

START

3020

CASE

RE PEOPLE V. LORIMER

I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
John K. Joice	1	10		
James A. Dorritee	36	41		
John K. Joice (resumed)		42		
James A. Dorritee	49			
John K. Joice (recalled)		50		
Nelso Bosanko	70	72	75	
John K. Joice (resumed)		76	81	91
Albert F. Dexter	95	102		
R. G. Larimer	122			
Herbert D. Elbert	151	153	154	154
R. G. Larimer (resumed)	155	163	224	
John K. Joice (resumed)	233			
R. G. Larimer (resumed)	240			
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John F. Haring	249	260	263	
Samuel B. McNeill	266	267		
(REBUTTAL)				
Herman L. Smith	269	271		
Mary F. Smith,	276	281		
Ro G. Larimer (resumed)	293			

CASE 3020

COURT OF GENERAL SESSIONS OF THE PEACE,
IN AND FOR THE COUNTY OF NEW YORK.
PART II.

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

---against---

ROBERT G. LORIMER.
(2 Cases).

B e f o r e

HON. T. G. T. GRAIN, J.,
And a Jury.

-----X
New York, June 13, 1920.

INDICTED FOR GRAND LARCENY IN THE FIRST DEGREE.
INDICTMENT FILED JANUARY 25, 1921.

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

ASSISTANT DISTRICT ATTORNEY JAMES M. DONAHUE,

For the People;

FABRICANT & COLLINGS (BY MR. FABRICANT) ESQs., for the
Defendant.

(A jury was duly impaneled and sworn).

MR. DONAHUE opened the case for the People.

MR. FABRICANT: Your Honor may I at this time ask
that all the witnesses in this case be excluded from the
court room?

THE COURT: Yes, so ordered.

J O H N K. J O I C E, called as a witness, on behalf of the
People, being first duly sworn, testified as follows:
(73 East 90th Street, New York City).

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mrs. Joice, may I ask what your business is? A I am a mer-
chant. I handle lumber and railroad equipment.

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Q You handle lumber and railroad equipment? A Yes, sir.

Q Where is your office? A 50 East 42nd Street.

Q How long have you been in business, Mr. Joice? A Three years.

Q And did you meet in the course of your business or in the course of your going around one Larimer? A Yes, sir.

Q Robert G. Larimer? A Yes, sir.

Q Is that man in court now? A Yes, sir, sitting at the table, to the right (indicating the defendant).

Q When, for the first time did you meet him? A I met him some place about --

Q About, approximately? A About April 1st of 1920.

Q About April 1st, 1920? A Yes, sir.

Q And where did you meet him then? A Washington, D. C.

Q At that time you were engaged in what business or occupation? A I was handling steel rail and railroad equipment.

Q Generally promoting steel rails and railroad equipment?

A I was working on just one big contract at that time.

Q What contract? A A steel rail contract that I had bought from the Government.

Q Did you meet the defendant also during the month of August, 1920? A Yes, sir.

Q Had you met him many times, Mr. Joice, between the first time you met him on April 1st and August 30th, 1920? A I saw him very often.

Q You saw him very often; how many times would you say, Mr.

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Joice? A Two or three times a week.

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Q And that would be in New York? A New York and Washington.

Q And Philadelphia? A Two or three times in Philadelphia.

Q Any place else? A Not that I recollect.

Q Now sometime before August 20th, 1920, did he come to you with a proposition with reference to one Gleason? A Yes, sir.

Q Now do you know the Mr. Gleason he referred to at that time?

A I know, Mr. Gleason, yes, sir.

Q Had you done business with him before that? A No, sir.

Q Never had any business with him before that, but had heard of him? A Yes, sir.

Q You know what business Mr. Gleason was engaged in? A Yes, sir, he was the manager of a concern named the Triangle Equipment Company at Philadelphia.

Q Now, Mr. Joice, what was the proposition Mr. Larimer made to you which concerned this man Gleason? A In August?

Q Yes. A I had advanced him money against a pipe contract, and we had developed about 1300 tons, there was remaining then 1500 tons that were yet unsold. Mr. Larimer came to me to get money to buy out Gleason's interest in that pipe.

Q In other words, there was an existing contract at that time?

A The Triangle Equipment Company had a contract with the Government for the purchase of some pipe, and there were 1500 tons remaining, and Mr. Larimer came to me with a proposition to buy his interest out.

Q To buy whose interest out? A The Triangle Equipment's

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interest, Mr. Gleason's of the Triangle Equipment Company.

Q Will you just, if you can, Mr. Joice, repeat your best recollection of the exact words that Mr. Larimer used in telling you that? A Well, I had advanced him against the proposition \$14,500.00 that far, and that was to carry through the first 1300 tons, and Mr. Larimer told me that he had the balance of it sold to the Argentine Government, and that we could buy the Triangle Company's interest for \$5,000.00 and make about twenty-five to thirty-per cent on the balance. He got the \$5,000.00 especially to buy that interest.

Q You say you gave him \$5,000.00. When did you give him that? A I gave him \$5,000.00 in cash on August 20th.

Q And that was with the express intention of yours that he buy out the remaining interest of Mr. Gleason in this contract? A Yes, sir.

Q How were you to get that interest, by assignment? A He didn't discuss that part of it. He would get the transfer of some description; we didn't discuss that.

Q Was that the sole remaining interest, outside of yours; if you had gotten that would you have had the entire contract? A That was all the remaining balance of the contract.

Q Yes, and Mr. Larimer had previously told you that all these goods, under the contract, had been sold to the City of Norfolk? A No. He said he had already made arrangements to sell to the Argentine Government. The previous 1300 tons had been sold and delivered to the City of Norfolk.

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Q And there remained then the interest that Mr. Gleason had? A The remaining part was at Norfolk and Gleason had the contract for the purchase of it from the Government, and Mr. Larimer represented he had it all sold to the Argentine Government.

Q Did he say why he came to you was because he needed cash? A No; he wanted money to handle it; he didn't have the cash with which to handle it.

Q That is what he told you? A Yes, sir.

Q You gave him \$5,000.00, in cash, to buy that interest?

A Yes, sir.

Q And when you gave him the \$5,000.00 in cash, did you see that paper (showing witness a paper); just yes or no? A Yes, sir, I did.

MR. DONAHUE: May I have that marked for identification.

(Received and marked People's Exhibit No. 1 for identification).
did

Q Now, when you first saw People's Exhibit No. 1 for identification, Mr. Joice? A On August 20th, 1920.

Q And who wrote that, do you know? A I wrote it and Mr. Larimer signed it.

Q That is, you wrote the body of it and the signature is in Mr. Larimer's handwriting? A Yes, sir.

Q Had you talked over the contents of that paper after it was signed? A Yes, sir.

Q Did you see him write it? A Yes, sir.

Q What did he say before he signed it? A He said, "J.K.",

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I will return you this money, if I don't get the contract."

Q Did he say when he would return the money? A He was to return it in four days.

Q Was all the writing on that paper, except the signature, on at the time you handed it over to Mr. Larimer? A Yes, sir.

Q And the signature was put on by Larimer, in your presence? A Yes, sir; there are some pencil marks up here (indicating) --

Q Outside of those pencil marks, is it in the same condition now as it was when you saw Mr. Larimer sign it? A Yes, sir.

MR. FABRICANT: May I question him just a moment?

MR. DONAHUE: Ask the Judge.

MR. FABRICANT: If your Honor please, may I ask the witness a couple of questions before this paper is submitted in evidence?

THE COURT: Yes.

BY MR. FABRICANT:

Q Mr. Joice, is this paper entirely in your writing, including the signature or not? A The signature is not my writing.

Q Did you see that signature placed there? A Yes, sir.

Q In whose handwriting do you say that is? A R. G. Larimer's.

MR. FABRICANT: No objection.

MR. DONAHUE: I offer it in evidence.

THE COURT: Received.

(People's Exhibit No. 1 for identification now received in evidence).

MR. DONAHUE: Do you wish to see it, Mr. Fabricant?

MR. FABRICANT: I would like that contract to be submitted

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to the Jury for inspection by them.

(The jury examined the same).

BY MR. DONAHUE:

Q Now, Mr. Joice, when you were turning over this \$5,000.00 to Mr. Larimer and receiving this People's Exhibit No.1, was there anybody else present at that time? A No, sir, there was not.

Q Was there anybody present subsequently when this same proposition was discussed? A Mr. A. F. Dexter was present four or five days before.

Q Mr. A. F. Dexter was present four or five days before?

A Yes, sir.

Q And that same matter was discussed? A Yes, sir, seven or eight days before.

Q And the same general matter was discussed about getting this assignment of Gleason of this contract? A Yes, sir, I handed him then a cashier's check for \$5,000.00, which he later handed me back.

Q Did you after August 20th, 1920, and after the time you received People's Exhibit No.1, did you meet Larimer? A Yes, sir, he came to New York.

Q And when did he come to New York? When was the next time you saw him after this paper was signed (referring to People's Exhibit No.1)? A About the 24th of August. He went down to Philadelphia to close up with Gleason, and then he came back here about the second day after, and he was here the 23rd and the 24th.

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Q And had you been in communication with him? A Yes, sir.

Q In the meantime? A Yes, sir.

Q And you were informed of certain facts, were you not?

A Yes, sir.

Q And when he came back on the 23rd, did you take up this matter of this assignment? A Yes, sir, he told me he hadn't concluded the contract.

Q What? (Answer repeated by the stenographer).

Q Did he tell you he had taken the matter up with Mr. Gleason?

A Yes, sir.

Q Did he say what Mr. Gleason had told him? A Gleason would not sell it.

Q But he had previously told you before you gave him the money that he had arranged with Gleason to sell it? A Yes, sir, that he had arranged to sell it, and I gave him the money to go down there to settle it.

Q Will you tell us the talk you had with Mr. Larimer on that particular subject? A On the 23rd and the 24th, I told him, "If you have not settled with him, why pay me back," and he gave me a check for \$5,000.00.

MR. DONAHUE: I ask that this check be marked for identification.

(The check above referred to received and marked People's Exhibit No. 2 for identification).

Q Will you look at People's Exhibit No. 2 for identification, and tell me whether or not that is the check you refer to? A Yes, sir.

Q When did you get that? A On August 24th, in my office.

Q At your office in New York? A Yes, sir.

Q And was it made out exactly as it is now? A Exactly as it is now.

Q Was it made out in your presence? A I don't know; it was made out in the office.

Q You recognize Mr. Larimer's signature? A Yes, sir.

Q And he personally handed the check over to you? A Yes, sir.

Q Did you subsequently cause that check to be presented at the Bank? A Yes, sir.

Q Did you ever receive any cash for this check? A No, sir.

Q Did you ever receive your \$5,000.00 back from Larimer that you gave him for the purpose of going to Philadelphia to get this assignment of this contract? A No, sir.

Q Ever receive any portion of it? A No portion of it.

Q You did not make a present of it, did you, to Mr. Larimer, of this \$5,000.00? A No, sir, I did not.

Q You still contend that he has your \$5,000.00? A Yes, sir.

Q And never gave any part of it to you at all? A No.

Q And you never received an assignment of this contract? A No, sir, no assignment.

Q And you have never received anything at all for the \$5,000.00 you gave Larimer? A No, sir.

Q Did you, subsequently, Mr. Joice, discuss this check with Larimer? A After the 24th?

Q After the 24th he gave it to you; after he gave it to you?
A No.

Q Did you ask him about it, I mean? A Did I ask him about it?

Q Yes. A I didn't see much of him after that.

Q You did see him? A Yes, sir, I went over to his office in Philadelphia and saw him.

Q About how many times, Mr. Joice, would you say you saw him from August 24th, after August 24th -- put it that way? A Three or four times.

Q Where were the places that you saw him? A Generally in my office.

Q In New York? A Yes, sir.

Q Did you ever talk with him with reference to this check? A Not particularly about that.

Q I mean, did you ever talk to him about it; ask him about it? A He told me the money was not in the bank.

Q Did he say what he was going to do? A Yes, sir, he was going to find the money elsewhere and pay me.

Q Has he paid you up to date? A No, sir, he has not.

