Mr Garrison? A I am in the insurance business.

Q Are you connected with the New Amsterdam Casualty Company? A Yes.

Q In what capacity? A General superintendent.

Q How long have you been general superintendent? A Since the early part of 1907.

Q What position did you hold, if any, in connection with that company, in the years 1905 and '06? A During the latter part of 1906 I was cashier.

Q And during, or in 1905, July, 1905, what, if any, connection had you with the company? A I was then assistant superintendent.

Q Since you have been superintendent of the company, you have been in charge of what portion of its business or affairs? A The entire detail office work.

Q In charge of all of the force of employees of the company, do I understand? A Yes.

Q Do you know the defendant, Thomas H. Walker? A Yes.

Q Was he in the employ of this company in the years 1905

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and 'D6? A Yes.

Q What position did he hold? A Chief payroll auditor.

Q Can you state about what date his connection with the company was severed? A On or about August 2d, 1907.

Q Were you in October 1906, cashier of the company?

A Yes.

Q Was it your duty to receive moneys paid to the company as premiums upon its insurance? A Yes.

Q Did all of the moneys paid to the company go through your hands? A Mine and my assistant's.

BY THE COURT:

Q What is his name? A J. H. Donaldson, Jr.

BY MR. MAYNARD:

Q Is he still in the employ of the company? A Yes, sir.

Q Did you of your own personal knowledge know that you had an assured named G. Robitzek & Brothers? A Yes.

Q 136th street and Ryder avenue? A Yes.

Q Do you know of your own knowledge who sold that insurance? A I did not hear the question?

Q Do you know of your own knowledge who sold that insurance for you? A I know what the records show. The records show--

BY THE COURT:

Q No, you are asked whether you know of your own knowl-

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edge, and the answer is no.

THE COURT: How is that material, Mr Maynard?

MR. MAYNARD: I do not know that it is, particularly.

THE COURT: No. Suppose you just show him People's Exhibit 5 and ask him if he has ever seen it before.

BY THE COURT:

Q Just look at that check. Have you ever seen it before, yes or no? A Yes, sir.

Q When did you see it first? A It was some time in--

Q Keep your voice up. A Some time in July, 1908.

Q Did you ever see it before July, 1908? A No.

Q When you did see it the first time, where was it?

A In the office of Robitzek & Brothers.

BY MR. MAYNARD:

Q Were you at the office of Robitzek & Brothers on that day? A I was in the office in July sometime. I don't remember the exact date.

Q Well, state how you came to see the check there on that occasion? A I had sent an auditor--

THE COURT: No, I think we will not go into that.

BY THE COURT:

Q You did not see it before you saw it in that place in the month of July, 1908? A No, sir.

Q You did not see it in the month of October, 1907?

A No, sir.

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BY MR. MAYNARD:

Q It never was tendered to you as cashier of the New Amsterdam Casualty Company in payment of a premium due from Robitzek & Brothers? A No, sir.

Q Do you know of your own knowledge whether a premium in the sum of \$49.20 was due on that day from Robitzek & Brothers? A No.

BY THE COURT:

Q Did you ever receive in the month of October, 1906, \$49.20 for a premium from Robitzek & Brothers? A No, sir.

Q Neither in cash or check? A No, sir.

BY MR. MAYNARD:

Q Have you ever received from Robitzek & Brothers or from any other source \$49.20, for the payment of an additional premium from him? A No.

BY THE COURT:

Q Now, in the month of October, 1906, what officer or person in your company physically received, in the first instance, checks for premiums paid by persons who held policies in your company? To whom would such checks, in the first instance, in the ordinary course of business come? A The cashier.

BY MR. MAYNARD:

Q And you were the cashier? A I was.

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BY THE COURT:

Q That is to say, for example, if a check was sent by mail to the company for payment of a premium, in the ordinary course of business it would come to you, in the first instance, is that so? A As soon as the mail was opened.

Q Now, the mail would be opened by somebody else?

A Yes, sir.

Q And who would be that person? A Well, I don't remember now. That is so long ago.

Q Well, do you know whose duty it was in October to open mail of the company? A I don't remember now. It is changed since.

Q But a check handed in at the office of the company in the payment of a premium, would in the ordinary course of business in the month of October, 1906, have been handed to you, is that so? A Or my assistant at the cashier's window.

Q That is to say, either Donaldson or yourself? A Yes, sir.

Q And would you with respect to that check in the ordinary course of business have some duty to transact? A I would.

Q What would that be? A It would be entered first on a remittance blank.

Q In other words, in the ordinary course of business, you would take a pen and make an entry? A Or my assistant.

Q When you say your assistant, you mean Donaldson?

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A Donaldson, yes, sir.

Q And that entry would be on what you would call what?

A The remittance book.

Q And then what would be the next thing that you would have to do, if anything, in connection with such check? A Deposit the check in the bank to the credit of the company.

Q And in that connection, would you make an entry yourself in any book? A There would be an entry in the agents' remittance book.

Q Now, that entry in the remittance book would be made either by yourself or Donaldson? A Yes, sir.

Q Now, would there be an entry made either by yourself or Donaldson in any other book in connection with the reception and deposit of such a check? A Not exactly. There would be a deposit slip entered, and then that would be copied in a copy book. That is all would be entered in the insurance department for that check.

Q In other words, if you made an entry in the remittance book, and having written out a deposit slip, and having made a certain copy in a copy book of that deposit slip, there would be nothing else in the way of bookkeeping entries or writing to be done by you in connection with the reception of the check?

A Of that individual check, no. The rest would be posting in totals in other books.

Q That would be in other books? A Yes, sir.

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Q Kept by other person? A Yes, sir, outside of the cashier's cage.

Q Have you here the remittance book for the month of October, 1906, of the company? A I think not, but I can get it in about fifteen minutes notice.

MR. MAYNARD: I think that is all.

CROSS-EXAMINATION BY MR. HAIRE:

Q Now, you were cashier or assistant cashier, which, in October, 1906? A Cashier.

Q You had known Mr Walker for some time, hadn't you? A Yes, sir.

Q When, in the course of business, did this \$49 become due from Robitzek & Brothers? A I don't exactly understand your question.

Q When did the amount mentioned in this check, People's Exhibit 5, because due from Robitzek & Brothers to your company?

A I don't know that \$49.20 was the amount due.

Q How? A I don't know that \$49.20 was the amount due.
BY MR. MAYNARD:

Q He did not ask that? A He asked me when it became due.

BY MR. HAIRE:

Q The amount mentioned in this check; did not this amount become due to your company? A The policy expired on

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July 12th, 1906, and as soon after that date as possible the books should be audited and the additional premium due should be paid. I don't know whether that amount is correct or not.

Q Well, you would not know of your own knowledge, would you? A Not unless I had the payroll before me.

Q That is in the province of the auditor, to find out and determine that, is that right? A That's right.

Q And you say the policy expired in July, 1906? Do you mean by that that the policy had lapsed, that there was no longer any policy carried by Robitzek? A Yes, sir, I do.

Q How? A That policy expired July 12th, 1906.

Q Well, did this collection of \$49.20, was that the re-issuance of a policy? A That I don't know, what that was.

Q You don't know what this \$49.20 was for, do you? A I presume it is for the additional premium under the old policies.

Q But you don't know? A Certainly not.

Q Then you were not thoroughly familiar with the business of the New Amsterdam Casualty Company at that time, were you?

A I was familiar with it, yes.

Q How? A Yes.

Q Did you have anything to do with the auditing of claims?

A The auditing of claims?

Q Yes. That is to say, this was a claim, wasn't it, against Robitzek & Brothers? For excess premium?

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THE COURT: Now, he does not claim to have any knowledge on that subject, but merely testifies that the amount was not paid over to him.

Q Well, now, you had knowledge of all moneys that came to the company, didn't you? A Yes.

Q And did you sometimes receive checks from Mr Walker as chief auditor of excess premiums which he had collected?

A Well, not as the chief auditor. I find that we received some checks from a man named T. H. Walker. I assume it was Mr Walker, and they were in payment of policies that were written, according to the records, by a man named S. T. Walker, who I understand is Mr Walker's son.

Q And didn't you receive this defendant's individual checks often? A I don't remember receiving them.

Q You don't remember? Will you say that you did not receive them? A I will not.

Q I want to show you this paper and ask you if your company gave that to Mr Walker? A I think it did.

THE COURT: Now, that is marked Defendant's Exhibit A for Identification.

(Marked Defendant's Exhibit A for Identification.)

Q Is that a paper, a receipt for the current premium--

MR. MAYNARD: I object to that unless you put it in evidence.

MR. HAIRE: I asked him what it was. I am going to

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offer it.

MR. MAYNARD: I object. The paper speaks for itself.

MR. HAIRE: No, it does not. My question was if
from
that was a receipt ~~by~~ the company to Mr Walker for money
paid by him.

MR. MAYNARD: I object to that.

THE COURT: Yes, I will sustain the objection.

MR. HAIRE: Well, I offer it in evidence.

MR. MAYNARD: I object to it as incompetent, immate-
rial and irrelevant, and having no bearing.

THE COURT: Now, your claim, I take it, Col. Haire,
is that the amount represented by the check, \$49.20, was
paid over by this defendant to the company, in checks of
his own, and that this is one of the receipts? Is that
your claim?

MR. HAIRE: That is not a receipt for that individual
payment, if your Honor please, but we claim we can show by
this and other receipts that Mr Walker was in the habit
and was allowed to endorse these checks, collect them and
pay these amounts less his premium over to the company, and
that was the rule carried on right along.

THE COURT: I am going to confine the evidence to
the question as to whether, as a matter of fact, this de-
fendant did pay over to the company the amount that he
received from this concern who drew the check, less, if

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you purpose to show that there was such a custom, any commissions due him.

MR. HAIRE: Precisely, and that is why I offer this in evidence.

THE COURT: I do not see that it bears upon that point. Now, if you will get right down to the issue in this case?

MR. HAIRE: I withdraw that for the present.

THE COURT: Yes. And you offer anything that tends to show that this defendant paid over either the \$49.20 or what you contend was that portion of the \$49.20 which he was obligated to pay over.

MR. HAIRE: I will withdraw the offer for the present, if your Honor please.

BY MR. HAIRE:

Q Is it not true that Mr Walker had authority to endorse, deposit and collect checks of the nature of People's Exhibit 5?

A Not to my knowledge.

Q Not to your knowledge? You are not the man that employed him? A No.

Q You are not the man that gave him his instructions?

A No.

Q Do you know that, as a matter of fact, he did often do that and turned in his individual check? A I don't know it.

Q You don't know it? You received his individual check

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at different times, didn't you? A I don't know.