MR. DONAHUE: I offer this check in evidence.

(People's Exhibit No. 2 for identification now received in evidence).

MR. DONAHUE: That is all.

CROSS-EXAMINATION BY MR. FABRICANT:

Q Mr. Joice, this People's Exhibit No. 2, check dated August 24th, 1930, to your order, for \$5,000.00, is signed by R. G. Laramie personally, is it not? A Yes, sir.

Q You are familiar with his handwriting, are you not? A Yes.

Q And that check is in his handwriting? A I think so, yes, sir.

Q Now you say that the signature on People's Exhibit No. 1 is also in his handwriting? A Yes, sir.

Q Do you regard your handwriting as at all similar to Mr. Larimer's? A Quite on the same order.

Q And you are sure that Mr. Larimer signed this receipt, dated August 20th, and that you wrote out the body of this? A Yes.

Q Had you ever paid Mr. Larimer any money in cash before? A Yes, sir, I have, --

MR. DONAHUE: I object to that.

THE COURT: What is your claim, Mr. Fabricant?

MR. FABRICANT: I may say now that we claim we never got the money which is supposed to have been paid on that on --

THE COURT: What is that?

MR. FABRICANT: We deny we received the money on August 20th, as alleged in this purported receipt, alleged to have been signed by this defendant. I will bring experts in handwriting to prove that.

THE COURT: The witness has answered the question.

Q Where did you get \$5,000.00 in cash that you say you paid on August 20th? A I had it in my office.

Q You had it there? A Yes, sir.

Q Did you have it there in preparation of the receipt of the communication from Mr. Larimer upon the Gleason situation? A No, I had been carrying \$5,000.00 to \$25,000.00 there all the year.

Q You mean in cash? A Yes, sir.

Q And Mr. Larimer having spoken to you about this Gleason affair before the day he came there? A Yes, sir; we talked about it with other people; Mr. Dexter was there.

Q Mr. Dexter was your attorney in fact? A No, sir, he was an associate, who was an employee at that time.

Q Had you appointed Mr. Dexter your attorney in fact at that time? A Yes, sir.

Q You say he was an employee? A Yes, sir.

Q But he was acting as your attorney in fact, was he not?
A Why he was acting as my attorney in fact during 1920, part of the year; I issued my power of attorney to him.

Q And is this the power of attorney (showing witness a paper) that you issued to him, Mr. Joice? Just look at that document?
A (after examining) Well, this may be a copy.

Q If that is not a copy, it is a copy of the original you issued? A Yes, sir.

Q To whom, Mr. Dexter?

MR. DONAHUE: I object to that. What can that show?

THE COURT: I do not know what bearing it has. I will receive it.

MR. FABRICANT: It is only a copy.

THE COURT: I mean to say, I will receive testimony regarding it.

Q Was Mr. Dexter acting as your attorney in fact as late as September 1, 1920?

MR. DONAHUE: I object to that. What materiality has it?

THE COURT: I do not know. I cannot say. I am going to hear about it.

A I think he had this continued on August 31st.

Q Just identify this paper, if you can? A (after examining) Yes, sir.

Q Do you identify that paper? A Yes, sir.

Q That is Mr. Dexter's signature? A Yes, sir.

Q And the paper is dated September 1, 1920? A Yes, sir.

Q And is a receipt for \$2,000.00 from Mr. Larimer? A Yes, sir.

Q On account of J. K. Joice? A Yes, sir.

THE COURT: Mark it for identification.

MR. FABRICANT: I offer it in evidence.

MR. DONAHUE: I object to it. The witness testified he had not received --

MR. FABRICANT: The witness -

THE COURT: I will look at it. (After examining same). I will receive it.

MR. DONAHUE: The indictment charges that he gave \$5,000 to this man to do a particular thing. This does not show anything about that at all. It has nothing to do with it. How does that explain the transaction?

THE COURT: It may be \$2,000.00 of the \$5,000.00. It acknowledges the receipt of \$2,000.00 within a very few days after the alleged payment.

MR. FABRICANT: It may be for an entirely foreign trans-

action.

THE COURT: It may be for an entirely foreign transaction or it may be for this transaction.

MR. DONAHUE: Why offer it in evidence at this time?

THE COURT: I will receive it; plainly competent.

(Received and marked Defendant's Exhibit "A").

THE COURT: Gentlemen of the jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you.

We will take a recess now until two o'clock.

(Whereupon a recess was taken until two o'clock).

(A F T E R R E C E S S)

New York, June 13, 1921. 2:00 P.M.

(Trial continued).

THE COURT: Mr. Fabricant, I admitted Defendant's Exhibit "A" unconditionally, but I think I ought to admit it conditionally. In other words, I will admit it subject to connection.

Mr. Joice, will please return to the witness stand.

J O H N K. J O I C E, resumes the stand, and testifies as follows:

CROSS-EXAMINATION CONTINUED BY MR. FABRICANT:

Q Now, Mr. Joice, when you testified that you had not received any part of the \$5,000.00, did you have in mind this payment of \$2,000.00 of September 1, 1920?
A I am sure I hadn't: that

\$2,000.00 was applied to another account.

Q Did you have an account with Mr. Larimer at that time?

A I had advanced him money for different projects and he owed me on some of the other projects.

Q And were you present when Mr. Larimer paid this \$2,000.00 to your attorney in fact, Mr. Dexter? A No, I think I was away that day.

Q Did you have any talk with Mr. Larimer between August 24th and September 1st about the \$5,000.00 which you had paid him, as you say? A About the 24th I kept asking him every day.

Q Where were the conversations had during which you asked him for it? A Between August 24th and September 3rd or 4th, I saw him three or four times. I went to his office in Philadelphia once or twice, and I met him in my office; about every second day he came up.

Q And when you gave him \$5,000.00 in cash -- it was in cash?

A Yes, sir.

Q You didn't have to draw it from the bank, any bank? A No, sir.

Q Quite certain of that? A I am quite certain. I carried it in a deposit box.

Q When you gave him this money it was your intention that he should go to Philadelphia with this money? A The \$5,000.00, no sir -- yes, sir, he was to go to Philadelphia to close up with Mr. Gleason of the Triangle Equipment Company.

Q Did you expect he would carry this \$5,000.00 along with him in cash, or did you expect him to deposit it in his account? A I

didn't know. I later asked him what he did with it.

THE COURT: No. Just pay attention to the question asked and answer it.

THE WITNESS: I didn't know where he was going to deposit it.

Q What was your intention when you gave him the \$5,000.00, as to what he was to do with it? A He was to go over and secure a transfer of the interest of the Triangle Equipment Company in the balance of the pipe.

Q How was he to handle the cash that you had given him, according to your intent? A Well, he said he had to pay them \$4500.

Q Did you expect him, or intend him, to carry this \$4500.00 or \$5,000.00 with him to Philadelphia? A Why I didn't tell him how to go about it, or how to carry it; I didn't tell him what he was to do.

Q You didn't tell him what he was to do? A I didn't tell him how he was to carry the money. He took it and put it in his pocket.

Q Well, you don't know what he did with the money? A Do I?

Q As a matter of actual knowledge do you know what he did with the money? A I think he put it in the Metropolitan Trust Company.

Q I am asking you if you know? A Not to my personal knowledge I cannot say.

Q All you know is that he walked out of your office, and you

say he had \$5,000.00 in cash with him? A Yes, sir.

Q How long afterwards was it that he gave you People's Exhibit No. 2, check drawn on a National Bank? A He gave me that on the 24th.

Q On the date it bears on its face? A Yes, sir.

Q When he gave you that check where were you? A I think he brought that to the office in the afternoon of the 24th.

Q And that was four days after the transaction occurred? A Yes, sir. He came back and said that he hadn't made the trade. I said, "Well, you have got to give me my money back?"

THE COURT: Answer briefly. Pay attention to the questions and confine what you say to the answer.

Q You said that he had got to give you your money back?

A Yes, sir. He walked in the other room, drew a check and handed it to me.

Q You were willing to accept the check as payment of the \$5,000.00? A I presumed at the moment that the check was good.

Q Did you ever put that check in the bank, present it for payment? A Yes, sir.

Q Where did you do that? A I put it in the Harriman Trust Company.

Q Well, now, this check does not bear any endorsement of any kind? A He had given me another check for \$3,000.00 on another proposition.

THE COURT: Won't you have the kindness, Mr. Jones, to listen to the questions and then answer them. Strike out the answer.

MR. DONAHUE: I think the check speaks for itself.

The check is here.

MR. FABRICANT: The check does not bear any endorsement of the bank.

MR. DONAHUE: I object. The check speaks for itself. The jurors can see it as well as he can.

THE COURT: That is true. Ask him another question.

Q Do you know, Mr. Joice, how it comes that this check bears no endorsement from the bank? A Yes, sir; I withdrew it from the Harriman Trust Company when I learned there were no funds there.

Q How did you learn there were no funds there? A I had had returned to me on the morning of the 25th a check for \$3,000.00, protested.

Q That was a check that had been given to you when? A Three or four days before.

Q And when Mr. Joice gave you this check, you were willing to accept it, provided it was good, in payment of the \$5,000.00? A Certainly.

Q Did Mr. Larimer owe you, Mr. Joice, \$5,000.00, in connection with any other matter at that time? A Yes, sir, considerably more.

Q A great deal more? A Yes, sir.

Q And on August 14th had you written to him about two drafts or two sums of \$2,000.00 and \$3,000.00; if you remember that off-hand? A I don't recollect that; no.

Q Do you mind looking at this letter, please? (Hands witness the letter) A (after examining) Yes, sir. I wrote that letter.

Q This letter was written by you on August 14th? A Yes, sir.

Q And at that time did you have a draft of Mr. Larimer for \$2,000.00, which had been put through by you, yes or no? A I would have to refresh my memory; to look at the papers.

Q Well suppose you do. Doesn't it refresh your recollection by looking at this letter? A (after examining letter and consulting memoranda) I received a check from him on August 12th for \$2,000.00.

Q And was that on a current account you had with him? A Yes.

Q Now you write him this letter on August 14th --

MR. DONAHUE: I object to any reading of it unless the whole letter goes in.

THE COURT: Do not embody in your question as statement of the alleged contents.

MR. FABRICANT: I withdraw that other question.

Q Well, on August 14th had you received any word as to the disposition of the \$2,000.00 draft, that you say had been received on August 12th? A I don't recollect that.

Q And do you remember anything about a cashier's check of \$3,000.00, which Mr. Larimer had given you?

MR. DONAHUE: This is an attempt to get the contents of the letter before the jury without a proper foundation having been laid, or without offering the letter in evidence. Maybe if I saw that letter I might consent to it going in.

THE COURT: Mr. Fabricant, do you want to put the letter in evidence?

MR. FABRICANT: It may not be necessary to put the letter in evidence. I am merely using this to --

MR. DONAHUE: If Mr. Fabricant assures me that he won't read it word for word, I will withdraw my objection.

Q Do you remember, Mr. Joice, anything about the \$3,000.00 cashier's check? A I remember nothing about a \$3,000.00 cashier's check. I remember a \$3,000.00 check though that was sent to me by Mr. Larimer.

Q About when was that? A I cannot tell you just the date; I can show you the check.

Q Look at this (referring to a paper) and see if you cannot refresh your recollection from it -- the third paragraph? A As Mr. Larimer told me he had sent a cashier's check for \$3,000, -- it never was received. Mr. Larimer told me he had sent me a cashier's check from Norfolk for \$3,000.00, or he told Mr. Dexter so, and the check never arrived at the office.

Q Then there was that \$3,000.00 check and the other \$3,000.00 check that you had in mind when you wrote this letter on August 14th --

MR. DONAHUE: I object to the form of the question.

THE COURT: Sustained.

Q Was there any question at that time on August 14th concerning a cashier's check or other check for \$3,000.00, and a draft for \$2,000.00?

MR. DONAHUE: I object to this. It was all before August 20th, when this money was passed for this particular purpose. I think we ought to have some idea of the theory

of the defense, if we can, and, perhaps, we could shorten up this trial.

THE COURT: I will let him answer the question.