Q How? A I don't know about that.

BY THE COURT:

Q Did you as cashier of the company, during the year 1906, or prior to October, 1906, receive from time to time the individual check of this defendant? A I think it was received by the company, but--

Q Speak louder? A It may have been received by the company in payment of premiums by S. T. Walker, but I don't know that I received it personally. My assistant, Mr. Donaldson, may have.

Q Now, regardless of the purpose for which you received it, did you from time to time receive checks, being the individual check of this defendant, and you receiving them as cashier for the company? A I don't remember. The records show there are some--

Q Well, if you do not recollect, that ends it, so far as you are concerned? A I don't remember.

BY MR. HAIRE:

Q Would the record show, or some record in the office of this company show if the checks had been the individual checks of the defendant?

A Yes, sir.

MR. MAYNARD: I object to that as calling for a conclusion.

THE COURT: I will allow the answer.

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BY THE COURT:

Q Have you any book in your company, kept in your office, an examination of which would refresh your recollection as to whether the company through you had in the year, 1906, received from time to time the individual checks of this defendant?

A Yes, sir.

Q What is that book called? A The remittance book.

BY MR. HAIRE:

Q Have you that book here? A No, I think not.

Q I will ask you whether or not, on December 18, 1906, your company did not receive Mr Walker's individual check in payment of the claim of the Greylock Realty Company, for \$52.60?

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

THE COURT: I will sustain the objection, unless you propose to show that the company did receive the individual check of the defendant Walker, for and on account of the \$49.20.

MR. HAIRE: We do, precisely, if your Honor please. That is just it.

THE COURT: Now, if you propose to show that, get right down to it.

MR. HAIRE: Your Honor will give me the benefit of an exception?

Q Now, Witness, did your company in addition to the salary

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which you were paying Mr Walker, pay him a certain amount in premiums and commission? A Not to my knowledge.

Q Not to your knowledge? A No.

Q Did you in the case of the Greylock Realty Company allow him a premium of \$17.50?

MR. MAYNARD: Objected to on the same ground, as ~~it~~ incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

A Not that I know of.

Q I show you this paper--

THE COURT: I am allowing it on the theory that you propose to show that there was an amount due from the company to this defendant, in excess of the \$49.20, at the time that the defendant received the \$49.20.

MR. HAIRE: We do propose to show that. In addition, we want to show the uniform custom that was followed.

MR. MAYNARD: I object to the custom.

THE COURT: No, I do not allow it--I have made myself, I think, plain. I will allow you to show two things, if you can. Either first, that he paid over either in cash by his individual check for \$49.20, or that portion of it, if any, which he claims that he alone owed, or you may show, if such be the fact, that the company was indebted to him at the time that he received the \$49.20, for that amount or in excess of that amount, and that he

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retained the sum of \$49.20 to pay that indebtedness, as bearing upon the question of his intent.

MR. HAIRE: I offer this upon another ground, if your Honor please, and that is to test the reliability and credibility of the witness' statements.

THE COURT: Repeat the last question.

(Question repeated by the stenographer.)

THE COURT: I will allow you to ask your question.

(Question again repeated.)

Q I show you this paper and ask you if that will refresh your recollection?

BY THE COURT:

Q The question is as to whether your company paid to this defendant, in addition to a stated salary, a commission, yes or no? Does that refresh your recollection on that point?

A Well, that does not.

Q Now, the answer is no.

BY MR. HAIRE:

Q Is that paper issued--

THE COURT: Now, that paper is marked Defendant's Exhibit A for Identification, is it?

MR. HAIRE: Yes, sir, A for Identification.

Q Did you sometimes receive checks for the company payable to your order? A Occasionally when they were cashed.

Q I show you this paper and ask you if you remember see-

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ing that before? A Yes, I saw it before.

THE COURT: Now, that is Defendant's Exhibit B for Identification?

MR. HAIRE: I will offer it in evidence after the next question.

Q Is it not true that Mr Walker presented that paper to you on the day it bears date? A He presented it to me for cash.

Q Well, he presented it to you and you received it, didn't you? A Yes.

MR. HAIRE: I now offer that in evidence.

MR. MAYNARD: No objection.

(Two pieces of paper marked Defendant's Exhibits B-1 and B-2 in evidence.)

THE COURT: You can read it to the jury, Col. Haire.

Q Now, these two papers marked Defendant's Exhibits B-1 and B-2, you saw at a later date in the Police Court, didn't you? A Yes.

Q And was there not attached to these papers at the time, a full memorandum and statement as to the claim of Mr Walker with regard to this amount of money mentioned in People's Exhibit 5? A I think there was a memorandum.

Q Yes, and do you remember that that was turned over at the suggestion of the Court to the District Attorney, with the check? A I don't know what became of it. I presume so.

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Q Did that memorandum have the policy numbers and all on? A I don't recall exactly what it had on. Figures, I think.

THE COURT: Do you want to read that exhibit to the jury? If so, read it.

(Mr Haire reads the exhibit to the jury.)

BY THE COURT:

Q Did that go through a bank account of the Casaaalty Company? A A separate account, yes, sir, not the premium account.

Q But it went through a bank account of the Casualty Company? A Yes, sir.

BY MR. HAIRE:

Q Now, Mr Walker claimed that that was in payment of that \$49.20, did he not? A I think he did, yes, sir, in the Police Court, I am speaking about.

Q In the Police Court, yes. Now, when was Mr Walker arrested? A I don't remember the exact date. Probably in August, I think, 1908.

Q Of this last year? A 1908.

Q 1908? Then you let this run from October, 1906, until July, 1908, didn't you? A We did not discover it until July, 1908.

Q Well, you sometimes make mistakes in your bookkeeping, don't you? A I presume everybody does.

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Q You sometimes, or do you know William A. Badger of Minneapolis, Minnesota? A I don't know him, no.

Q Do you know of him? A I don't recall. It seems that we had an agent of that name once, a long while ago.

Q Do you remember making a mistake of \$100 in his account and carrying it for two years?

MR. MAYNARD: I object to that as incompetent, immaterial, irrelevant and inadmissible.

THE COURT: Yes, I will sustain the objection.

MR. HAIRE: Exception.

Q Did it take you two years to find out on December 4th, or from December 4th, 1904, to November 30th, 1908, that Mr Badger had overpaid you \$100?

MR. MAYNARD: Objected to on the same ground.

Objection sustained. Exception.

Q How many people had access to your ~~xxx~~ cashier's rooms in October, 1906? A Two, besides the officers of the company.

Q Who were they? A Mr W. F. Moore, as president; George E. Taylor, secretary; W. J. McCaffrey, as general manager; George C. Pratt, treasurer.

BY THE COURT:

Q In addition to those persons there was yourself and Donaldson? A Yes, sir.

MR. HAIRE: That is all, for the present.

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REDIRECT-EXAMINATION BY MR. MAYNARD:

Q Under what circumstances, Mr Garrison, was the defendant's check of October 25th, 1906, presented to you? A It was presented to me for cash, initialled by an officer of the company, which was the custom.

Q Did you pay him the cash? A I did.

Q Did you make any entry of that transaction in any of the books of the company? A Yes, sir.

Q Is that the cashier's book of the company (indicating)? A Yes.

Q Is it in your handwriting? A Yes.

Q It was the book that you kept on the 25th of October, 1906? A Yes.

Q Is there any entry on that page in reference to this check? A Yes.

MR. MAYNARD: I offer that entry in evidence.

MR. HAIRE: Let me look at it, please.

(Marked People's Exhibit 6 in evidence.)

MR. HAIRE: That is one entry, I understand?

MR. MAYNARD: Well, the entries of that date, October 25th, page 42.

Q State what entry on that date refers to the check of the defendant, October 25, 1906, \$39? A The entry relating to that, the words "Check T. H. Walker, cashed, \$39," in the disbursements column. "\$39," in the deposit column.

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BY THE COURT:

Q Did you receive on that day from the defendant more than one \$39 check? A No, sir.

BY MR. MAYNARD:

Q Did you pay to the defendant in cash, in exchange for that check on that day, \$39? A I did.

BY THE COURT:

Q And that payment was made from the moneys of the company, is that so? A Yes, sir, the petty cash account.

BY MR. MAYNARD:

Q When that check was first received by you, did it have the initials of an officer of the company upon it?

A It did, yes, sir.

Q Where? A In the upper left hand corner.

Q Are those initials there now? A They have been erased.

Q Is the check discolored? A Slightly, yes, sir.

Q What was the rule in the New Amsterdam Casualty Company in respect of the matter of cashing checks for employees?

MR. HAIRD: I object to the rule. I object to the question.

THE COURT: Well, I think I will sustain the objection.

Q What instructions were given to you as cashier of the

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New Amsterdam Casualty Company, in the matter of cashing checks for employees? A I was allowed to cash checks if the checks were first initialled by an officer of the company.

Q What officers of the company were authorized to initial checks? A The president, secretary, the treasurer, and general manager.

Q All of the parties heretofore named by you? A Yes.

Q W. F. Moore, president? A Yes.

Q G. E. Taylor, secretary? A Yes.

Q What is McCaffrey's initials? A "W. J. McCaffrey," general manager. George C. Pratt, treasurer.

Q Do you remember whose initials were on that check when you received it? A I do not, no, sir.

Q You were asked, Mr Garrison, why you did not know the amount that was due on the policies of Robitzek & Brothers. What was the reason? A The reason was because Mr Walker, or no one else had reported the result of the audit.

BY THE COURT:

Q Well, you as cashier would not have known, would you, in any event, what the amount due was? It was not part of your duty to know? A Not directly. The bookkeeper outside would have known when he came to post it.

Q Yes, but you as cashier had nothing to do with how much, if anything, persons outside owed the company? Your duties were limited to the reception of such money as was paid

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in to you, the making of certain entries, and causing that money to be deposited, is not that so? A Yes, sir.

BY MR. MAYNARD:

Q You were asked, Mr Garrison, about the length of time that had elapsed between the turning over of the check of Robitzek & Brothers to the defendant Walker, at the time of his arrest. State if you will, the reason for that lapse of time? A After Mr Walker was dismissed, I was given entire charge of the office. I had a great deal of work to do, and as soon as I could I had a man go over this book.

Q What book do you mean? A Payroll register here.

Q People's Exhibit 3? A And find out how many audits were overdue. The man's name was Robert Couch. He made a list of them and he worked on them and finally one day he reported to me--

BY THE COURT:

Q Never mind. He made a report to you on a certain day?

A Yes.

BY MR. MAYNARD:

Q Yes, go ahead. He made a report to you of what?

A He reported to me that Mr Robitzek--

MR. HAIRE: I object to that.

THE COURT: No, I will not allow that, unless the defendant was there when the report was made.

Q Did you yourself examine this payroll register for

such accounts as you have described? A Yes, sir.

Q Did it personally? A I did, yes, sir.

Q What did you find from the examination of that payroll register in July, 1906, in respect of--

MR. HAIRE: I object to that.

THE COURT: Yes, I think that is immaterial. You have the register in evidence. It either shows an entry or does not show it.

BY THE COURT:

Q Did any person other than the defendant keep that register? A His assistant.

Q What is his name? A Well, he is not with us any more. I have forgotten what his name was. It is a long time ago.

Q You do not recall his name? A No, I can find out his name.

Q So that entries in that book were made by two separate person, is that so? A Yes.

Q And that applies to the month of October, 1906, is that so? A Yes.

Q In other words, it was the duty of two individuals, one of them being the defendant, to make certain entries in that book? A Yes, sir.

BY MR. MAYNARD:

Q I call your attention to People's Exhibit 4, and ask

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you if you know that book and the handwriting? A That is in the handwriting of Mr Walker.

Q What book is that? A This is a book kept by him daily, showing the total additional and return premiums on payroll reports.

Q That is what you called the book, is it? A Yes, sir.

Q Are all the entries in the handwriting of Walker in that book? A All up to the time that he was dismissed.

Q I ask you to look in the month of October, 1906, and state whether there is an entry of receipt from Robitzek & Brothers on the 11th of October, of \$49.20? A There is no such record. I have looked it over.

Q Well, do you find it there? Can't you find the page? I gave you the page.

MR. HAIRE: Will you repeat the question?

(Previous question repeated by the stenographer.)

A No record of it. He did not make any record.

Q Was it the duty of Walker to make in that particular book a record of each and every report that he made? A Yes, sir.

MR. HAIRE: I object to that.

THE COURT: Objection sustained. This man was cashier of the company in which the defendant was auditor. Now, they had a common superior, a certain man who hired Walker, and Walker's duties were regulated by the terms of

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his employment, which were made not by this witness.

MR. MAYNARD: Yes, sir.

Q What was your superior officer who had charge of that matter? Who hired Mr Walker, do you know? A I don't know.

THE COURT: The last witness gave that?

MR. MAYNARD: Taylor, I think.

Q Is Mr Taylor present? A I don't know.

Q Is he outside? A I don't know whether he is outside or not.

Q You could get him here, couldn't you? A I presume so.

BY THE COURT:

Q Now, are you able to say whether that book, People's Exhibit 4--in the ordinary course of business, do you know whether original entries were made in that book, and whether the other book which has been received, the payroll register, Exhibit 3, is a mere transcript of entries in that book? A Are not made from that book. They are both made from the reports themselves.

BY MR. HAIRE:

Q We cannot hear you? A The entries in both books were made from the reports themselves.

BY MR. MAYNARD:

Q The original entries? A Yes.

BY THE COURT:

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Q Well, is one book a duplication of the other? A No, not exactly. Of course in a sense it might be considered so. I could not call it a duplicate.

Q In other words, the payroll book contains matter which is not contained in the other book? A Yes, sir. Then the small book was kept with the idea to tell how much additional premiums were coming in from day to day.

BY THE COURT:

Q In other words, that book was intended to represent amounts due, rather than amounts received, is that so? A Yes, sir.

Q And the payroll book was intended to represent the amounts as received? A Well, neither of those books showed the payments. They had no reference to payments, neither of those books.

BY MR. MAYNARD:

Q What did they have reference to? A They had reference to the reports. As soon as they came in the reports were entered in both those books.

BY THE COURT:

Q In other words, neither of those books was intended to show any entries of an amount, as an amount received? A No.

Q Both those books were intended to represent amounts ascertained to be due? A Yes.

BY MR. MAYNARD:

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Q As additional premiums? A To be due the company
or the policyholders.

Q Well, as additional premiums? A Both ways. ~~Due~~
additional premiums, and ~~due~~as returns, from the two columns.

Q Well, the jury do not understand you. This book is
intended to show either the amount of additional premiums due
the company as the result of audit, or the amount of the rebate
coming from your company to the assured in the event that that
estimate has been too high, is that right? A Yes, exactly.

Q And neither book was intended to show or did show re-
ceipts of moneys by any one for the company? A No, sir.

Q And was any entry made in the same connection upon the
applications for insurance? A Yes.

Q State if you will what ^{the} entry was by an auditor upon the
applications?

MR. HAIRE: I object to that.

THE COURT: How is that material?

MR. MAYNARD: It is a third place. I understand this
man was required by his duties to make certain entries upon
certain books and papers, and in this particular instance
he failed to do it, and it is up to him to explain why.

THE COURT: No, I do not think it is material. I
think it would be material, perhaps, to show that he did
not make entry of the amount due, but not of the original
amount, inasmuch as there is no claim that this \$49 had

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any connection with the original amount.

MR. MAYNARD: I am satisfied.

Q Do you remember, Mr Garrison, whether at any time prior to October 25th, 1906, you as cashier had cashed checks for this defendant? A I think I did, yes, sir.

Q Now, as superintendent, did you know whether or not Thomas H. Walker was an agent or broker for the New Amsterdam Casualty Company? A He was not an agent or broker, to my knowledge.

Q He was simply an auditor? A An employee.

Q Was he entitled to receive commissions on premiums received from anybody?

MR. HAIRE: If this man knows?

MR. MAYNARD: Well, that is what I ask him.

A Not to my knowledge.

Q You mentioned S. T. Walker. Was he one of your agents or brokers? A We had an account with S. T. Walker.

Q Did you ever know him? A No, sir.

Q Did he sell insurance for you? A According to the records, yes, sir.

Q Did you have different kinds of agents or brokers in connection with your company? Were some under contracts and some without contracts? A Yes.

Q How did you distinguish them? A Those that were under contract were agents, representatives of the company.

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Those who are not, are brokers, placing their business with various companies, not bound to any one company.

Q Well, was this S. T. Walker account a broker account or agent account? A Broker.

Q Broker? So you did not necessarily have to see him?

MR. MAYNARD: I think that is all.

BY THE COURT:

Q Well, while you were cashier, what was the system by which the company paid to agents and brokers commissions? Was the customary way for the agent or broker to turn over the premium minus his commission? That is to say, with the commission already deducted, or was the customary method for the company to receive the whole amount of the premium, and then pay its check to the agent or broker by way of commission? A It was done both ways. Some checks were received in gross, and the company sends their check to the broker for his commission.

Q Did you at any time while cashier pay to this defendant any check of the company as and for his compensation, by way of commission? A Not that I recollect, no, sir.

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RE-CROSS EXAMINATION BY MR. HAIRE:

Q How did you pay him his salary ? A In cash.

Q How ? A Cash.

Q Did you keep a book of account of that ? A We had a pay roll book, that's all, with all the other employees.

Q Well, when he drew any cash out, did you charge him with it ?

BY MR. MAYNARD:

Q Do you understand the question? A I do not, exactly.

BY MR. HAIRE:

Q Did you charge him with cash when you paid him ?

A Well, he had no account. We could not charge him with it.

Q Now, you cashed for him checks besides this \$29., didn't you, or \$39. ? A I presume so; I think so.

Q Did you ever cash him any check except in the multiple of five, ten, fifteen, twenty or twenty-five, besides those ?

A I can't remember the amounts.

Q Now, that check, Defendant's Exhibit B-1 and 2, was not torn in two when it was in the Police Court, was it ?

A I think not.

Q And there was no erasure up in the corner either, was there ? A There was.

Q At that time ? A At that time.

Q Do you remember the name of the Assistant District Attorney? A No, I do not.

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Q. How? A. I do not, no.

Q. Mr. Ward? Did not Mr. Ward and myself look at that and hold it up and comment upon the fact that there was no endorsement there, and hold it up to the ~~xx~~ light? A. I remember the Magistrate, Kernochan, said there had been an erasure. He could see it.

Q. Now, is it not true that the Magistrate said there had been none, after the Assistant District Attorney and myself looked at it? A. He said there had been an erasure, but he did not know what was there before the erasure was made, as I recall it.

Q. You do not remember the comment made by the Assistant District and myself to the effect that there was no erasure there?

MR. MAYNARD: I object to the comment.

THE COURT: Yes.

Q. You have seen this check since it was in the Police Court, haven't you? A. I think I saw it once.

Q. In the District Attorney's office? A. Yes.

Q. Whose office was that in? A. Well, I don't remember now, or the name.

Q. You had it in your hand and examined it? A. I don't think I had it in my hand, no.

Q. Now, I show you this paper dated December 31st, 1906, and ask you if that is a check you cashed for the defendant?

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BY MR. MAYNARD:

Q What is the date ? A December 31st, 1906.

BY MR. HAIRE:

Q 1906 ? A I would have to refer to the books before I could answer. Apparently --

Q Can't you tell by looking at it ? A I was not cashier on December 31st, 1906.

Q But you were the October preceding? A I was.

Q Now, that check is marked on the corner, isn't it ?

A Yes.

Q That is endorsed in the handwriting of Mr. Taylor ?

MR. MAYNARD: Do you want to offer that in evidence ?

MR. HAIRE: Well, I want to offer that in evidence so far as the endorsement is concerned, in the corner.

MR. MAYNARD: Well, I have no objection to that.

(Marked Defendant's Exhibit C).

Q Can you tell by looking at your book that that check now marked Defendant's Exhibit C was cashed for the defendant?

A Yes, sir.

Q Will you look at your book and see ? A Is that check \$15. ?

BY MR. MAYNARD:

Q Are the entries in that book now in your handwriting ?

A No. I was promoted on the 15th of December, I think, it was, 1906.

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Q Whose handwriting is that ? A This is Mr. Brackett, the present cashier.

BY MR. HAIRE:

Q That shows that was cashed on that date, doesn't it ?

A Yes.

Q Now, I show you this paper dated November 13th, 1906; you were cashier then, weren't you ? A November 13th, yes, sir.

Q I ask you if ~~kk~~ you cashed that paper for Mr. Walker, the defendant? A Well, it was cashed. This says "Currency to George E. Taylor." The check is payable to George E. Taylor. I presume I cashed this for Mr. Taylor

MR. HAIRE: I offer that in evidence, so far as the endorsement of Mr. Taylor is concerned.

MR. MAYNARD: I object to that.

THE COURT: I do not see how it has any relevancy.

MR. HAIRE: If your Honor please, this witness has sworn that Mr. Taylor had endorsed this check in the corner and it had been rubbed out.