A The cashier's check for \$3,000.00 that he claimed he sent was never received by me, and he never did duplicate it.

Q And then how about the \$3,000.00 draft? Was there some question about that on August 14th? A The \$3,000.00 draft -- I was not in New York at the time, but my recollection is that the draft was sent through and it was not paid.

Q That is your best recollection? A Yes, sir.

Q Isn't that what you had in mind on August 14th in your transaction with Mr. Larimer that that \$3,000.00 might not be paid?

A No. I don't understand what you are trying to get me to answer?

Q Now, Mr. Joice, People's Exhibit 3 for \$5,000.00, wasn't that given to you by Mr. Larimer on August 16th, dated ahead August 24th, to cover two items of \$3,000.00 and \$2,000.00, that you claimed you should have received at that time, and which had not been paid?

A Let me see the letter (rising from the witness chair).

THE COURT: Just sit down.

A No, sir, it was not (after examining letter).

Q Well, now, I show you this letter again, if you please, and ask you if that refreshes your recollection?

THE COURT: Is that the same letter you showed him before?

MR. FABRICANT: Yes, your Honor.

THE COURT: Suppose we have it marked for identification.

(The letter previously referred to received and marked Defendant's Exhibit "B").

Q The \$2,000.00 check was pre-dated a couple of days after the 14th? A No, sir, it was not a pre-dated check. The check was given me on the date.

Q Is it not a fact that you didn't deposit this in your bank because of the fact that the check was pre-dated, and because you were waiting to see whether you would receive the \$3,000 as a cashier's check and the \$3,000.00 payment on the draft? A No, sir, it was not.

Q Now, you said, in your direct examination, that there was some talk of a settlement to take place between Gleason's firm, known as the Triangle Equipment Company, and Mr. Larimer, about which he spoke to you before he got the \$5,000.00?

MR. DONAHUE: I have not heard of a settlement or a promise during the examination of this witness.

MR. FABRICANT: The witness stated that Mr. Larimer, in speaking to him of this \$5,000.00, made a statement that there was going to be some kind of a settlement between him and Mr. Gleason.

THE COURT: Ask him if he said so.

Q Was there some talk about that, Mr. Joice? A Talk about a settlement with Mr. Gleason?

Q Yes. A Yes, sir, there was some talk about his settling with Gleason, going down and purchasing this stuff from him.

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Q Did you know that there had been a dispute between Larimer and Gleason's firm, known as the Triangle Equipment Company, prior to August 24th?

MR. DONAHUE: I object to that.

THE COURT: I will let him answer, yes or no?

A I didn't know there was any dispute.

MR. DONAHUE: May I have the date fixed?

MR. FABRICANT: Prior to August 24th. I offer it in evidence, if the Court please.

MR. DONAHUE: I would have no objection to the letter, your Honor, but I note there are some lead pencil memoranda on the side, which I cannot read. Evidently, in the handwriting of Mr. Larimer.

THE COURT: I will receive the typewritten part and the printed letter head.

MR. DONAHUE: Then I have no objection.

(Defendant's Exhibit "B" for identification, now received in evidence)

Q Do you remember what the trouble was that you anticipated with the Triangle Equipment Company at that time, August 14th? A Yes, sir, I do.

Q Had Mr. Larimer spoken to you about any trouble? A Yes, sir, he told me they were "butting" in on the handling of the job.

Q And the job was what, as you understood it? A The job was moving the pipe and getting the contract.

Q You understood that the contract for this pipe from the Government had already been secured? A But the contract for the

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selling of the pipe had not been secured, only for a part
of it.

Q And Mr. Larimer had told you that the Triangle Equipment Company was, as you say, "butting" in? A Yes, sir.

Q Was there any other trouble that Mr. Larimer mentioned to you about this contract with the Triangle Equipment Company? A Yes, sir, he told me that his rights against it would fall pretty soon, and they might go and sell the balance of the pipe direct to somebody else.

Q And didn't Mr. Larimer tell you that he wanted to settle up this dispute with the Triangle Equipment Company by buying them out entirely and buying their interests? A Yes, sir.

Q Did he show you a document of any kind which was to incorporate the transaction as agreed on between him and the Triangle Equipment Company? A Not that I recollect.

Q Let me show you this paper and ask whether you ever saw that before? A (after examining) No, sir, I have never seen it. I heard that they had settled up, --

THE COURT: No; you have answered it.

THE WITNESS: I have never seen it.

MR. FABRICANT. May I have this paper marked for identification.

(The paper above referred to received and marked Defendant's Exhibit "C" for identification).

Q Mr. Jones, I show you another paper and ask you whether you ever saw this paper? A (after examining) No, sir, I can

answer readily that I never seen that, even without reading it.

MR. FABRICANT: I ask that this be marked for identification).

(Received and marked Defendant's Exhibit "D" for identification).

Q I show you another paper, Mr. Joice, and ask whether you saw that top sheet, or both of them in fact, ever before in your life? A The typewritten part, yes, sir.

Q And where did you see that typewritten part? A I believe that was in my office, just prior to July 7th.

Q Of 1920? A 1920, yes, sir.

Q Was that made up in your office? A I am quite sure it was.

Q What is that? A I am quite sure it was.

Q You say you saw these papers in your office before July 7th? A About July 7th, I think that was made up.

Q You are sure this is what you are referring to? A There is no date or memorandum; that does not tell what it is; they were probably attached to something else; I cannot tell what it was.

MR. FABRICANT: I offer these for identification.

(Two papers above referred to received and marked Defendant's Exhibit "E" for identification).

Q Did you ever advance to Mr. Larimer on August 20th \$5,000.00, in the form of a check drawn on the Metropolitan Trust Company?

A No; I advanced him a cashier's check of the Fort Dearborn Bank, Chicago, which he held a couple of days and returned to me.

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Q You see that is not an answer to my question.

THE COURT: Do you want that answer to stand?

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

THE COURT: Yes, or no?

THE WITNESS: No, sir, not on August 20th.

Q Wasn't these two sheets, Defendant's Exhibit "E", prepared in your office and under your supervision? A They were prepared in my office.

Q Were they prepared under your supervision? A They were prepared from the books.

Q From your own books? A Yes, sir.

MR. FABRICANT: Now, if the Court please, I offer them in evidence.

MR. DONAHUE (after examining same) I have no objection.
(Defendant's Exhibit "E" for identification now received in evidence).

Q Now what is this paper supposed to be, when it was prepared in your office, do you know, Mr. Joice? A I think what it was taken from was a copy of the ledger balance.

Q And was that the account between you and Mr. Larimer?

A The ledger balance was.

Q Have you the original ledger entries here? A Of my own?

Q Yes. A No, sir, I have not.

Q Where is the original ledger sheet? A In my office.

Q And you say this is a copy from the original? A Yes, sir.

There are things that are interlined that are not on the ledger.

Q You mean the lead pencil marks? A No some typewriting;

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that is a transcript of some other statement that do cover what the ledger covers.

Q I ask you whether the entry on here, August 20th, By Cash (Metropolitan Trust Company, N. Y.) represented a transaction which you had with Mr. Larimer on that day? A No, sir, that notation there was where Mr. Larimer deposited that particular money.

Q Now I note here that all of these items on the account, commencing March 2, 1920, and going down to August 20, 1920, bearing alongside them the words "By Cash", with ditto marks; does that indicate you paid Mr. Larimer cash every time? A No, that was cash; mostly checks.

Q You regarded the giving of checks, as giving cash? A Yes.

Q That was a bookkeeping way of giving the entry? A Yes.

Q Had you ever given Mr. Larimer cash before August 20th?

A yes, sir, three different times.

Q Can you indicate which of these entries on this account represent cash actually paid to him? A Cash of \$1500.00 on March 23rd -- it reads "25" here. March 23rd I gave him \$1500; April 21st and April 22nd were both in cash.

Q Now when these two sheets of Exhibit "E" were prepared in your office, did you send them to Mr. Larimer? A Not that I recollect; no.

Q Were they given to Mr. Larimer in your office? A I don't know; he may have come in; we were working on them for a day or two; he may have come in and got copies.

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Q Did you furnish him this copy? A I might have.

Q This sheet is virtually a statement of account between you and Mr. Larimer? A Well, it is not complete.

Q You think that there are other things that should have gone in there? A I am quite sure it is not complete.

Q The \$5,000.00, which you have claimed, in this prosecution, was given by you to him for a specific purpose is included in this account; is it not? A Is included in that account; yes, sir.

Q And that was a general account you had with Mr. Larimer, was it not? A Yes, sir.

Q When had that account started? A It started on March 2nd.

Q And that appears on this Defendant's Exhibit "E", doesn't it? A Yes, sir.

Q And after March 2, did you continue advancing money to Mr. Larimer? A Yes, sir.

Q Did you get money back from Mr. Larimer? A From time to time.

Q And the monies which you advanced in that way, and which you received from him, as you state, are represented on this account, Defendant's Exhibit "E"? A I don't know that they are all there; I have not added that up.

Q Well, there are some of them there? A Yes, sir.

Q And this you say is a copy from your books? A It may have been a copy from Mr. Larimer's.

Q Your statement is that this statement was prepared in your office? A I think it was copied in my office; I would not say

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it was prepared in my office.

Q It was copied from your books? A It is very much like it. I could tell better if I analyze the whole of it.

Q The \$5,000.00, which you advanced on August 20th, was included in the original account, of which this is a copy? A Yes.

Q You didn't make a special account of that \$5,000.00? A No, I did not.

Q Now, Mr. Larimer, paid back to you \$2,000.00 on September 1st, did he not? A Yes, sir.

Q Does that appear in your account? A Yes, sir.

Q How long before September 1st had Mr. Larimer paid you any money? A August 12th.

Q How much had he paid you? A \$2,000.00.

Q After September 1st did Mr. Larimer ever pay you any money? A I gave him two other credits; no other money.

Q What were the credits for? A I gave him credit for \$1600. for a Stutz automobile and \$500.00, I collected from a merchant named Wimblanger.

Q And when did you get the Stutz automobile, for which you gave him a \$1600 credit? A September 13th.

Q And when did you collect the \$500.00 from a merchant for which you gave him credit? A September 23rd.

Q During that time you were asking Mr. Larimer for as much money as he could paid you in order to satisfy your account, weren't you? A Yes, sir.

Q Did you cash any confession judgment notes from Mr. Larimer about that time? A No, sir.

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Q Did you ever get any papers, of any sort, from Mr. Larimer, representing the indebtedness, as appears on the account? A Well, now, I don't know. I put the account in the hands of some attorneys of Philadelphia, an attorney in Philadelphia, and I don't know whether he got any notes from him or not.

Q When you put this account in the hands of the attorney, this \$5,000.00 was included in the account, wasn't it? A I think so.

Q Now, Mr. Joise, your original arrangement with Mr. Larimer was started on March 2nd, and it was that you and he would share fifty per cent. of whatever profits he might make; wasn't that the situation? A On the particular proposition we were going into.

Q On that first proposition? A Yes, sir.

Q And all these payments that appear in the account, Defendant's Exhibit "E", were payments you made from time to time on various ventures; were they not? A Yes, sir.

Q And your understanding was that you were to get fifty per cent on all of these? A Yes, sir.

Q Whenever there was a profit? A Plus my original investment.

Q Plus the original investment? A Yes, sir.

Q And when you rendered these accounts to Mr. Larimer, your purpose was to fix the amount of indebtedness between you and him? A The balance, yes, sir.

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Q When this Defendant's Exhibit "E" was prepared, that was equally the purpose? A I don't know whether that was ever submitted. I cannot recognize the paper.

Q You have said it was prepared from your books? A It does look so.

Q You do say when you handed the account to the lawyer in Philadelphia, you included this \$5,000.00? A I am quite sure so.

Q How much did you hand over to your attorneys as the amount of indebtedness between you and Mr. Larimer for collection? A I don't know.

Q Well, does this Defendant's Exhibit "E", in any way refresh your recollection? A (after examining) It is my belief it is very near right; I could not say whether it is.

Q About how much was the amount? A I turned over to him some \$25,000.00 to \$27,000 or \$30,000.

Q And that say \$27,000 included a balance, which also had in it, this \$5,000.00, which is the subject of this indictment. Can you tell us how much in all you advanced to Mr. Larimer and how much he paid back to you from the beginning of your transactions to the very end? A I advanced \$29,050.

Q And how much did you get back, in all? A \$9800.00.

Q The balance represents what? A \$19,250 is the balance.

Q The balance represent an indebtedness, which you have been carrying on your books against Mr. Larimer; isn't that so? A Yes, sir.

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Q And did you start suit against Mr. Larimer for that amount? A Not that I know of.

Q You handed it over to your attorney in Philadelphia? A Yes, sir.

Q You do not know whether or not they received from Mr. Larimer judgment notes for the amount of that balance? A No, sir, I do not.

Q Have you ever had any talk with your lawyer in Philadelphia about that? A No, I have never been told anything at all about that.

Q When did you hand over your claim to the lawyer in Philadelphia? A Sometime about the first of September; about the fifth of September I should judge.

Q And when did you first make complaint to the public authorities here concerning these transactions? A To the public authorities?

Q Yes. A Well, I never made it known to the public authorities.

Q Well, you came to the District Attorney's office? A Oh, I could not tell you what date that was.

Q Wasn't that in January of 1931? A Yes, sir, about January.

Q Well, now, between August 24th, when you say that this \$5,000.00 should have been returned to you, you received how much from Mr. Larimer? A Between those dates?

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Q Between August 24th and the present time? A I received \$4100.00 from him, counting the two credits.

Q Yes that was something? A And I gave him a check for \$250.00.

Q Now how much did you receive after August 24th from Mr. Larimer? A \$3850.00.

Q And that was credited by you to his general account, wasn't it? A I credited it up in the general account, yes, sir.

Q Now how do you differentiate between the \$5000.00, which you say you gave him on August 20th, and the other sums? A I placed the credits back to the first indebtedness; I canceled the first indebtedness, all the way down.

Q Well, you were running a general account? A Yes, sir, and I just canceled the general indebtedness as I go down.

Q Now the \$5,000.00 of August 20th, was not a general indebtedness, was it, according to your understanding? A It was handed to him for a special purpose. While I carry it on in a general account, they were each one for specific operations that I had with him; one, two, three, four, five, six different operations.

Q And on each one of those operations you were to get half of the profits? A Yes, sir.

Q Mr. Larimer was to have the use of the money and the management of the money, and the full control of the funds, wasn't he? A Yes, sir.

Q And then after he got done with the transaction, if there

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was a profit, he was to return to you the amount of your original investment, plus half of the profits; is that the arrangement you made with him? A Yes, sir.

Q You put that \$5,000.00, of August 20th, on the general account, in the books, did you not? A Yes, sir.

Q And at that time, Mr. Larimer had just paid you some money on August 12th? A Yes, sir, he paid me \$2,000.00 on August 12th

Q That was on the general account, wasn't it? A Yes, sir.

Q Was there any time during your transactions with Mr. Larimer, that he actually paid back to you a specific amount of money invested in one transaction, plus half the profits on that transaction? A No, sir, he never paid up any of the profits; he just paid back on account.

Q Yes, and you were accepting these monies on account? A Yes, sir, and I was paying him --

Q And the account was mutual and current from day to day, from week to week? A That is the way I ran it.

Q And you accepted this money, after August 24th, some \$4100.00 on account, in the same way, did you not? A Yes, sir, I did.

Q You originally had no written contract with Mr. Larimer, did you? A Yes, sir, I had a letter.

Q I mean, originally, when you started with him? A Yes, sir.

Q Have you got that letter here? A Yes, sir.

MR. DONAHUE: If your Honor please, I have a witness here from Washington, D. C., that I promised to let go back tonight. May I put him on now?

THE COURT: Yes.

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(Mr. Joice was then withdrawn to permit of the witness from Washington to testify).

J A M E S A. D O R R I T E E, called as a witness, on behalf of the People, being first duly sworn, testified as follows: (1406 "Q" Street, N. W., Washington, D. C.).

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Dorrites, what is your business or occupation? A Auditor of the District National Bank, Washington, D. C.

Q And how long have you been connected with that bank? A Eleven years.

Q And your duties are the supervision of every account? A In all of the departments.

Q Have you brought, at my request, a transcript of the account of R. G. Larimer, in the District National Bank, of Washington, D. C.? A Yes, sir.

Q Did you give it to me? A I gave it to you at noon today; it was in a brown envelope.

Q Are you familiar with Mr. R. G. Larimer's signature? A I cannot say that I am, although I have seen the signature card.

Q Did you bring the signature card of R. G. Larimer with you? A yes, sir.

Q Did you examine it at my request, the account of R. G. Larimer? A Yes, sir.

Q At the District National Bank, Washington, D. C.? A Yes.

Q When was that account opened, do you recall?

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

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THE COURT: I will allow it.

A Around April, 1920.

Q And did you examine the deposits and the withdrawals in that account? A Only the records of them.

Q Did you find, Mr. Dorritee, at any time during the life of that account, that there was ever \$5,000.00 to the credit of R. G. Leximer?

MR. FABRICANT: I object on the ground that it is incompetent; no materiality upon this issue whatever.

THE COURT: I will allow it.

MR. FABRICANT: May I have an exception?

THE COURT: Yes.

A No, sir, he didn't.

Q Do you know what was the highest amount that was ever there to his credit during the whole life of that account?

MR. FABRICANT: I object on the same grounds, and as having no relevancy to this issue.

(No ruling).

A As near as I can remember it was about \$3500.00. Those records you have there will show.

Q Do you remember, Mr. Dorritee, the account with particular reference to the balance that was on hand to the credit of this account on the 20th of August to the 24th or the 25th? A Yes, sir.

Q What was the condition of the account at that time?

MR. FABRICANT: I object on the same grounds.

THE COURT: Allowed.

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MR. FABRICANT: Exception.

A The account was overdrawn \$37.00 and some cents.

Q What day was that, between the 19th and 24th? A There was no transaction on the account from the 19th to the 24th.

Q Will you look at these papers, Mr. Dorritee, and tell me whether you ever saw these before or not? A Yes, sir.

MR. DONAHUE: May I have them marked for identification. (The papers referred to, which were later returned to the witness, to be considered as marked People's Exhibits Nos. 3 and 4, respectively).

Q You say, Mr. Dorritee, you are the Auditor of that bank?

A Yes, sir.

Q Were these papers, People's Exhibits Nos. 3 and 4, for identification, made up by you, or under your supervision? A Under my supervision.

Q That is, they were taken from where? A From the records of the bank.

Q From the records of the bank? A Yes, sir.

Q And what are these papers you hold in your hand? A They are our ledger sheets.

Q A transcript of any account? A R. G. Larimer's.

Q For how long, beginning when and ending when? A From April 21st, 1920, to the present date.

Q Now were they brought on from Washington by you? A Yes.

Q And they were prepared under your supervision from the books of record kept at that bank? A These are the books of record.

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Q These are the originals? A These are pages of the originals taken from the books? A No; this is the sheet itself (referring to one of the exhibits).

Q Taken by you? A Yes, sir.

MR. DONAHUE: I offer them in evidence.

MR. FABRICANT: I object to their reception in evidence on the ground that they are not competent and also being wholly irrelevant to this issue, not making any difference in the situation as to what the account was from April to the present time.

THE COURT: The only thing that is material is whether there was sufficient funds in the bank to make payment of the check, which is an exhibit here, or was the account, at the time, overdrawn. That is all there is to it.

MR. DONAHUE: I can also show, as bearing on the defendant's intent, that he never had that much money in the bank at all, at any time.

THE COURT: I understand your contention, Mr. Fabricant, and I also understand the People's. I think I will receive in evidence the account up to and including the day of the drawing of the check.

MR. DONAHUE: Your Honor, will recall that that it is a check given in New York on a Washington, D. C., bank.

THE COURT: Then say a week afterwards.

Q Now will you give us the balance? A \$15.33.

Q MR. FABRICANT: May I have an exception noted to the admission of this evidence at all, and the admission of any

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part thereof?

THE COURT: Yes.

MR. DONAHUE: May I have this witness explain to the jury what these figures are (indicating).

THE COURT: Yes.

Q Mr. Dorritoe Will you take these sheets and explain to the jury just what they mean with reference to this account, up to and including August 24th, and then one week beyond that?

MR. FABRICANT: Before that is done, I am going there to object on another ground, and that is that ~~xx~~ is no evidence connecting this defendant with the account in Washington.

MR. DONAHUE: We have the defendant giving a check, and the complaining witness states that he sent on the check, on that particular bank, and also that there is only one District National Bank in Washington, D. C.

THE COURT: You have a right to prove that this defendant did not have in the bank in Washington, D.C., the money necessary to meet that check. You have the right to prove that. Beyond that I do not think I will allow you to go.

MR. DONAHUE: We are satisfied with that.

THE COURT: I will allow this witness to testify, if he can, that on the date of the drawing of a check for a certain number of days, subsequent or prior thereto, the defendant, did not have money, sufficient to meet that check, to his credit in the bank.

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Q Now, Mr. Dorrites, can you tell us the balance that was on hand, each day, say beginning on August 15th, going down to about August 31st; give us his balance on hand?

A August 15th, \$79.15; August 16th, \$79.15; August 17th, \$47.80; August 18, \$47.80; August 19, \$27.20, overdrawn; August 20th, \$27.20, overdrawn; August 21, \$27.20, overdrawn; August 22, \$27.20, overdrawn; August 23rd, \$27.20, overdrawn; August 24th, \$72.80, credit; August 25, \$15.33, and from th on on to the 31st of August, the balance is the same.

Q What was that balance? A \$15.33.

Q That continued from the 25th of August to when? A August 31st.

Q Is there more than one District National Bank of Washington, D. C.? A No, sir.

MR. DONAHUE: That is all.

THE COURT: Do you have more than one depositor in that bank of the name of R. G. Larimer?

THE WITNESS: No, sir.

MR. DONAHUE: I would like to ask one or two more questions.

THE COURT: You may.

Q Do you know when this account was closed? A It is not closed now. There is still a balance in the bank.

Q When was the last transaction on that account? A September 8th.

Q And what is the balance there now? A \$6.33.

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Q That remains there since when? A September 8, 1920.

MR. DONAHUE: That is all.

MR. FABRICANT: I have just one or two questions.

CROSS-EXAMINATION BY MR. FABRICANT:

Q Do you have any personal knowledge, or any way of finding out whether any check had been presented for payment on that account a few days before August 24th? A If they are presented over the counter and turned down, we have not. If they are presented to the teller and payment refused, we have not, but if they come in through the Clearing House, we have.

Q Have you any record with you now, of any kind, by which you could tell whether a \$3,000.00 check had come into that account through the Clearing House? A No, sir, I have nothing with me.

Q You have no personal recollection of that? A No.

Q When was your attention first drawn to this account? A I think it was in January.

Q January 1921? A Yes, sir.

Q I show you a paper, marked People's Exhibit No. 2 in this case; have you ever seen this check before? A (after examining) This morning.

Q Ever before this morning? A Not that I know of.

Q Can you say whether that check was ever presented to your bank? A No, sir; there is no way of telling.

Q Is it customary for checks that are presented, to bear some evidence of presentment? A Not to the window.

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Q I mean if it went through the Clearing House? A If it went through the Clearing House, it would have.

Q Do you know whether it is customary for banks to stamp a check before it is put through the Clearing House?

MR. DONAHUE: On the other hand, Mr. Joice, knew it was not any good, after he made a certain investigation, and he didn't present it. A \$2,000.00 check came back, and it was protested, and he felt it was useless to present it at that time. I am willing to concede that it did not go through the Clearing House.

MR. FABRICANT: That is all.

BY MR. DONAHUE:

Q I understand you to say that if this check was presented to the paying teller or the receiving teller, or to any official in the bank, and there was not enough money to meet it, he would just turn the check back without making any endorsement thereon? A Yes, sir.

Q Or putting any stamp on it? A Yes, sir.

BY MR. FABRICANT:

Q That is, if presented at the window down in Washington, D.C.?

A Yes, sir.