THE WITNESS: I did not say I swore to that. I said an officer --

BY THE COURT:

Q You remain perfectly silent, Mr. Witness, until you are spoken to.

MR. HAIRE: We want to show that Mr. Taylor endorsed in an entirely different manner.

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THE COURT: Well, you have the endorsement of Mr. Taylor upon another check. I do not think that that is material.

MR. HAIRE: Your Honor will give me the benefit of an exception?

THE COURT: Yes.

BY MR. HAIRE:

Q Your company has had considerable trouble and litigation with Mr. Walker, hasn't it?

MR. MAYNARD: I object to that.

THE COURT: I will allow it on the issue of bias.

A They had a lawsuit against him.

Q You have had considerable litigation, haven't you?

MR. MAYNARD: I object to the characterization of considerable.

THE COURT: Well, yes.

BY THE COURT:

Q Has there been a suit pending between your company and Mr. Walker, the defendant? A Yes, sir.

Q More than one? A Not to my knowledge, except this one.

BY MR. HAIRE:

Q You had a case pending against him long before this charge was brought up, didn't you, in the Municipal Court?

A I think so.

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Q Now, witness, I want to call your attention to this book, page 62, People's Exhibit 3, and ask you to show me where Mr. Walker's handwriting appears, page 62.

BY THE COURT:

Q Now, start with the first line, the line from the top.

A I don't know before that. There is Mr. Walker's writing (indicating).

Q Now, take the first line. Is there anything on the first line of page 62 in the handwriting of Mr. Walker? A I am not certain, but I think not.

Q You are not sure of the first line? A No.

Q Now, on the second line, is there anything on page 62, now? A No, sir.

Q On the third line, is there anything in the handwriting of Mr. Walker, the defendant? A Yes, sir.

Q There is? A Yes, sir.

Q On the fourth line, is there anything in his handwriting?

A No.

Q On the fifth, is there? A No, sir.

Q On the sixth? A No, sir.

Q On the seventh? A Yes, sir.

Q On the eighth? A No, sir.

Q On the ninth? A No, sir.

Q On the tenth? A No, sir.

Q Eleventh? A No, sir.

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Q Twelfth ? A No, sir.

Q Thirteenth? A No, sir.

Q Fourteenth? A No, sir.

Q Fifteenth? A Yes, sir.

Q Sixteenth? A No, sir.

Q Seventeenth ? A No, sir.

Q Eighteenth ? A No, sir.

Q Nineteenth ? A No, sir.

Q Now, you have mentioned the lines on which there is something in the handwriting of the defendant, is that so, on that page ? A Yes, sir.

BY MR. HAIRE:

Q On three, do you remember the line three what you say was in the handwriting of Mr. Walker? All that is on that page is "one and one half teams" and "one half teams", is that all?

A I think so. There is two or three words there. I don't remember what the amount is now, but I think it is in his writing.

Q The amount. Now, what is the next one, the seventh ?

BY THE COURT:

Q Mr. Witness, you can step down there so that you can see the book.

BY MR. HAIRE:

Q The words "no change" is all in that, isn't there ?

A And the date, on both of them.

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Q Now, the words on the fifteenth line ? A The words "three teams, one team \$19.25, August 7th, 1906."

Q That is all that is on the double page in his handwriting, isn't it ? A Yes, sir.

Q Now, where is that book in which you had marked this \$39. as cash ? A Here it is (indicating), October 20th.

Q Now, after the word in People's Exhibit 6, and after the words "ch", that is "check" I suppose, T. H. Walker, cash, when was that word "cash" put there ? A October 25th, 1906.

Q Can you tell me if that was placed there the same time you wrote the -- A Yes.

Q Now, the figures are "39" under the head of deposits. Now, deposits for whom? A The New Amsterdam Casualty Company.

Q Under the head of disbursements you have 39 marked ? A Yes.

Q Did you put that there the same time , A Yes.

Q What is this in green pencil beyond that? A That is the check of the quarterly auditors.

Q When was that placed there ? A I don't know exactly. I will have to look that up.

Q What does that mean? A Our books are audited quarterly and the auditors put their own private check opposite each item.
BY THE COURT:

Q In other words, it is the auditor's mark, made by somebody in the employ of an auditing company? A Yes.

Q Engaged in auditing the books of your company?

A Yes, sir.

BY MR. HAIRE:

Q Now, the entry, for instance, under that, is not marked cash, but it contains the same entries as to amount under deposits and also disbursements, does it not? A Yes.

Q Then, outside of the word cashed in there, there is nothing to show that this amount of \$39, which was received was received any different from moneys that were paid in from clients, is there? A Yes.

Q There is nothing different besides the word "cash", is there? A There is something different.

Q What is that? A The fact that it is in that book. That book is for petty cash.

Q That is petty cash accounts. Well, money that is paid in by your clients appears in this book too, doesn't it?

A Not for premiums.

Q Not for premiums. A Not premiums.

Q How about amounts overpaid, or whatever you call this \$49., additional or accrued premium? A That is premium, but no premiums additional or any other kind are in that book.

Q When a man comes and hands you a check, in other words, you put it in that book? A Not for premiums in that book.

Q Where is your premium book? A That is the remittance book.

Q Well, where is that ? A Down in the office.

Q Will you produce that ? A Yes, sir.

Q That is all for the present.

MR. MAYNARD: I think that is all. (Calling) Mr. Taylor. Just take the stand again, Mr. Garrison.

F R E D S. G A R R I S O N, a witness for the People, recalled:

BY MR. MAYNARD:

Q I call your attention to those letters on page 42 of People's exhibit 6, and ask you to state, if you know, whose handwriting that is in ? A Mr. Pratt's, treasurer of the company.

Q What are the initials on the page ? A "G.C.P."

Q What do they indicate on that page ?

MR. HAIRE: I object to that as incompetent, unless it is something already in evidence.

MR. MAYNARD: It is the same page we have been speaking of, and some initials there I had not asked about.

MR. HAIRE: All right.

A It indicates that Mr. Pratt checked up my accounts and disbursements for that day, and found them correct, and that proved my check for reimbursements.

MR. HAIRE: I move that the answer be stricken out.

THE COURT: Yes, strike it out. It indicates that Mr.

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Pratt had that book before him on that day.

MR. MAYNARD: I will ask the indulgence of the Court until recess, now.

THE COURT: We will take a recess now until a quarter of two.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 1:45 o'clock P.M.

After recess. Trial resumed.

GEORGE E. TAYLOR, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Taylor, you are an officer of the New Amsterdam Casualty Company? A Yes, sir.

Q What office do you hold? A Secretary.

Q Did you hire the defendant, Thomas H. Walker, to render services to your company? A I did.

Q Did you at that time give him instructions as to his duties? A I did.

Q Did you at any time instruct or authorize him as part of his duties to collect moneys due as premiums or additional premiums in connection with insurance issued by your company? A No, sir.

Q Did you ever authorize him to endorse checks for de-

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posit or any other purpose for your company? A I did not.

Q Are you familiar with his handwriting? A Yes, sir.

Q I show you this check, People's Exhibit 5, and ask you if the endorsement there is in the handwriting of this defendant? A Yes, sir.

Q Did you ever at any time authorize him to endorse that check for deposit or any other purpose? A No, sir; this check nor no other check.

BY THE COURT:

Q You say it was no part of the duty of this defendant to collect moneys for the company? A He did not ask me that question, your Honor.

BY MR. MAYNARD:

Q Well, the Court asks you the question. A I thought you asked ~~xx~~ me if I said so.

BY THE COURT:

Q Yes, was it any part of the duties of this defendant to collect moneys for the company? A No, except in specific cases.

Q They do not hear you. A I said no, except in specific cases.

Q That is to say, except as he might be specifically told by you to collect moneys for the company he was not, by virtue of his position, authorized to empowered to collect any money for the company? A That's right, your Honor.

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Q Now, did you specifically authorize this defendant, that is to say, did you tell this defendant to collect from Robitzek & Brothers, \$49.20, for any sum of money whatsoever? A No, sir; I did not.

CROSS EXAMINATION BY MR. HAIRE:

Q How long have you been secretary of the company?

A Since May, 1903.

Q And Mr. Walker worked for that company during two or three years, didn't he? A He did.

Q Well, you know of his endorsing checks, did you not?

A No, sir; I do not.

Q Where does that stamp come from, which is the stamp on the back of that check? A That I don't know.

Q Isn't that the stamp of your company?

BY MR. MAYNARD:

Q (Handing) Examine it carefully. A No, sir; we have no stamp like that.

BY MR. HAIRE:

Q You have not any stamp like it? A We have not, no, sir.

BY THE COURT:

Q Referring now to the company? A Yes, sir; I am referring to the company's stamp.

BY MR. HAIRE:

Q Now, you knew of his making collections often, did you not? A Yes, when he was authorized to do so.

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Q Well, he was authorized to do so as auditor in chief, wasn't he ? A No, he was not.

Q Was not he auditor in chief, chief auditor ?

A He was chief pay roll auditor only.

Q Well, what do you mean by pay roll auditor ? A I will explain it to you. We had an employers' liability business.

Q How. A We had an employers', a business known as employers' liability, and the premiums on the policies that were ~~mx~~ issued are based upon the compensation paid to employees. When the policy is originally drawn, the assured makes a statement as to what his wages are at the time, and at the end of the year he gives us a statement showing what the actual wages are, and the premiums are adjusted at that time. Now, a pay roll auditor is a man who goes around and examines the assured's books and gets a correct statement as to the wages expended during the life of the policies, for the purpose of adjusting the premiums.

Q Yes, and he was chief auditor in that respect, was he ?

A He was.

Q And he audited a good many claims, did he ? A He audited a good many pay rolls, if that is what you mean.

Q Yes, and he was allowed a commission, wasn't he, over and above his salary ? A He was not.

Q What ? A He was not.

Q Never. A Never.

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Q Do you know the signature of Mr. Donaldson? A I do.

Q The Assistant cashier? A Yes.

Q I show you this paper which is marked Defendant's Exhibit A for identification, and ask you if that refreshes your memory any? A That is Mr. Donald's signature.

Q Yes A Yes.

Q Well, is the money referred to, was that collected as a premium? A Yes.

Q And is there a commission allowed there? A No.

Q What? A Not to Mr. Walker.

Q No commission allowed? A No.

Q Doesn't that show that Mr. Walker paid in a certain sum of money on that day? A It shows Mr. Walker paid in a certain sum of money on that day.

Q Well, was not or does not it show a commission?

A It shows a commission was deducted.

MR. HAIRE: Now, if your Honor please, I offer Defendant's Exhibit A for Identification in evidence.