J O H N E. J O I C E, resumes the stand, and testifies as follows:

CROSS-EXAMINATION RESUMED BY MR. FABRICANT:

Q When you got this check, People's Exhibit No. 2, for \$5000.00, which you say you advanced on August 20th, you thought the check

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was drawn against funds that actually existed, did you not?

A Yes, sir.

Q And when you deposited this check, People's Exhibit No. 2, in your bank, you were still under the impression that this check was drawn against funds? A Yes, sir.

Q About how long after you made the deposit did you find out, as you say, that the check had no funds behind it? A The same afternoon.

Q And then what did you do? A I sent over to the bank and withdrew it.

Q And kept it in your own files? A No, I sent it down to my son in Washington, and he presented it.

Q And it was not paid down there? A No.

Q And then was it sent back to you? A Yes, sir.

Q And in the meantime did you see Mr. Larimer? A Yes, sir.

Q Well, when you discovered the check had been drawn against an account that had no funds, you were surprised, were you not?

A Yes, sir.

Q And you say that you treated this as a special payment to him, for a special purpose? A Yes, sir.

Q Well, did you go to the District Attorney and complain that this man stole your money on August 24th, 25th or 26th? A Did I?

Q Yes. A No, I did not.

Q Did you do it when Mr. Larimer came in and paid you \$2000.00 on September 1st?

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MR. DONAHUE: There is no evidence that he paid him \$2000.00.

Q Did he pay you \$2000.00 on September 1st? A On September 2nd.

Q You hadn't made any complaint against him up to September 2nd, had you? A The \$2000.00, September 2nd --

THE COURT: Just answer the question direct, please.

A No, sir, I had not.

Q And on September 2nd, when Mr. Larimer came in and paid you the \$2,000.00, you accepted that, did you not? A It was accepted, yes, sir.

Q You had People's Exhibit No. 1, this receipt, in your possession at that time, did you? A Yes, sir.

Q And you say that this exhibit was written out by you and signed by Mr. Larimer? A Yes, sir.

Q When Mr. Larimer came in on September 2nd, did you say to him, "Mr. Larimer, I want to have the \$5,000.00 cash back that I gave you?" A On September what?

Q September 2nd? A No; the night he told me that he was not going to trade with Gleason, I told him I wanted it back; that was about the 23rd of August.

Q Well, now from August 23rd up to September 2nd, had you seen Mr. Larimer? A Yes, sir, once or twice; he said he would find money one way or another; he was going to pay me as soon as he got his arrangements all up; he was going to pay me.

Q He told you that he didn't have the \$5,000.00 that you

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say you gave him? A He told me that he didn't have it in the District Bank.

Q I don't mean the \$5,000.00 against which he didn't draw, but the \$5,000.00 which you say you gave him on August 30th; did he tell you that he didn't have that money? A He told me that he didn't have any.

Q You knew at that time that you had given him this money to close a transaction with Gleason? A Yes, sir.

Q Did you ask him what he had done with the money? A Yes, sir.

Q What did he say to you? A I went over to look at his books in Philadelphia.

Q Well, did he tell you what he had done with the money? A No, he asked me to look for myself.

Q Did you find out what he had done with it? A What he had done with that \$5,000.00?

Q Yes. A No, the books show he received \$5000.00, and had checked it out for various expenses, personal expenses, practically, all of it.

Q When did you see those entries in his books showing that he had checked them out for personal expenses? A When I went to his office.

Q What date was that? A I don't recollect the date.

Q You did not make any complaint about it then to the public authorities or to the Police Department? A No, sir, I didn't.

Q You accepted from Mr. Larimer this Stutz automobile, did you not? A No, I took a bill of sale of it.

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Q Bill of sale? A Yes, sir.

Q And gave him a credit of \$1500.00? A \$1600.00.

Q Was that visit to Philadelphia before September 2nd, when he paid you the \$3,000.00? A I cannot answer just when I was there.

Q You cannot answer when it was? A No, I think it was after he paid me the \$3,000.00.

Q Before you got the Stutz machine? A Yes, sir.

Q And before you got the \$500.00 from some other concern?
A I think it was on the 10th of September; the day I gave him the check for \$350.00.

Q Why did you give him that? A He said he didn't have money to pay his office expenses at the moment.

Q So you advanced him \$350.00 more? A Yes, sir.

Q You put that on the account, did you? A Yes, sir.

Q As a matter of fact all these monies that you advanced to Mr. Larimer were put by you on the same account? A The same ledger account, yes, sir.

Q In the beginning did you regard Mr. Larimer as your agent? A From the moment I talked with him, I told him I didn't want to have a partner. I had had one wished on to me, and had just got through with him.

Q You allowed Mr. Larimer to handle these funds in his own name? A Yes, sir.

Q In his own bank account? A Yes, sir.

Q And you expected him when you gave him any money to put it in his own account? A Yes, sir.

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Q Did you expect him to keep them separately in his name, as your agent? A No, sir; I didn't ask him about it.

Q You arranged with him that he would have full control of that money? A No, I told him I didn't want a partner at all. It was plainly understood the first day that we opened the talk, and I gave him money the next day afterwards; it was plainly understood that we should have no partnership.

Q Well, as a matter of fact you allowed him to have the money? A Yes, sir.

Q In his own account? A Yes, sir.

Q Isn't that so? A I didn't dictate to him as to what account he should put it in.

Q You didn't regard it as anything wrong on his part to put that money from time to time in his own account? A No.

Q You didn't regard it as unlawful for him to mangle the money that you gave him with his own funds? A No.

Q Did you arrange with Mr. Larimer as to how the losses on these transaction might be covered? A I was advancing all the money. There was no one to hold the "bag", if there were losses, but myself.

Q Did you arrange with Mr. Larimer as to how the losses would be covered, if any? A No, we took it for granted that the profits were to be divided equally and the losses were to be jointly covered; we had no arrangement.

Q You took that for granted? A Yes, sir.

Q You expected Mr. Larimer to advance money? A He had no

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money to invest in any of it.

Q You are quite sure of that? A Yes, sir.

Q Are you sure he had no money invested in this transaction with Mr. Gleason? A I don't think he had a dollar.

Q You don't think so? A I am quite sure.

Q Isn't that why you started this prosecution against him, because you thought he didn't have a dollar? A No, sir.

Q Well, you were under the impression that he didn't have a single dollar laid out on this transaction with Gleason?

A He had some money I advanced him.

Q I mean independently of any money that you may have given him? A Independently of what I gave him he never had a dollar of his own money in any of the ventures.

Q You would, perhaps, be surprised to learn now that he had more invested in it than you had?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. DONAHUE: If your Honor please, while I am reluctant to interrupt this witness again, Mr. Dorritee, the witness from the bank in Washington, has just called my attention to something, and I would ask your Honor to indulge me in calling Mr. Dorritee at this time, for a few more questions.

THE COURT: You may call him now.

JAMES A. DORRITEE, recalled, on behalf of the

People, having been previously sworn, testified as follows:

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MR. DONAHUE: First, I asked that this check be marked for identification.

(Received and marked People's Exhibit No.5 for identification).

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Dorrtee has People's Exhibit No.5 for identification been presented to your bank for payment? A Yes, sir.

Q And is that on the same account you have already testified to? A Yes, sir.

Q And was payment made on that check? A No, sir, it was not.

Q What happened to the check? A It was returned protested for non-payment.

MR. DONAHUE: May I also have this paper marked for identification.

(Received and marked People's Exhibit No.6 for identification).

Q And will you look at People's Exhibit No.6 for identification, and tell me whether you ever saw that before? A Yes, sir.

Q Now you say that check, People's Exhibit No.5 for identification was received at your bank for payment? A Yes, sir.

Q Mr. Dorrtee, would you say that the signature on both People's Exhibits Nos. 2 and 5 were made by the same hand? A Yes, sir.

Q MR. DONAHUE: I now offer People's Exhibit No.5 for identification, in evidence.

(People's Exhibit No.5 for identification, now received in evidence)

Q Was People's Exhibit No.5, Mr. Dorrtee honored by payment? A No, sir.

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Q Why wasn't it honored at that time?

MR. FABRICANT: I object on the ground that is thoroughly incompetent, and having no relevancy on this issue.

THE COURT: I will allow the witness to answer. This is the check as to which evidence was given by Mr. Joice?

MR. DONAHUE: Yes, your Honor.

Q Why wasn't that check honored for payment, Mr. Dorrites?

A For not sufficient funds being to Mr. Larimer's credit at that time.

Q That check was received at your bank? A Yes, sir.

Q When? A August 23, 1921.

Q Through the Clearing House? A Through the Clearing House.

Q And was it sent back to where it came from through the Clearing House by your office? A Yes, sir.

Q There was not sufficient funds on hand? A No, sir.

Q You have already testified as to what the balance was on that day? A Yes, sir.

Q Can you tell us through what bank you received that? A American National Bank of Washington, D. C.

Q You received it through that bank? A Yes, sir.

Q Any other endorsement on there? A Yes, sir, and they received it from the Harriman National Bank of New York.

MR. DONAHUE: That is all.

J O H N K. J O I C E, recalled, testified as follows:

CROSS-EXAMINATION CONTINUED BY MR. FABRICANT.

Q Now, Mr. Joice, the check just offered in evidence, people's

Exhibit No.5, a check to your order, by Mr. Larimer, for \$3,000.00, is it not; do you remember that? A Yes, sir.

Q And it is dated August 21st; do you remember the occasion of the receipt of this check? A No, sir, I didn't receive it. It was received at the office.

Q Do you know what it was received for? A It was received to apply on account.

Q On account of the existing indebtedness? A Yes, sir.

Q And wasn't the check of August 24th received for the same purpose, to apply on account of the existing indebtedness? A No, sir; he handed me that to offset the \$5,000.00.

Q What is that? A He gave me that to offset the \$5,000, in cash, that he got on August 20th.

Q It didn't actually offset the \$5,000.00? A No, sir, it never was paid, and it didn't offset it.

Q And was the \$3,000.00 given to offset any specific sum? A No, no specific sum.

Q And you had never received a single check, from Mr. Larimer, to offset any specific sum in your account, had you? A Not that I know of.

Q You say this check of August 24th was given to offset the specific sum of \$5,000.00, received by Mr. Larimer on the 20th of August? A Yes, for that purpose.

THE COURT: In other words, you claim that with the exception of this one transaction, everything was a general account, and when he made payments you applied it to such items

of the indebtedness, as you saw fit?

THE WITNESS: Yes, sir, I applied against then the first that was due, the first I advanced him, and on this last one, he handed to me, to give me back what I handed to him in cash, three or four days before. He was to go down there to use it for that purpose, and he was to repay me that money.

Q Well, you learned he hadn't used it for that purpose, Mr. Joice, within a very few days after this check was put by you in the bank? A That he hadn't used it?

Q Yes. A I supposed he had the money in the banks of Washington and Philadelphia.

Q When did you first learn that he used it for his personal account? A When I got it on his books.

Q When was that? A Somewhere about the 10th of September or the 12th; somewhere along there.

Q Did you regard that as having been a thief of this money? A I certainly did.

Q Did you say so to anybody? A I told it to him, too.

Q You told it to him? A Yes, sir.

Q Did you make a complaint to the District Attorney of New York County? A No, sir.

Q Or Philadelphia? A We went to the District Attorney in Philadelphia.

Q How long was it afterwards that you went to the District Attorney in Philadelphia? A About the 12th or 15th of September.

Q Now, by the way, did you find out whether the cash gave him was deposited in Philadelphia? A No, I don't know he deposited it. The books showed that he deposited it in the Metropolitan Trust Company.

THE COURT: In New York City?

THE WITNESS: Yes, sir.

Q Did you ever go to the Metropolitan Trust Company and find out what the state of his account was there? A I went up there but didn't find out.

Q When Mr. Larimer showed you his books and said he spent this money for his personal account, how long was it after that when you received payment on account, generally speaking, from him? A I didn't received anything after that.

Q You received the Stutz automobile? A I got the automobile bill of sale before that. I got that about the 3rd, 4th or 5th of September.

Q That was while you were talking to him about general indebtedness? A Yes, sir, I went and took possession on the 15th.