MR. MAYNARD: I have no objection.

THE COURT: Received.

(Marked in evidence as Defendant's Exhibit A, and Mr. Haire reads the exhibit to the jury.)

BY MR. HAIRE:

Q Now, was not that \$17. Mr. Walker's commission?

A No, sir.

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Q How ? A No, sir.

Q Whose commission was it ? A The commission of the broker who placed the risk.

Q Well, you used fictitious names for brokers, didn't you ? A No, sir.

Q Don't you know, or didn't you and Mr. Walker have some trouble because you insisted upon suppressing return commissions ? A No, sir.

Q You have had considerable trouble with him, haven't you ? A Not in that direction.

Q Well, you do not feel very friendly towards him, do you ? A No, I do not.

Q He has claimed that your company owed a large amount of return commissions, hasn't he ? A I don't know what claim he made in that direction.

Q Return premiums ? A I don't know what claim he made in that direction.

Q Well, you know he made such a claim, don't you ?

A He never made a claim of that kind to me.

BY MR. MAYNARD:

Q That is all you know, then ?

BY MR. HAIRE:

Q Well, you know he has made a claim against your company for a large amount of commissions ? A I will repeat my former statement, I don't know.

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Q Will you wait until I finish my question. A Yes.

Q You know that he has made claims against your company for commissions earned in securing excess --

MR. MAYNARD: Earned by him?

Q (Continuing) Earned by him in securing excess premiums?

A No.

Q You don't know that he made such a claim at the time the case was tried in the Municipal Court in the City of New York?

A I don't know it, no, sir.

Q Were you a witness in that case? A I was not.

Q You did not see his bill of particulars? A I did not.

Q Don't you know that he claimed a commission on the Fort Pitt Bridge? A I do not.

Q Where you recovered in the neighborhood of \$10,000?

A I do not.

Q Well, you have heard that he claimed it, haven't you?

MR. MAYNARD: I object to that.

THE COURT: Yes, sustained.

Q I show you a paper here dated April 30th, 1906, and ask you if you recognize that paper?

BY MR. MAYNARD:

Q Just say yes or no? A Yes.

BY MR. HAIRE:

Q Is that a paper issued by your company? A It has our imprint on it.

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Q Was that issued for commission on premium? A No.

Q That is for straight premium? A That is in payment of a straight premium.

Q Was that collected by Mr. Walker? A I don't know.

Q You don't know? A No.

MR. HAIRE: I ask to have that marked for identification.

(Marked Defendant's Exhibit D for Identification).

Q I show you a paper dated March, 1907, and ask you if that was issued by your company?

BY MR. MAYNARD:

Q If you know? A Yes.

BY MR. HAIRE;

Q Was that, or does that show a commission allowed?

A It does.

Q Was that paid into the company by Mr. Walker?

A I don't know.

Q You don't know? A It is signed "S. T. Walker."

MR. HAIRE: I ask to have that marked for identification.

(Marked Defendant's Exhibit E for Identification).

Q Now I show you a paper dated February 28th, 1907, and ask you if that is a paper issued by your company? A Yes.

Q That shows a commission, does it? A Yes.

Q Paid by your company? A Yes.

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MR. HAIRE: I ask that it be marked for identification.

(Marked Defendant's Exhibit F for Identification).

Q I show you a paper which is stamped January 30th, 1907, and ask you if that was issued by your company? A Yes.

MR. HAIRE: I ask to have it marked for identification.

(Marked Defendant's Exhibit G for Identification).

Q Another one dated June 29th, 1907, and I ask you if that was issued by your company? A Yes, it was.

THE COURT: Colonel, do you think this case will take all day.

MR. HAIRE: I think it will, your Honor. I think the defense will take an hour as the case develops.

I ask to have that marked for identification.

(Marked Defendant's Exhibit H for Identification).

MR. HAIRE: Perhaps I can save time by handing up several of these papers and asking him to go through them and ask if they were issued by his company, if the District Attorney does not object to that method.

Q Will you look those papers over, and see if they were all issued -- they are ten in number -- by your company?

A Yes, they were all issued on the stationery of our company.

MR. HAIRE: I ask to have them marked for identification.

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Ten separate papers are marked as one exhibit, Defendant's Exhibit I for Identification).

Q Now, have you a man, or did you have in 1906 in your employ a man by the name of W. A. Coley? A Yes.

Q How? A Yes, we did have, and we have now.

Q Yes, your special agent? A Yes.

Q Well now, did not Mr. Walker collect money on premiums and turn over to him under your directions? A He did not.

Q Did you know that Mr. Walker paid the commissions due to Mr. Coley, or the premiums which were due to your company went through Mr. Coley's hands? A Repeat that, will you?

Q (Question repeated by the stenographer).

THE COURT: You had better re-frame your question.

Q Didn't you know that Mr. Walker was in the habit of paying by his checks, premiums due to your company, to Mr. Coley? A No, I did not.

Q Do you know Mr. Coley's signature? A Yes.

Q I show you two papers here, and ask you if they will refresh your memory in any way? A Both of those checks are drawn by Mr. Walker and endorsed by Mr. Coley. At least one of them looks like Mr. Coley's signature; the other does not.

Q You don't know? A I know that one of them is Mr. Coley's signature. That one, I am not certain about. (Indicating).

Q Well, does either of them or both of them taken together

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in any way refresh your memory ? A My memory does not need refreshing.

BY MR. MAYNARD:

Q Well, answer that question. A No.

BY MR. HAIRE:

Q Then, Mr. Walker never was authorized to pay to Mr. Coley premiums he received ? A No, he was not.

Q Do you know that Mr. Coley was paying to your company money that he received from Walker as auditor ? A No.

Q Did not know anything about that? A No.

MR. HAIRE: I ask to have these marked for identification.

(Marked Defendant's Exhibit J for Identification).

Q Did you ever receive checks from Mr. Walker in payment of premiums ? A I never received checks from Mr. Walker in payment of anything.

Q The cashier did that, did he ? A That was the cashier's duty, to receive all moneys. Whether he received from Mr. Walker, I don't know.

Q Well, you knew that Mr. Walker often paid premiums by his check, didn't you ? A Only on stuff that he was authorized to collect.

Q Was not he authorized to collect money whenever a person offered it to him? A No.

Q Or whenever he went to audit an account? A I testified

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before that he was authorized to collect on specific occasions.

Q Well, he did collect money, many thousands of dollars, didn't he, for the company? A No, not many thousands of dollars.

Q Was not his first position ~~was~~ with your company as a collector? A No.

Q What was it? A His first position with our company was in charge of our inspection department, elevator inspection department.

Q Did not do any collecting for your company? A No. I think not.

Q Did not he attend to collections exclusively during the first month he was with your company? A No.

Q Your memory is good? A It is very good.

Q Do you know anything about checks going through your bank at all? A No.

Q Your company's bank? A No.

Q I want to show you this paper, dated December 31st, 1906, and ask you if that was not paid by Mr. Walker to you directly or to the company for premiums? A That I can't say. I don't know.

THE COURT: That paper had better be marked for identification.

MR. HAIRE: I ask that it be marked now.

(Marked Defendant's exhibit K for Identification).

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BY THE COURT:

Q Did you on behalf of your company at any time after October 11th, 1906, and before September 24th, 1908, make a demand upon this defendant for the sum of \$49.20, as an amount collected by him from Robitzek & Brothers ? A Not to my knowledge.

BY MR. HAIRE:-

Q I now show you twenty-one papers, commonly called checks, and ask you to look them over, and state whether or not you know that they represent amounts collected in premiums by Mr. Walker and paid to Mr. Coley or the company by check?

A These purport to be checks ~~xxxx~~ drawn by Mr. Walker, payable to the order of W.A. Coley, some endorsed by Mr. Coley, some of them stamped for deposit, for what purpose I don't know. Two of them are marked payable to the order of The Travelers' Insurance Company; one of them payable to the order of The Travelers' Insurance Company, endorsed "W. A. Coley", and the other one is marked payable to the order of Silas Shipman, Jr., and endorsed "W. A. Coley", and deposited --

BY THE COURT:

Q (Interposing) Did any of those checks, pass, to your knowledge, through the bank account of the New Amsterdam Casualty Company ? A Not to my knowledge; no, sir.

BY MR. HAIRE:

Q Will you say that you did not know that Mr. Walker was

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collecting money and paying it to Mr. Coley for the Amsterdam Company. A I did say that, sir.

MR. HAIRE: I ask to have these marked for identification, twenty-one checks.

(They are marked Defendant's Exhibit L for Identification).

BY THE COURT:

Q I understand you to say, Mr. Witness, that you never personally, as an officer of the New Amsterdam Casualty Company, made a demand upon this defendant for the payment by him to the New Amsterdam Casualty Company, of the sum of \$49.20 ?

A That is what I meant, your Honor. I never personally made any demand on him for it.

Q So far as you know, was any such demand ever made ?

A I don't know.

Q On behalf of the company? A I don't know. It was entirely out of my department. I would not have knowledge of it.

BY MR. HAIRE:

Q Now, Mr. Walker had a desk in the office of the company, didn't he ? A Yes, sir.

Q When engaged in business there ? A Yes.

Q And was that desk broken open by your orders ?

A No, sir.

Q You know it was broken open, do you ? A Yes.

Q And the papers removed from it ? A No, I don't know

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that anything was removed from it.

Q You don't know that anything was removed from it ?

A No.

Q But you do know that it was broken open? A The same as we would open any other employe's desk.

Q But you had given him a private lock to put on that desk, hadn't you ? A No, sir.

Q And one drawer, didn't you tell him to put on a special lock ? A I did not.

Q Did not furnish the lock for him? A I did not.

Q And didn't you urge this defendant to make collections wherever and whenever he could ? A I did not.

Q Didn't you tell him because there was a deficit of some \$8,000. in the funds of the company that had been misappropriated you wanted to make them ? A No, I don't think anybody ever told him that. No, I did not tell him so, never.

Q Didn't you talk with him about a deficit of \$8,000. ?

A Most assuredly I did not, because no such deficit ever existed.

Q You did not accuse Mr. Strubel of taking \$8,000. from the company? A Yes. I did not accuse him. He did take \$8,000.

Q Well, there was a deficit there then, wasn't there ?

A Yes, there was a deficit of that amount.

Q Didn't you say a moment ago no such thing ever occurred?

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A I thought you meant in the funds of the company itself. You are talking about the funds of the cashier's department now.

Q That was trouble in the cashier's department ?

A There was trouble in the cashier's department.

Q And that was the company's money too, wasn't it ?

A Yes. But when you spoke of the funds of the company, I spoke of the general funds of the company, and not the cashier's department.

Q Well, you are differentiating very carefully then ?

A It is necessary to do so with you.

Q And your company has made a good many mistakes in its bookkeeping, hasn't it ?

MR. MAYNARD: I object to that.

Q Didn't it during the year 1906 and '5 ?

MR. MAYNARD: I object to that.

A No, I don't think so.

BY THE COURT:

Q Do not answer when there is objection.

THE COURT: I will let the answer stand.

BY THE COURT:

Q In the ordinary course of business, Mr. Witness, as conducted between yourself, or rather as between your company and this defendant, by what officer of your company would a demand have been made upon the defendant for the payment of \$49.20 ?

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A Well, by the general manager.

Q And his name ? A W. J. McCaffrey.

BY MR. HAIRE:

Q You had charge of the collections part of the time, didn't you ? A I did, part of the time, yes

Q Didn't you have charge of the collections at the time in October, 1906 ? A I am not sure.

Q Your memory is not good in that respect ? A No, it is not. I am not sure whether I did, or whether the treasurer did at that time.

Q Now, your company has held over, hasn't it, excess premiums or return premiums ? A I don't know what you mean by "held over".

Q Kept them, instead of paying them back ? A No, sir.

Q And paying them to people to whom they were due ?

A No, sir.

Q And didn't you have difficulty with Mr. Walker because he told you you could not keep up the business if you did not deal straight with people ? A Never.

Q That is all.

RE-DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Taylor, do you know that on October 11th, 1906, \$49.20 was due your company, or did you, as an additional premium on insurance issued to G. Robitzek & Brothers ? A Yes, sir.

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BY THE COURT:

Q What is the answer ? A Yes, I did.

Q You knew that on that date ? A Yes, sir.

BY MR. MAYNARD:

Q Did you authorize this defendant Walker to collect that \$49.20 for the company? A No, sir; I did not.

BY THE COURT:

Q How did you know that amount was due ? A The books showed that the premium had been charged on our books and was unpaid.

Q Do you mean to say that on October 11th, 1906, there was some book in your company that showed that that \$49.20 was due ? A Yes, sir; our ledger showed that, if that is the correct date. I don't know the date. I presume that is the date.

BY MR. MAYNARD:

Q That was the date of the check I gave you. At what time was Walker's connection with your company severed, as you recall? A I think I can tell you definitely. It was two years ago last August. I was in California at the time Mr. Walker's connection with us ceased.

Q The name of Strubel, a cashier of your company, has been mentioned. When did he cease to be your cashier? A I am not sure of the date. It was in June or July, I think, of 1906, if I am not mistaken.

Q Who succeeded him as cashier ? A Mr. Donaldson, I

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think, or perhaps Mr. Garrison, for a short time. I think Mr. Garrison or Mr. Donaldson, I am not positive which.

Q Who is the present cashier? A Mr. Brackett, and Mr. Donaldson is assistant cashier.

Q And Mr. Garrison, who was once cashier, is now your general superintendent? A He is now general superintendent.

BY THE COURT:

Q Now, I understand you, Mr. Taylor, and I want you if you do not understand me to say so -- A Very well, your Honor.

Q (Continuing) I understand that you have a book in the business of the New Amsterdam Casualty Company that is known as a ledger? A Yes, sir.

Q And I understand you to say that in that ledger there is an entry which informed ~~xx~~ you as of the 11th day of October, 1906, that \$49.20 was due to the New Amsterdam Casualty Company from G. Robitzek & Brothers, as and for excess premium? A Yes, sir, if that date is correct. Your Honor, I am not sure about the date, because I don't recall the date.

BY MR. HAIRE:

Q A little louder, please, witness. A I say yes, if that date is correct. I don't know whether it was October or what month it was. I don't recall.

BY THE COURT:

Q But it informed you at all events of that fact, as of the time when, as a matter of fact, that amount did become due,

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whatever the date was ? A Yes, sir.

Q Now, that ledger is not a book of original entry, is it ? That is to say, the entries in it are transcribed from other books ? A That book is not what you might call strictly call a book of original entries. There is a register -- first, all premiums are charged up in the register, and then they are transferred to the ledger, or journal -- ordinarily in manufacturing terms, they call it a journal; we call it a ledger.

Q Now, the first book in which premiums due, including excess premiums, are entered, is what book? A Is a book called a register.

Q In a book called a register? A Register, and they are then transferred to the ledgers.

Q And who, in the month of October, 1906, kept the register? A That would be impossible for me to tell, your Honor. Some one of the bookkeepers; we had a regular bookkeeper for that purpose. Who he was I could not possibly tell now.

Q And you were informed as of October, 1906, by an entry in the register of your company, transcribed into the ledger, that there was the amount of \$49.20 due to your company, from E. Robitzek & Brothers as excess premium, is that so?

A Yes, sir.

RE-CROSS EXAMINATION BY MR. HAIRE:

Q Who were the superior officers of Mr. Walker during the

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month of October, 1906 ? A Who were the superior officers ?

Q Yes, from whom he might receive instructions ? A In 1906, from the treasurer.

Q What is his name ? A Mr. George C. Pratt, treasurer; from myself; from the general manager; from W. J. McCaffrey; from the president, Mr. W. F. Moore, or from the general superintendent at that time -- the superintendent as he was called at that time. He is now called general superintendent, Mr. F. S. Garrison.

JAMES H. DONALDSON, being called and duly sworn as a witness on behalf of the People, testified as follows :

DIRECT EXAMINATION BY MR. MAYNARD:

Q Mr. Donaldson, what is your connection with the New Amsterdam Casualty Company? A Assistant cashier.

Q How long have you been assistant cashier ? A Since July, 1906, the 20th of July.

Q Who preceded you, immediately preceded you as cashier? A Edward M. Shaw; I think his middle initial was "M." I am not sure of that.

Q Do you know of your own knowledge who preceded Edward M. Shaw ? A No, sir; I do not.

Q In your work as cashier or assistant cashier, in October, 1906, did you have anything to do with the petty cash ac-

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count ? A No, sir.

Q With respect to what portion of the funds of the company did you have your duties directly? A Mostly with the premium receipts.

Q The premium receipts were entered in what books ?

A In the premium receipt book.

Q The premium receipt book? A Yes.

Q Is that one of those books here on the table (indicating) ?

A Yes, sir.

Q Are there several premium receipt books here ?

A The four top ones are premium receipt books.

Q The four top ones ? A Yes, sir.

Q Are you perfectly familiar with the contents of those books ? A Yes, sir.

Q Are they in your handwriting ? A Mostly.

Q As of the year 1906, are they in your handwriting ?

A Yes, sir.

Q Have you carefully examined those books, to ascertain whether there is any entry showing the payment of any premium or additional premium to the company by the defendant, Thomas H. Walker ?

MR. HAIRE: Simply yes or no.

Q (Continuing) Yes or no. A Yes, sir.

Q Is there; let me ask first the question did you ever, as assistant cashier of the New Amsterdam Casualty Company,

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receive a premium or an additional premium from Thomas H. Walker ? A Yes, I have. I won't say whether it is additional premium or pure premium.

Q In connection with what account on your books ?

A S. T. Walker.

Q Who was S. T. Walker? A My impression is that he was Mr. Walker's son.

Q Did you ever see him? A Never saw him that I know of.

Q Did you ever receive from Thomas H. Walker, the defendant, -- you know him, do you? A Yes, sir.

Q (Continuing) Any premium whatever in connection with insurance issued to G. Robitzek & Brothers, by your company?

A You speak of additional premium ?

Q Yes, I will limit it to that, additional premium?

A No, I am quite sure I did not.

Q Did you ever receive the specific sum of \$49.20, as an additional premium paid by E. Robitzek & Brothers, from Thomas H. Walker ? A I am positive that I never did.

CROSS EXAMINATION BY MR. HAIRE:

Q You and Mr. Garrison had the same office, did you ?

A We were in the same office; yes, sir.

Q And do business through a little window like ?

A Yes, sir.

Q And the same window ? A Yes, sir.

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34 Q And Mr. Walker sometimes came there and paid premiums ?

A On S. T. Walker's account.

Q Paid by his check sometimes, did he pay premiums ?

A He did.

Q Premiums that he had collected ? A That I don't know.

Q You don't know ? A No, sir.

Q In other words, you don't know how he came in possession of the premiums which he paid ? A Through a broker, I presume.

Q You presume? You don't know ? A I really don't know.

Q And he paid by checks sometimes, his personal check?

A No, I am positive never.

Q Do you know Mr. Coley? A Yes, sir.

Q Do you know whether he paid him on behalf of the company by his personal check? A I do not.

Q You don't know, A No, sir.

Q Mr. Coley paid in by his personal check on premiums ?

A Yes. Not on anything on S. T. Walker's account, that I ever remember.

Q I am not talking about S. T. Walker. I am talking about Thomas H. Walker. Do you know whether Thomas H. Walker was in the habit of paying premiums to Mr. Coley? A I do not.

Q Of money that he collected ? A No.

Q You don't know anything about it ? A I don't know that he ever did.

Q You don't know that he ever did ? By that you mean that

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you have no knowledge of seeing him do it, is that what you mean?

A Yes, sir.

Q Well, as a matter of common report, and understanding, didn't you know that he did?

MR. MAYNARD: I object to that.

THE COURT: Yes; sustained.

Q That is all.

A L V I N C. C A S S, being called and duly sworn as a witness on behalf of the people, testified as follows:

DIRECT EXAMINATION BY MR. MAYNARD:

MR. HAIRE: I object to the testimony of this witness. He has been sitting in the court room, as I understand it, all the time, taking notes.

THE COURT: Well, I made inquiry at the beginning of the trial as to whether the gentleman would be called as a witness, and I understood he was not going to be.

MR. MAYNARD: Well, I did not see this gentleman until the recess time. I understood the Court to indicate the gentleman at the end of the table, and I did not know him at all.

THE WITNESS: May I make a statement, Judge? When I came here --

BY THE COURT:

Q You did not anticipate being called as a witness?

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A I did not. I sent a note to the presiding Judge stating I had been attorney for the company, and as far as I could tell, I would not be called as a witness. I myself, I did not think so, and asking his consent to remaining or not, and when I was told I would be called as a witness, the District Attorney asked me to leave the room. I heard part of the testimony this morning. I left before adjournment.

THE COURT: Well, I will allow him to be interrogated. We will see. It may be along another line than the evidence given.

BY MR. MAYNARD:

Q What is your business, Mr. Cass? A I am an attorney.

Q Were you in 1906 attorney for the New Amsterdam Casualty Company? A I was one of their attorneys.