Q Did you regard it as a violation of his arrangement with you when he deposited the \$5,000.00 here in the Metropolitan Trust Company? A No.

Q Did you regard it as a violation of his account, if he had taken that money out of the Trust Company there and spent it in connection with the transaction with Gleason? A It would have been a violation of my agreement with him; it was only for the purpose of buying over the rest of this pipe.

Q There was not anybody present when you had this conversation with him? A Mr. Dexter was in the conference two or three times. We talked it over two or three days.

Q Mr. Dexter is still in your employ? A No. I discharged him when this job was over.

Q He is not around in the court room now? A He is outside.

Q You remember Mr. Larimer telling you that he was having trouble with this Gleason and with the Triangle Equipment Company?
or
A Well, I don't know as to what he calls it trouble. He said they were "butting" in. I had my son there looking after him, to see that the money was handled right. He kept saying as they were "butting" in. I don't know whether he calls that trouble.

Q Did you ask him to explain what the trouble was between him and Gleason? A No, he always had a plausible --

THE COURT: Tell us what he said to you?

THE WITNESS: He never explained what the trouble was.

Q Did you go down and have a talk with Gleason about the matter yourself? A No.

Q You allowed him to represent you in this matter, without getting in contact with the Triangle Equipment Company? A Yes, sir, when I first --

THE COURT: Now, you have answered it. Yes, is the answer.

Q Do you remember July 9th, 1920, at all. A On July 9th?

Q Yes, do you remember that particular day? A Not especially; I remember about July 9th, about then.

Q I show you this paper and ask you whether you recognize that?

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A yes, sir, I do.

Q Does that bear your signature? A Yes, sir.

Q It bears Mr. Larimer's signature also? A Yes, sir.

Q And the blue sheet attached, does that bear your respective signatures? A Yes, sir.

MR. FABRICANT: I offer it in evidence.

(Received and marked Defendant's Exhibit "F").

Q This defendant's Exhibit "F" was drawn up in your lawyer's office? A Yes, sir.

Q And it was drawn up by your lawyer? A He dictated that from what Mr. Larimer and I brought him.

Q It was drawn by your lawyer, was it not? A Yes, sir.

Q And was Mr. Larimer represented by Counsel? A No, sir, he was not.

MR. FABRICANT: I am going to read, Defendant's Exhibit "F" to the jury. (Does so.).

Q Now, Mr. Joice both of these letters were gotten up at the same time, were they not? A No, sir, they were not.

Q Well, they were intended by you to be part of the same transaction, were they not? A No.

Q Where was the original letter of which this blue sheet was made up? A That was delivered to me by Mr. Larimer; that was written to me by Mr. Larimer in Philadelphia and brought back.

Q Then you signed it? A Yes, sir.

Q It was your intention to incorporate the original letter of July 9th, addressed to you? A It was to keep out the "infer-

ference", as he called it.

Q You have charged that Mr. Larimer stole \$5,000.00 that you gave him on July 7th? A Yes, sir.

Q And there is an indictment pending in this Court that he stole that \$5,000.00? A Yes, sir.

Q What did you give him that \$5,000.00 for? A To make payment on the pipe?

Q With this man Gleason, isn't that so? A On the first of the half/purchased.

Q With the Triangle Equipment Company? A Yes, sir.

Q And you gave him that \$5,000.00 on the 7th of July, did you not? A Yes, sir.

Q And this account was drawn up by you in your lawyer's office on July 9th? A Yes, sir.

Q You include in that account the \$5,000.00 given to Mr. Larimer on July 7th? A Yes, sir.

Q You include that as an indebtedness, do you not? A Yes, sir.

Q You say here, after narrating all of the sums advanced and repayments, that there is due to me \$32,000, including that \$5,000. on July 7th? A Yes, sir.

Q Was that \$5,000.00 due to you on July 9th? A That was a balance that was not due, if he had not collected.

Q It was a balance that you had on your books of account? A If he collected it.

Q It was not due to you, no right to have, on July 9th? A No.

Q And Mr. Larimer was to use that \$5,000.00 in the Gleason transaction? A Yes, sir.

Q What did you mean when you signed up there (indicating) that Mr. Larimer was to use his full judgment? A In making commitments against what he had purchased.

Q And what did you mean when you accepted the proposition that he was to divide with you the profits that had accrued or may accrue shall be made after legitimate expenses are deducted? A I should let him know the legitimate expenses that applied against it.

Q Did you include his personal expenses? A Certainly not.

Q He rendered you an account of his personal expenses from time to time? A He told me what he charged off on the first few lots, and I figured out you have so much profit in it. His personal expenses were over \$21,000.00 in three months.

Q That made you quite sore when you found out that his expenses had been as high as that? A Most decidedly.

Q Did you know that on September 3rd and 4th, 1930, when Mr. Larimer showed you his books--how long afterwards was it? A From September 3rd on, I discovered that he was spending it all.

Q Where did you discover it? A I discovered it in the first place that he spent all the receipts for the pipe.

Q Where did you discover that he had spent your \$5,000.00? A He didn't have it to pay me back.

Q Where did you discover that he spent it for his actual purposes; where were you when you discovered that? A When he told me that he didn't have any; that it was practically all spent; that is all; I don't know just what date it was.

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Q Was it down there in Philadelphia, in Mr. Larimer's office? A It was down in Philadelphia, in an attorney's office.

Q And did Mr. Larimer bring his books there? A No, he did not.

Q Did he take you down to his office and show you his books? A Yes, sir.

Q Are these the books that are lying here now (indicating)? A Yes, sir.

Q And he turned over these books to you? A All of them.

Q After he turned over these books, did you receive any property of any kind from him? A No. I think the books were turned over about the 25th of September. I don't know just what date they were turned over; they were delivered over to the attorney. I didn't see them until a month after.

Q You recognize, do you not, Mr. Joice, that if Mr. Larimer was your partner in this series of transactions, — A (Interrupting) He was not a partner.

Q You recognize that if he were a partner of yours that you would have no claim in this court?

MR. DONAHUE: It is in black and white that he is not a partner.

MR. FABRICANT: Do you object to it?

MR. DONAHUE: Yes.

THE COURT: Sustained.

MR. FABRICANT: I except.

Q Mr. Joice, did you suggest that the following in this letter be placed in it: "To make this purchase not as a partnership transaction, but you are going to act as my agent in connection therewith?" A No, sir, I did not. I went down --

THE COURT: You have answered the question.

Q Who did suggest that? A It was made on the suggestion of the attorney, after he had listened to the explanations of what our dealings were together, by Mr. Larimer and myself.

Q And who was the attorney? A Frank Harvey Field.

Q And Mr. Field told you that it would be better to put in this document that Mr. Larimer was acting as your agent?

A No, sir.

Q Had you ever designated Mr. Larimer as your agent prior to July 9th? A On the first of July, I had it understood before I advanced him the first money that there was to be no partnership proposition.

Q Have you your original account with Mr. Larimer here? A Only an abstract of it.

Q In the original account did you designate him as an agent on your own books? A No, not designated, just charged up to R. G. Larimer.

Q As a matter of fact wasn't it when Mr. Larimer commenced to get into difficulties you thought of having this reduced to writing and designate him as an agent? A I did not think he was in difficulties then.

Q You went down to your lawyer? A I did not think he was

in real difficulty. He said he had a deposit of \$20,000.00 for payment on rail, and had lots of other money coming, and when we came to find out, he had taken it out and spent it.

Q Didn't you think he was in some difficulty when you went down and had this document drawn up? A No.

Q On August 14th you wrote to Mr. Larimer, "that I feel, Larimer, I must ask you to live up to the letter of our understanding, and that these collections which remain, that they be remitted direct to me". Did he remit them direct to you? A No, sir, he never remitted to me a dollar.

Q And you just charged the account with the amounts that he reported were due to you? A He was paying that on the old accounts.

THE COURT: Strike that out. Read the question?

(Question read by the stenographer).

MR. DONAHUE: Maybe Mr. Joice does not understand it.

THE COURT: If the witness does not understand, he can say so.

THE WITNESS: I do not understand the question.

Q You say, Mr. Joice, that Mr. Larimer did not remit direct to you any of the amounts that were yours as profits on these transactions? A Yes, sir.

Q Now when he didn't remit in that fashion, you charged his account on your books with the amounts thus due to you? A No, sir.

Q Isn't that what you had in your agreement of July 9th, Defendant's Exhibit "F"? A I don't understand that question?

Q Is there any particular difficulty about that? Don't you understand that question? A I do not understand that question.

Q On July 9th you were down to your lawyer's office; you drew up this agreement, saying that there was \$7200.00 of profits. "My share of the profits is \$3600.00" Had you received that \$3,600.00? A No, sir.

Q What did you do about the \$3600.00? A I never put it on my books.

Q Put it in this account, Defendant's Exhibit "F"?

A Yes, sir.

Q Then you did put those amounts due to you in the general account? A I put them on the exhibit; I didn't put them in the ledger.

THE COURT: In other words, the amounts which were represented to you, that were coming to you by way of profits, as distinguished from the amounts you advanced, you did not enter upon your ledger?

THE WITNESS: They were not entered on the ledger.

THE COURT: You only entered on your ledger the amounts you say you advanced to Larimer, and the amounts that you say he paid to you; is that so? A

THE WITNESS: Correct.

THE COURT: I think, Mr. Fabricant, we will take an adjournment.

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Gentlemen of the Jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, for form or express any opinion thereon, until the same is submitted to you.

The Court stands adjourned until tomorrow morning at 10:30 o'clock.

(Whereupon an adjournment was taken until Tuesday, June 15th, 1921, at 10:30 A. M.).

THE PEOPLE against ROBERT G. LORIMER
OR
ROBERT G. LARIMER

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New York, June 14, 1921. 10:30 A.M.

(Trial continued).

J O H N K. J O I C E, resumes the stand, and testifies as follows:

CROSS - EXAMINATION CONTINUED BY MR. FABRICANT:

Q Now, Mr. Joice, yesterday, we were at the point where I asked you what you did concerning the profits which accrued on the various transactions, and my question was whether you received those profits, plus the original investment, from time to time, on the contracts or not? A Your question was what?

Q Whether you received the profits and the original investment in each of the transactions from time to time or not?

A I did not receive any profits.

Q What did you do concerning the profits which were reported to you by Mr. Larimer as having been earned on these transactions? A I just carried them on a memorandum.

Q You did put them in as a part of the account that you drew up between yourself and Mr. Larimer on July 9, 1920?

A Not in the account, on memorandum attached; figured in it.

Q Is it not in this agreement between you and him, dated July 9, and in evidence as Exhibit "F"? A Yes, sir.

Q And in that Defendant's Exhibit "F", you also charge as one of the advanced amounts the sum of \$5,000.00, paid to Mr.

Larimer on July 7th? A Yes, sir.

Q By the way, how did you give that money to him; was that a check or cash? A A check.

Q Drawn on the Chatham and Phoenix National Bank, was it not? A Yes, sir.

Q And when the account, Defendant's Exhibit "E" was drawn up, in your office, you also included the profits, did you not as a part of the accounting? A In the agreement, yes, sir.

Q What you did, in each instance, was to charge Mr. Larimer's account, was it not? A I didn't charge it up to the account on the books.

Q Well, you did in your two agreements, in your two statements of accounts that are now in evidence, as Defendant's Exhibits "E" and "F"? A They were on those statements.

Q You regard this (showing) as a statement of the account between you and Mr. Larimer? A No, it was an agreement, to come to mind, as to just where he stood; it was a recapitulation of what we had done; what we had agreed to do.

Q Now the agreement did provide that Mr. Larimer was to -- you were to receive as your compensation for investing this money, through Mr. Larimer, the return of the monies advanced, and the one-half share of all profits realized by Mr. Larimer in these various transactions. Did you understand as to ~~that~~ the money would be returned, or as to what form it was to be returned in? A When it was returned?

Q It was actually returned in part payments from time to

time? A It has not actually been paid.

Q I mean part of it? A On a few of the transactions, yes.

Q You actually received from him up to July 9th, \$3700?

I credited that against the principal.

Q And since July 9th, do you remember off-hand how much you received entirely? A I don't remember that off-hand.

Q Well, there was a payment, was there not, on August 13th?

MR. DONAHUE: We have gone over this four or five times.

A I think that was \$3850, as I stated yesterday.

Q Since July 9th?

MR. DONAHUE: I object to that. He did not say that.

MR. FABRICANT: I am trying to find out.

THE COURT: He may ask him.

Q How much since July 9th? A I believe I have given his account a total credit for cash, automobile, and an outside collection, of \$3850.00.

Q Now, I would like to know again exactly what was said by Mr. Larimer concerning his relations with Gleason, on August 13th, when you said you paid him the \$5,000.00? A We got to a point where he had advised me that he had bought the pipe from the company, from the Triangle Equipment Company, or through them, and that there were 1300 tons --

Q What was it you said, by or through them? A He had bought it through the Triangle Equipment Company. In the commencement he told me he had bought it from the Government, and he wrote me a letter to that effect. Later it developed that he hadn't bought it from

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the Government.

THE COURT: If you will have the kindness, just pay attention to the question and answer it.

Q I ask you what he told you on August 30th? A On August 30th, there were about 1500 tons of rail, or rather, pipe, that had not been sold or shipped. He told me he had it sold to the Argentine Government, to its representative here in New York, and that he could buy Mr. Gleason's interest for \$7800.00,

Q What did he say?

MR. DONAHUE: I think the witness ought to be allowed to finish his answer.

THE COURT: Yes.

A (continued) and that we could make a profit of about \$20,000 to \$25,000.00 on the pipe, and he wanted to buy Gleason's interest; he had already paid him part of it. We discussed it three or four different times; we discussed it with Mr. Dexter also --

THE COURT: Now you have answered the question.

Q Did he say anything about having had trouble with Mr. Gleason's firm? A He said he was having some dispute as to the counting, the weighing of the pipes, etc.

Q Didn't he say they were in the process of settling up their dispute as to that transaction, and that an agreement or settlement was to be signed either that day or within the next few days? A He said he was going to settle and take his interest over; that he had agreed to take over the interest and close the

whole job over, and take the interest over, for so much money.

Q What did he say was Mr. Gleason's interest? A It was defined as a half interest in the profits on the pipe -- the entire interest in the balance of the 1500 tons of pipe.

Q And what did Mr. Larimer tell you was his personal interest in it? A At that time?

Q Yes. He said he had a contract that had expired at that time.

Q Did he say he had a half interest in it at any time?

A At any time?

Q Yes. A The first thing, he owned it all; secondly, he only had half an interest; finally he found his contract had expired, and had no interest in it, but he could get Gleason out of it by paying him \$7800.

Q Your arrangement was that you were to have half of the interest he was to have in the Gleason contract? A That was the corrected arrangement.

Q And that Larimer was to advance half of the money necessary to enter into the contract? A There was no question of his advancing any of the money; he never had any of the money.

Q Were you to give him half of the profits of the transaction without his advancing any of the money? A Yes, sir.

Q And you were giving him the full control of your money, in that way? A Yes, sir, and half an interest in the profits.

Q As a matter of fact, didn't you know that Larimer had

advanced money on that contract before you were ever approached about it? A No, sir.

Q You didn't know anything about it? A I am quite positive of it.

Q You didn't know anything about it? A His books don't show it.

Q You are basing it on his books? A Yes, sir.

Q Are you not basing your statement that you paid him \$5,000.00 on August 20th on the fact of the entry in his books showing a deposit of \$5,000.00 in the Metropolitan Trust Company on August 20th, 1920? A No, sir, I am not. I am basing it on the receipt he gave me for it.

Q Aren't you basing it partly on the fact that there is such an entry in his book? A No, sir.

MR. WOLF: May I have a piece of paper (addressing the Clerk of the Court).

(Paper was handed to Mr. Fabricant by Mr. Wolf).

Q Have you a pen, Mr. Joice? A Yes, sir.

Q Will you kindly write the name Robert G. Larimer on a sheet of paper, on one of the lines thereon? (Witness complies)

Q And then will you kindly write on the next line, "Received from of J. K. Joice"? (Witness complies).

Q Will you kindly write out on the next line, "In full, \$5,000.00"? (Witness complies).

Q Will you please write the words, on the next line, "To close purchase", and then, if there is another line there, or in

any event, will you write just "R. J. Larimer", and once more, if you please, "R. G. Larimer"? (Witness complies).

MR. FABRICANT: If the Court please, may I offer this in evidence?

MR. DONAHUE: I have no objection, your Honor.

THE COURT: Received.

(The paper above referred to received in evidence and marked Defendant's Exhibit "G").

Q Now in writing the name R. G. Larimer, on Defendant's Exhibit "G", have you written that in your usual style? A I wrote as I ordinarily write. I write strictly a Spencerian system.

Q And concerning People's Exhibit No. 1, I ask you again whether the name R. G. Larimer was written by you or not?

MR. DONAHUE: We have gone over that at least fifteen times. There is no question about it.

THE COURT: Pardon me. Once before you asked him --

MR. FABRICANT: I think, perhaps, I have, your Honor.

MR. DONAHUE: Let the jury look at it.

(Defendant's Exhibit "G" shown to the jury).

MR. FABRICANT: If we are going to have an inspection of the exhibit by the jury, I would like to have an inspection made by them of both exhibits, which are in evidence.

(The jury inspected both exhibits).

(Mr. Joice was withdrawn from the stand, in order to permit on a witness, for the defense, out of order).

THE COURT: Gentlemen of the Jury, this next witness is called by the defense, and he is put on the stand out of the regular order, because it would inconvenience the witness, for reasons which it is not necessary to disclose, to remain any considerable time in the court room. So by an arrangement between Counsel, he is put on out of the regular order. It is really part of the defense.

N E L S O B O S A N K O, called as a witness, on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q What is your name, please? A Nelso Bosanko.

Q What is your business? A Assistant Manager of the Metropolitan Trust Company.

Q Which branch of the Metropolitan Trust Company? A Fifth Avenue.

Q Were you ~~seen~~ on or about August 20th, 1920? A Yes, sir.

Q At that time was there an account in your bank of R. G. Larimer & Company? A Yes, sir.

Q And you are familiar with that account? A Yes, sir.

Q Have you produced here the original deposit slip, bearing date of August 20, 1920? A I have.

Q And were you the one that handled that transaction at the time? A Yes, sir.

Q Will you please produce that deposit slip? A Yes, sir.
(Hands a deposit slip to Mr. Fabricant).

Q Now is there any of your handwriting on that deposit slip? A No, sir.

Q You see the words "Bank of Manhattan" written opposite the figures \$5,000 there (indicating)? A Yes, sir.

Q What does that deposit slip indicate to you, sir? A It indicates that there were two checks, one of \$5,000. and one of \$1,000 deposited to the account of R. G. Larimer & Company on that date.

Q And does it indicate whether it was cash? A Indicates it was not cash. One check of \$5,000 on the Bank of Manhattan Company, and one check of \$1,000 of the Western Union Telegraph thereon on the Liberty National Bank.

MR. FABRICANT: I offer that in evidence as Defendant's Exhibit "H".

(Received and marked Defendant's Exhibit "H").

Q Is there any other deposit of \$5,000, appearing to the credit of R. G. Larimer & Company during the month of August, 1930?

A Yes, sir, on August 6th, there was a deposit from the Philadelphia National Bank to that account.

Q That was on August 6th? A Yes, sir, August 6th.

Q Any other deposit of \$5,000 in the vicinity of August, 1930? A No, sir.

MR. FABRICANT: That is all.

CROSS-EXAMINATION BY MR. DONAHUE:

Q Have you brought a transcript of his account? A Yes, sir.

Q An exact transcript? A Yes, sir.

MR. DONAHUE: I offer it in evidence.

MR. FABRICANT: I object to the whole account going in evidence. I do not see that it has any relevancy in this case.

THE COURT: I do not think it will prejudice you. I will receive it.

MR. FABRICANT: I do not want to burden the record.

THE COURT: It may have some utility.

(The account referred to received and marked People's Exhibit No.7).

Q What is the name, please? A Nelson Bosanko.

Q You were well acquainted, were you not, with Robert G. Larimer? A No, sir.

Q You knew him at the bank? A Yes, sir.

Q Had heard of him? A Yes, sir.

Q Have heard of him since? A Yes, sir.

Q Did you have any business relations with him? A No, sir. I did not.

Q Now when was this account opened, Mr. Bosanko, can you tell us? A I cannot tell you -- June 7, 1920.

Q Can you tell us when it was closed? A February 15, 1921.

Q Now, in all that time, Mr. Bosanko, will you please tell

us when there was a deposit made of an amount of \$5,000; how many times? A There was one made on July 7th; one on August 7th.

Q Yes. A One on August 20th, in a total of \$8,000; one on September 16th. Now there are odd amounts here, for instance, \$5,700 -- do you want those?

Q How many altogether over \$5,000 in one deposit? A Seven.

Q Seven altogether? A Yes, sir.

Q Now, Mr. Bosanko, are you familiar with Mr. Larimer's handwriting? A Yes, sir.

Q And are you familiar with the check books that your company issue? A Yes, sir.

Q Will you kindly look at this book and tell me whether that is a check book issued by your bank? A Yes, sir, that is.

Q And was that the account book that was opened in your bank during the months of July, August, September and August, of 1920?

Q THE COURT: Mark it for identification.

(The account book referred to received and marked People's Exhibit No. 8 for identification).

Q Do you know what happens to a check, Mr. Bosanko, after it is deposited to the credit of the depositor in your bank?

A Yes, sir.

Q Tell us who it goes to, particularly? A It would clear first through our main office. All collection items are sent to our main office for collection.

Q That is downtown? A Yes, sir. They forward the check s

to the various collection agencies which we have in any city in the country. That agency would send the check to the bank in their city on whom it was drawn and give our main office credit for it. Our main office would give us credit for it.

Q Where would the check finally wind-up? A Whatever bank it is drawn on and then charged to the customer.

Q And then after that the usual custom is to return it to the drawer? A Yes, sir.

Q That was a fairly lively account, was it not, Mr. Bozanko? I mean deposits and credits were being made all the time? A No, I would not say that, sir.

Q How much was the balance on an average every day? It was a very hard account to average.

Q In other words, it was a very lively account? There were checks out against it all the time?

MR. FABRICANT: I object to that, roaming into other fields. Utterly irrelevant in this case.

THE COURT: Yes.

Q Can you give us any idea of what the balance was on deposit to the credit of Robert G. Larimer & Company, on or about August 20, 1920?

MR. FABRICANT: I object to that.

THE COURT: Sustained.

MR. DONAHUE: If the Court please, that will all go to show -- this is part of the defense. This is cross-examina-

examination. I want to show the financial condition of the defendant at that time.

THE COURT: Objection sustained.

MR. DONAHUE: That is all.

RE-DIRECT EXAMINATION:

Q Just a moment. I want to ask you if you have any idea of finding out who the drawer on the Manhattan Bank was of the check which was deposited on August 20th? A That would be a very hard thing to do. I have an idea, if my memory serves me right, that that check was a bank check on the Bank of Manhattan. If that were the case, it would be very easy to find out.

THE COURT: When you say you have an idea, do you mean to say that is a matter of personal recollection with you?

THE WITNESS: Yes, sir.

Q Well, I show you a paper and ask you whether this paper refreshes your recollection? A (after examining a check) --

MR. DONAHUE: Will you have it marked for identification, Mr. Fabricant?

MR. FABRICANT: Not just now unless it refreshes his recollection.

A No, sir, I don't remember that, but evidently I am wrong in my assumption, if that is a copy of that check.

THE COURT: Mark it for identification.

(The check referred to received and marked Defendant's Exhibit "I".

THE COURT: You mean to say now, in the light of the check which has been handed to you for identification, you believe

you were in error when you said you had a recollection?

THE WITNESS: Yes, sir, I do.

THE COURT: That a \$5000 check was a bank check?

THE WITNESS: Yes, sir.

THE COURT: Your present recollection is that it is not?