Q Did you have in your hands the matter of the \$49.20 collection from G. Robitzek & Brothers, for that company?

A That, among others.

Q Did you as attorney for the company, make demand of this defendant, Thomas H. Walker, of the sum of \$49.20?

A I did.

Q Did he pay you the money? A He did not.

BY THE COURT:

Q When did you make the demand? A That was in, as near as I can recall, the early part of the summer of 1908, after the finishing of some civil litigation, when the further ac-

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counts were gone over. Walker came to my office at my request.

BY MR. MAYNARD:

Q I show you Defendant's exhibit B-1 and B-2, in evidence, and ask you if you ever saw that exhibit before?

A I did.

Q Where did you see it? A I saw this first at the time of the examination of Mr. Walker before Magistrate Kernochan, in the Tombs Police Court.

Q Yes, did you carefully examine it at that time? A I did.

Q With respect to the initial on the upper left hand corner? A After that was brought out in the testimony.

Q You yourself carefully examined it? A I did, at that time.

Q Did you see the initials that were on that check at that time? A I did.

Q What were they? A There was a very faint "W.J.M." It was not visible by direct sight, but by turning so that the light would strike it, the letters could be made out.

BY THE COURT:

Q "W. J. M." ? A Yes, sir.

BY MR. MAYNARD:

Q Do you know whose initials they were? A I don't know whose initials they were. I know an officer of the company who has those initials.

Q What is his name? A William J. McCaffrey.

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Q The general manager? A General manager.

Q Are those initials visible upon the check now? A This check is in a different condition than it was at the time I examined it. At that time this discoloration was not apparent, and there was a trace of the initials.

Q You never saw the check after that day? A From the time of the Police Court hearing until you showed it to me this instant, I have not seen it.

CROSS EXAMINATION BY MR. HAIRE:

Q Then the check has been mutilated since that time, hasn't it? A No, I don't think so. The discoloration has come from time.

Q Oh, has it been torn in two since then? A It has. I don't know as it was torn. It is in two now, and it was not at that time.

Q That, by agreement of the Court and defendant's counsel, was placed in the hands of the District Attorney, wasn't it?

A The District Attorney had it at that time, yes, and used it on the hearing. It was produced by Mr. Walker.

Q It was produced by Mr. Walker and turned over to the District Attorney? A Yes.

Q Now, when did you say you made demand upon Mr. Walker?

A As near as I can recall, it would be in the early part of the summer of 1908.

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Q 1908 ? A I only have one or two things which help me to recall that time.

Q Are you sure that it was not later than that ?

A That is my best recollection, sir.

Q You would say for a certainty it was not later than the 15th of June, would you , A I would not. It may have been in July.

Q Whereabouts did you make this demand ? A At my office, 116 Nassau street.

Q At that time, the Casualty Company was engaged in litigation with Mr. Walker, was it ? A They were not. They had already sued and recovered judgment.

Q Yes, sued in conversion and defeated, weren't they ?

A Sued ~~xx~~ in conversion and recovered judgment, and you tried i for the defendant.

Q Yes, but not in conversion, did you? A In conversion.

Q Now, counselor, I will give you a chance to answer that truthfully. That judgment was not in conversion, was it ?

A That judgment was an action in conversion, and I contend a judgment in conversion. What you have in mind is that the Judge did not endorse the judgment with the special direction that he should have, under the special Municipal Court Act.

Q Is it not true that the Judge refused to render judgment in conversion, and is it not likewise true that he gave credit for \$75. against the Casualty Company to Mr. Walker ? A It is

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true he gave judgment for \$75. for salary. He did not refuse to render a judgment in conversion. What he did refuse to do was, after the time had elapsed, for five days in which judgment could be collected, he refused my application to add the words "Defendant is liable to imprisonment" which is a special form of judgment in conversion.

Q Well, then, judgment was not in conversion, was it ?

A It was in conversion, in my opinion.

Q The judgment roll does not show it, does it ?

A The judgment roll does not show the defendant was liable to imprisonment, to a body execution.

Q Now, Mr. Walker was ^{the} a man that got you your first case for this Casualty Company, wasn't he ? A He was not.

Q Didn't he get you the Predowsky case ? A I don't recall the case.

Q Is not that the first case you had for the company?

A I don't recall that case.

Q Well, that is a case in which claim for \$120. against Mr. Predowsky, and you collected \$40. in cash, didn't you, and the balance in a note, and sent the company four dollars, and Mr. Walker said you had charged too much? A That is absolutely not so.

Q You did not have any trouble with Mr. Walker or the company about the Predowsky case ? A I never had any trouble with any person about collections I have made.

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Q Didn't they send the four dollars back to you and insist upon another adjustment? A There has never been any trouble of that kind, not only with that company but with any other client I have ever had.

Q That is all.

MR. MAYNARD: That is the People's case.

MR. HAIRE: If your Honor please, I move that your Honor direct the jury to return a verdict of not guilty, and dismiss the indictment, first, upon the ground that the evidence would not warrant the jury considering the case, first, for the reason that it is not shown that the New Amsterdam Casualty Company did not authorize this man, the defendant, to make collections; principally upon this point, for the reason they failed to produce the person who had given him instructions; have failed to produce one other officer, Mr. Pratt, whom they mentioned here as authorized to give these instructions. The case seems to me, if your Honor please --

THE COURT (Interposing) Suppose he was authorized to make collections, and, having made a collection, converted the money to his own use?

MR. HAIRE: This case, if your Honor please, is not for the conversion of the money, it is for the misappropriation of the check, as the indictment reads, and not its proceeds.

THE COURT: Very well. Suppose it is a case for the misappropriation of the check? Assuming that he was authorized to make the collections at all, is not the point in that event in the case whether, as matter of fact, he misappropriated the check or the money?

MR. HAIRE: Well, it only goes to show this, if your Honor please, that in the general dealings, his giving his check and paying in money at that time, it leaves the presumption and the burden of proof upon the prosecution, to show that he did not turn in these moneys and make the settlements.

THE COURT: I think, counselor, that the moment that you contend that that is all there is to the case, it would seem to me as if the case should go to the jury. The doubt that I had in the matter was this: If this defendant was wholly unauthorized to make any collections whatsoever, if he was wholly unauthorized to receive any checks, for or on behalf of the company, and he then did receive a check, and kept that check, it might be urged perhaps that the larceny, if there was one, was a larceny by false pretense from the parties handing him the check, and not from the company.

MR. HAIRE: Very true, your Honor. Now, every one of these men has sworn that he had no authority to collect. How can he then be held under this indictment? If he had

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no authority for getting this paper, then this company cannot prosecute him for the conversion of that paper to his own use. Every one of them has sworn that they never gave him that authority.

MR. MAYNARD: There is testimony, however, to the effect that despite this lack of authority, this man did on special occasions, collect and turn in moneys, and the indictment charges him not solely with the larceny of the check, but with the larceny of the money obtained upon the check. The evidence showed this man received the check from Robitzek & Brothers, which was given by Mr. Robitzek in payment of the indebtedness to this company, and he gave it to him as the employe and agent of this company, and he, as employe and agent of this company, deposited that to his own account. In other words, he appropriated the money.

THE COURT: The question, it seems to me, hinges in part upon whether, as between the parties making the payment and the company, the parties making the payment could successfully have contended that they, in giving the check to the defendant, had made payment to the company. In other words, whether they could have successfully contended that they made the payment to some one who was apparently authorized to receive the money.

MR. MAYNARD: That is the statement, in effect, of Mr.

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Robitzek, who was on the stand. That is, the man who drew the check, that he was told by Mr. Walker, agent of the Casualty Company, that he owed \$49.20, and he drew his check to the order of that company and delivered it to that man, the agent and employe of the company. The company ~~had missed~~ ^{admits} the cancellation of the indebtedness.

THE COURT: You see the evidence, counselor, of the demand on behalf of the company, is some evidence of ratification by the company of what the defendant did. In other words, it is some evidence that the company said "Well now, here, we will take the position that you were authorized to collect this money, and we make the demand", and thereupon, upon failure to turn over, there was a conversion.

MR. HAIRE: But think of that, your Honor, the demand could not have made this defendant guilty, or changed his legal status, his legal status at the time of the overt act, if there was an overt act, and your Honor will remember that this occurrence was in October, 1906. This man says that he made the demand after some litigation with this defendant in 1908; it may have been in July, even. None of the company knew anything about his making this demand.

MR. MAYNARD: He stated on his oath that he made demand in behalf ~~of~~ of the company, as its attorney, and it

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was made after the discovery of the larceny.

THE COURT: It appears to me, Mr. Maynard, I must say, very much like a case of larceny by false representations, false representations by conduct -- larceny not from the company, but from the people who paid the money. If the evidence had shown that this defendant was authorized by the company to receive the money, or to receive the check, and it had then been contended that, being so authorized, he had failed to pay it over, you would have had a case of larceny by way of embezzlement under this indictment; but, although this defendant occupied a position in the company, and used his position to get the money, on the evidence he had no more right to receive that money originally than had a total stranger. In other words, it was not a breach of trust by him, because no trust in that regard had ever been reposed in him.

MR. MAYNARD: He was an agent and employe of the company.

THE COURT: But not for the purpose of making a collection.

MR. MAYNARD: But it appears by the evidence that in other instances, and indeed from this very man, on prior occasions, he had received checks for the company.

THE COURT: It is not a case where you can infer authority from the circumstance that he had previously done

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the same thing, because the evidence is distinct that he had been specifically authorized upon each occasion on which he had collected, and that in this instance he had not been authorized to make the collection.

Now, that is the way it appears to me, but I am loath to direct a verdict under the circumstances. I think I will admonish the jury now, and give you an opportunity to submit such authority as you may care to in the morning, on the point. I think you understand what my contention is, as to what it appears to me to be?

MR. MAYNARD: I do, yes, sir.

THE COURT: I will admonish the jury now, and reserve decision on the motion to direct.

MR. HAIRE: Your Honor will give me the benefit of an exception?

THE COURT: I have not decided against you. I will reserve decision on that, and let the case go over until to-morrow morning.

MR. HAIRE: Very well, your Honor.

THE COURT: You may submit any authorities on the point. It comes down to that, whether the larceny established by the evidence, if one is established, is not larceny from Robitzek & Brothers, and not from the company.

Gentlemen of the jury, you are admonished not to con-

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verse among yourselves, on any subject connected with this trial, nor to form nor express any opinion thereon, until the same is submitted to you.

The Court stands adjourned until to-morrow morning, at half past ten.

(The Court thereupon adjourned the further trial of the case until Wednesday, January 26th, 1910, at 10:30 o'clock A.M.)

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THE PEOPLE, &C. VS. THOMAS H. WALKER.

New York, January 26th, 1910.

THE COURT'S CHARGE.

THE COURT: Gentlemen of the jury, the defendant Thomas H. Walker, is charged in this indictment with the crime of Grand Larceny in the Second Degree.

There are two counts in the indictment. Each count charges him with that crime. The first count in the indictment charges that crime in what is sometimes called the common law form, or common law larceny, as distinguished from what was formerly the crime of embezzlement.

The first count in this indictment is taken from your consideration, and this case goes to you so that you may determine from the evidence, as you recollect the evidence, whether or not the defendant is guilty of the crime of grand larceny in the second degree, as charged in the second count of the indictment.

The second count of the indictment charges, in substance, that the defendant, Thomas H. Walker, as the clerk, servant and agent of a certain corporation called the New Amsterdam Casualty Company, having in his possession certain property alleged to belong to that company, and more particularly described in the first count in the indictment, namely, the check offered and received in evidence in this

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case, and marked People's Exhibit No. 5, appropriated such check to his own use, with the intent, so the indictment charges in its second count, to deprive and defraud the New Amsterdam Casualty Company, alleged in the indictment to be the true owner of the check, of its property in the check.

It is the law that, a person who, with intent to deprive or defraud the true owner of his property, having in his possession, as a servant, agent or clerk, any property, including any evidence of debt, appropriates the same to his own use, steals such property, and is guilty of larceny.

The provisions of law to which your attention is directed require that, before a defendant can be found guilty under them, there shall be established by the evidence, to the satisfaction of the jury, that the defendant had in his possession, custody or control as a bailee, servant or agent, certain property, and under the head of property is included an evidence of debt such as a check.

The law further requires that the evidence shall go to the point, and establish to the satisfaction of the jury, and beyond a reasonable doubt, that a defendant so possessed of property shall appropriate the same to his own use, and the law requires moreover that the evidence shall go to the point, and shall satisfy the jury beyond

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a reasonable doubt, that if there was such a possession and such appropriation, that the appropriation was made by the defendant with the intent to deprive or defraud the true owner of its property.

Did the defendant have in his possession, as a clerk, servant or agent, the check which has been offered and received in evidence as People's Exhibit No. 5?

If you answer that question in the affirmative, upon the evidence as you recall the evidence, because you entertain respecting the propriety of an affirmative answer to it, no reasonable doubt upon the evidence, the second question is, if so, did he have such check in his possession as a clerk, servant or agent of a corporation called the New Amsterdam Casualty Company?

If you answer that question in the affirmative, because you entertain upon the evidence, as you recall the evidence, no reasonable doubt as to the propriety of an affirmative answer to it, the next question that presents itself in logical sequence is, did the defendant appropriate the same to his own use?

If you answer that question in the affirmative, upon the evidence as you recall the evidence, for the reason that you entertain respecting the propriety of an affirmative answer to it no reasonable doubt upon the evidence, the last and remaining question is, did he so appropriate

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it with intent to defraud the true owner of it, of such true owner's property in it, and if that last question is answered in the affirmative, because you entertain respecting the propriety of an affirmative answer to it no reasonable doubt upon the evidence, it will be your duty to find this defendant guilty as charged in the indictment.

If you answer any one of these questions in the negative, you may not find this defendant guilty as charged in the indictment.

If you say respecting the answer which you think is required to any one of these questions, that you entertain upon the evidence a reasonable doubt as to whether your answer to it should be in the affirmative or in the negative, then likewise you may not find this defendant guilty as charged in the indictment.

I recur for the moment to the second question suggested to you, namely, the question which I have embodied in the words "Did the defendant have such check in his possession, as a clerk, servant or agent of the corporation called the New Amsterdam Casualty Company?" And in that connection, and to aid you in your determination of that question, I suggest for your consideration upon the evidence these questions:

Was the check, People's Exhibit No. 5, the property of the New Amsterdam Casualty Company, when it passed into

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the hands of the defendant from the hands of the maker of the check, G. Robitzek? And, as aiding you in a solution of that question, I suggest for your consideration these queries upon the evidence:

Was delivery of the check by G. Robitzek, the maker of the check, to the defendant, a payment by G. Robitzek to the New Amsterdam Casualty Company in such a sense as to release the maker of the check from a second payment?

Was the fact that the defendant was not authorized to collect moneys for the New Amsterdam Casualty Company, except as specifically authorized in special instances, disclosed by the New Amsterdam Casualty Company to G. Robitzek, the maker of the check, at or prior to the time when the check was made and delivered to the defendant?

For what purpose did the maker of the check hand the check to the defendant?

Was it to close a transaction of the maker of the check with the New Amsterdam Casualty Company, conducted by the defendant in his capacity as auditor of the New Amsterdam Casualty Company?

So far as the maker of the check was concerned, did he hand the check to the defendant as the auditor and representative of the New Amsterdam Casualty Company?

Was the defendant held out to the maker of the check by the New Amsterdam Casualty Company as having apparent

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authority, so that the delivery of the check by the maker of the check to the defendant, was not negligence on the part of the maker of the check ?

Was the maker of the check justified in believing that the defendant as the agent of the company, authorized and empowered to audit books and adjust claims, had also authority to take back to the New Amsterdam Casualty Company a check made out to that company for the amount which the defendant, the agent within the purview of his authority, determined was due from the maker of the check to the New Amsterdam Casualty Company, and notified the maker of the check it was due ?

Did the New Amsterdam Casualty Company ratify the unauthorized act, if it was unauthorized, on the part of this defendant, in the reception, by the defendant, of the check in question prior to the finding of the indictment against the defendant ?

Did the defendant, prior to the finding of such indictment, and after such ratification, if there was such ratification, appropriate the check and its proceeds to his own use ?

All these questions are subsidiary questions put to you, in order that you may, in the light of these questions and of others which may properly suggest themselves to you, determine whether or not the evidence requires that you

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should find that the defendant had in his possession the check in question as a servant, agent or employe of the corporation called the New Amsterdam Casualty Company.

This defendant comes to the Bar with the presumption of innocence . That means that, under our system of jurisprudence, he is not required to affirmatively establish the fact of his innocence, if it be a fact.

The burden of proof is upon the prosecution. That burden requires that, before you can find the defendant guilty, you must be satisfied from the evidence, beyond a reasonable doubt, of the defendant's guilt.

There are two contingencies, in either one of which, Thomas H. Walker is entitled to a verdict of not guilty. The first is, if upon the evidence you believe him to be innocent; the second is, if upon the evidence you entertain a reasonable doubt respecting his guilt.

A reasonable doubt is a doubt that is founded in reason; sustained by reason. A doubt for the existence of which a juror entertains a reason. It is not a whim; it is not a caprice; it is not the action of unreasonable sympathy. It is only a doubt answering to the description of a reasonable doubt that warrants and requires a verdict of not guilty, in the absence of an affirmative belief on the part of jurors that a defendant is innocent and not guilty.

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You will be wholly uninfluenced in the rendition of a verdict by any disposition which the court has made of any motion during the pendency of the trial.

I charge you specifically that, in this case, you will be entirely uninfluenced by anything that was said in your presence and in your hearing upon the argument of any such motion, either by counsel or by the Court.

You will wholly banish from your minds, when you retire to deliberate in the jury room, anything that was said either by counsel or the Court in connection with any such motion, and you will pass upon this case as though that which was said in the argument of any such motion, or by the Court, in the decision of any such motion, had been said in your absence and not in your presence, and where you could not and did not hear it.

A decision by the Court of a motion during the pendency of the trial, imports no opinion by the Court as to what the verdict should be. Anything said by a Judge in disposing of such a motion is not addressed to the jury, and is not to be considered by the jury.

Colonel Haire, in a comparatively recent decision by the Appellate Division, it was held more proper that the Judge should not charge a jury upon a certain subject, except upon the request of counsel. Is the request in this case that I should charge this jury upon that subject?

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MR. HAIRE: I think not, your Honor.

THE COURT: Are there requests to charge ?

MR. HAIRE: I desire to ask your Honor to instruct the jury that, as sole judges of the facts, they are entitled to give such credit to the testimony of a witness as in their judgment they see fit.

THE COURT: I charge you that.

MR. HAIRE: And furthermore, that if they believe that a witness has wilfully testified falsely, they may disregard the whole or any portion of his testimony, as they, in their judgment, see fit.

THE COURT: That is so. If the testimony which is believed by the jury to be false relates to a material matter -- with that qualification, the request is charged.

MR. HAIRE: I ask your Honor to instruct the jury that the prosecution in this case is bound by the statement of its officers, made upon the witness stand, to wit, that this defendant had no authority to collect the money in this particular instance.

THE COURT: I decline to charge that. I charge the jury that, upon the question of authority, they must determine the case, so far as that question may be at all material in the case, upon the entire evidence in the case.

MR. HAIRE: I ask your Honor to instruct the jury that it is not enough to justify the jury to find a conviction,

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provided they should determine that a mistake was either made by the cashier or the defendant in connection with the entering or the making of any entry in connection with the transaction of October 25th.

THE COURT: In other words, your request, taking the language to mean what you have actually said, is that the jury may not convict if they determine that a certain thing was a mistake, referring specifically to a certain omission to enter?

MR. HAIRE: The omission to enter the check of \$39.

THE COURT: In other words, paraphrasing your request, and merely do it for the purpose of seeing whether or not I understand it, you request me to charge this jury that if they find that the omission to enter was a mistake, that then there is not evidence which would warrant this jury in finding the defendant guilty?

MR. HAIRE: That is it, your Honor.

THE COURT: I understand you correctly, do I?

MR. HAIRE: I think so.

THE COURT: The request is denied.

MR. HAIRE: Exception. I ask your Honor to charge that the jury have a perfect right to take into consideration the fact, as testified to by the witnesses for the prosecution, that the defendant claimed at the time of his examination in the Magistrate's Court that this check of

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\$39. was paid in settlement of that claim.

THE COURT: I do not care to particularize any item of evidence. It is the duty of the jury to consider all the testimony in the case.

MR. HAIRE: Exception. May I ask your Honor to charge that they have a right to take into consideration that and all other testimony -- I will withdraw that, and say all testimony given?

THE COURT: I will not merely charge them that they have a right to, but I charge them that it is their duty to consider, in determining the question of the guilt or innocence of the defendant, all the evidence that there is in the case.

MR. HAIRE: That is all.

THE COURT: Any requests, Mr. Maynard?

MR. MAYNARD: No requests.

THE COURT: Gentlemen, you may retire.

(The jury returned the following verdict: We find the defendant not guilty).

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