THE WITNESS: If that is a correct copy of that check,
yes, sir.

Q Whatever check it was that was deposited in your bank, on
that day, would bear some stamps of some sort, put on by your bank?

A It would.

Q What sort of stamps? A Bearing our Second Teller's stamps.

Q Do you know how that reads? A I believe, "Through the
New York Clearing House. Metropolitan Trust Company. The date.
Second Teller.

Q And the usual endorsement by the Clearing House? A The
Clearing house would not have to endorse it. There would be the
paid stamp on it of the Bank of the Manhattan Company.

Q You think if you saw the original check, that went through
your bank, you would be able to recognize it? A No, sir, I cannot
say I would.

Q Would you recognize the endorsement? A Yes, sir.

BY MR. DONAHUE:

Q You say, Mr. Bosanko, your recollection is that this was
a bank check? A Yes, sir.

Q That is your recollection? A Yes, sir.

Q Was your recollection refreshed by showing you this piece of paper that Mr. Fabricant just showed you, or have you still the recollection that it was a bank check? A The recollection, if that is a copy.

Q Now does that check refresh your recollection? A No, sir.

Q Now your recollection, independent of that, is that this was a bank check? A Yes, sir.

Q Now will you kindly tell the jury what a bank check means?

A A bank check is the same as any other check, only that it is drawn on the bank itself, and is just as good practically, as a check, or as a certified check.

Q Mr. Bosanko, isn't the usual way to get a bank check to go into the bank and deposit the cash and ask them for a check? A Yes, sir.

MR. FABRICANT: Will you be available later?

THE WITNESS: I hope so. I don't know about this afternoon.

Q Now, Mr. Bosanko, a stranger can walk into a bank, any bank in the City of New York, and if he has \$5,000, in cash, they will give him \$5,000.00 for it? A Ordinarily they will.

BY MR. FABRICANT:

Q You have no recollection of what that was? A No.

Q You could not swear it was a bank check? A No.

Q Would you say it was a check drawn by the Roberts Numbering Machine Company on the Manhattan Company Bank for \$5,000.00,

to the order of R. G. Larimer? A No.

Q You really have no recollection about the exact character of that check, or who the maker was? A Exact, no; if it were exact, I don't think it would be a recollection.

Q And if this paper shown to you, and marked Defendant's Exhibit I for identification is a true copy, then your recollection --

MR. DONAHUE (Interrupting) I object to that.

THE COURT: Sustained.

MR. FABRICANT: May I ask him a hypothetical question?

THE COURT: You have already asked him one. I thought it was open to objection, and I have sustained the objection.

MR. FABRICANT: That is all.

J O H N K. J O I C E, resumes the stand, and testifies as follows:

CROSS-EXAMINATION CONTINUED BY MR. FABRICANT:

Q Now, Mr. Joice, I am going to ask you to write another name on this Defendant's Exhibit "G", and I am going to ask you to keep in your eye the signatures appearing on People's Exhibits Nos. 1, 2 and 5, and I also ask you to try your very best to imitate these three signatures?

MR. DONAHUE: I object to that. I do not think we are here to amuse the jurors by asking him to imitate signatures.

THE COURT: Objection sustained?

MR. FABRICANT: To which I respectfully except.

I am not trying to amuse the jurors.

THE COURT: I have sustained the objection. That does not mean to say I approve of the comment made by the Assistant District Attorney.

Q Mr. Joice, you wrote on August 14th on Defendant's Exhibit "B" -- A

MR. DONAHUE: Mr. Joice, may I ask if you tried to imitate any of these signatures?

THE WITNESS: No.

Q (continued) You wrote then the following language -- "I want to be perfectly fair; I may be a little foolish, but you may get into a lot of trouble with the Triangle Equipment Company with loose letters. I want to leave the proposition in true shape; that the funds belong to me. You are acting as my agent, so that they cannot come in and attach them." What was there in your mind about some one attaching these funds, when you wrote that? A Well, there was a suit by Lewis against Larimer. They had him arrested for misappropriating the funds --

Q I am asking what there was in your mind at that time?

THE COURT: Just listen to the question and answer it.

A I learned of a suit against Larimer, and he was arrested for misappropriating the funds.

Q In a civil suit? A No, sir, he was arrested, and I also learned that his relations with the Triangle Equipment Company were not what he had told me they were; that he had no rights to the contract; that the Triangle Equipment Company had bought the material, and he had not bought it from the Government. All

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different from what he started in to operate under. I don't know what they might do; they might go in and attach the account as against Larimer.

Q So that is what you wrote to him on August 14th? A Yes, sir.

Q So on August 20th you gave him \$5000? A For the special purpose of going over and buying the balance of interest in the pipe.

Q And you gave him that, knowing he had misrepresented the whole transaction to you? A Yes, sir.

Q And knowing he had been arrested for misappropriation? A Yes, sir.

Q And knowing he had flimflammed the whole from the beginning to the end? A I didn't know he had flimflammed me. He said he had \$20,000 on deposit in Norfolk, and I relied on that.

Q And after him giving you a check for \$5000 on August 24th, you knowing afterwards that check was drawn against an account that had no funds? A No, I didn't.

MR. DONAHUE: That is an assumption. He said the check had not come back at that time.

Q You learned after you had deposited the check---

THE COURT: I think it is all argument.

Q You did learn of some check, did you not? A I learned there was not funds to cover the check.

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Q After you learned that, and after all that had happened, you included \$5000 which you say you gave him, \$5000 in your account with him?

MR. DONAHUE: I object. There is no account.

THE COURT: Sustained. You have all that in evidence.

MR. FABRICANT: Your Honor does not rule it out as incompetent?

THE COURT: I rule it out as incompetent, because of repetition.

MR. FABRICANT: That will be all.

REDIRECT EXAMINATION BY MR. DONAHUE:

Q Now, Mr. Joice, from the beginning of your transactions which I understand started March 3, 1930, and ended September 23rd, 1930, were you ever at any time ahead of any of the money you had given him; had you at any time gotten more than you had given him?

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

THE COURT: Sustained.

Q Did you ever get any profit on any of these transactions at all?

MR. FABRICANT: I object on the same grounds.

THE COURT: Objection sustained.

MR. DONAHUE: Your Honor has allowed Mr. Fabricant to ask these questions. He has been calling these returned

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moneys, profits.

THE COURT: This witness has already testified he never made any book entries respecting profits, and that all the moneys that he received from the defendant, he applied on account of some which he says the defendant owed him for moneys which he said he loaned to the defendant, applying each payment to the oldest item of indebtedness.

MR. DONAHUE: Even at that, there would not be one item which showed a profit, if he said all the moneys he received in consideration of the amount he passed out to Larimer.

THE COURT: You have in evidence, I don't think it would make much difference whether produced on cross examination or direct, what purports to be a statement of the amount that the witness advanced or loaned to Larimer, and the amount which it was said by the witness, Larimer paid to him as the difference. There is not any particular object to be gained in treating of it.

Q Now, just how many distinct transactions did you have Larimer,---do you know this paper? (Showing witness a paper)

A Yes, sir.

Q I mean, keep in mind the specific contract? A Six.

Q And were they all contracts that somebody either had with the Government, or the Government had with somebody, which Larimer said he had the right of assignment, or a right of action

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in them? A No, sir, they were not.

Q What were they? A The first one, copper wire was bought and sold.

Q The first one was copper wire contract, with whom? A The first proposition was copper wire, bought from the Emergency Fleet and sold to the General Electric Company.

Q When you say the Emergency Fleet, that is a branch of the Government, is it not? A He didn't buy from the Emergency Fleet.

Q Just let us get down to fundamentals, Mr. Joice.

THE COURT: Will you have the kindness, and briefly, to tell us what what first transaction was? Now put it in to plain language, so that these twelve men can understand you.

THE WITNESS: He bought and sold some copper wire.

BY THE COURT:

Q Who bought and sold? A Mr. R. G. Larimer bought some copper wire from some people down at Lebanon, Indiana.

Q Who did he buy the copper wire from? A Lebanon-Franklin Traction Company.

Q Whom did he sell the copper wire to? A The General Electric Company.

Q And what was your interest in that transaction? A I was to be returned my funds, and fifty percent of the profits.

Q In other words, you loaned or advanced to Larimer the

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money to buy that copper wire? A Yes, sir.

Q On the understanding that when he sold the copper wire, you were to get back the money that you had loaned, had advanced to him, and onehalf of the profit on the transaction? A Yes, sir.

BY MR. DONAHUE:

Q How much did you advance to him? A \$3100.

Q How much did you get back? A \$3100.

Q That amount is all right? A Yes, sir.

Q That was squared up? A Yes, sir.

Q What was the second account you had with him? A Nails and spikes.

Q From whom to whom? A I advanced \$3000. He told us he bought it from the Shipping Board and had sold it to some firm in Philadelphia. There was never any such transaction--

MR. FABRICANT: I object.

THE COURT: Strike out the answer.

Q Who was that contract with, did he say? A He said he was buying from the U. S. Shipping Board.

Q And you advanced how much? A I advanced \$3000.

Q How much did you get back? A \$3000.

Q That amount was squared up? A Yes, sir.

Q What was the next amount? A The locomotive train.

Q How much did you advance on that? A \$1450.

Q And how much did you get back? A Paid back \$1450.

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Q He paid back \$1450? A Yes, sir.

Q That was the third, or was it the fourth? A 800 tons of steel rail.

Q Who was the contract from, did he say? A Levis.

Q Not what you said, what he said? A Levis & Company.

Q With whom, with Larimer? A He sold---no, Larimer bought it from Hyman Michaels and sold to Levis & Son.

Q How much did you advance on that? A \$3000.

Q How much did you get back? A I got it all back.

Q All even on that? A Yes, sir. Make that last transaction read \$3250.

Q What was the next transaction? A The next transaction was iron pipe.

Q And who was that contract with, did Mr. Larimer say? A The United States Government.

Q And how much did you advance on that? \$14250.

Q \$14250? A Yes, sir.

Q How much did you get back? A None of it.

Q What was the sixth contract? A The contract that Gleason had an interest in, 1500 tons of pipe.

Q How much did you advance on that? A \$5000.

Q How much did you get back on that? A None of it.

Q What was the next transaction? A That is all.

Q How long did you know Larimer altogether? A I met him a few days before March 2nd.

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Q And almost immediately after you met him, was he the one who discussed the proposition? A He agreed the first day that I would give him money and he would handle the copper.

Q And was it because of what he said to you? A Yes, sir.

Q You relied on what he said? A

MR. FABRICANT: I object to that as not being within any of the issues.

THE COURT: Sustained.

BY THE COURT:

Q Now, in each of these separate transactions the defendant purported to buy merchandise, with the exception of the very last one where he purported to buy an interest in the contract, isn't that so? A Yes, sir.

Q And in every other instance, except the last, he purported to be able to sell to some named concern, and the understanding was that you were to get back the amount that you had advanced or loaned and one-half of the profits made? A Exactly.

BY MR. DONAHUE:

Q Mr. Joice, are these amounts that are set forth in defendant's exhibit F, as being repayment, the correct amount and the correct days on which you received those amounts? A Yes, sir.

Q Those amounts are correct and you received those amounts of money? A Yes, sir.

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Q In what form, check or cash, do you recall? A They were all in checks.

Q Signed by him? A R. G. Larimer.

Q And deposited where by you, in your own bank? A My own account.

Q Did you ever have an account, Mr. Joice, in the Metropolitan Trust Company? A No, sir.

Q Now you mentioned the word "settlement" of Mr. Gleason's contract, in answer to Mr. Fabricant's question; did you mean by that a money settlement, or did you mean an assignment was going to be taken over?

THE COURT: Ask him what he meant by that?

Q What did you mean by the word "settlement" when you spoke of Mr. Gleason's interest in that contract, where you gave \$5000 to be disposed of by the payment of that \$5000? A

Take over the contract and pay for it and make settlement in full.

Q To get rid of him? A Yes, sir, as far as his interest was concerned.

Q In other words, you wanted to get all of it? A We wanted the interest, so that we could handle it jointly.

Q When you gave over that \$5000, you understood that would give you the entire interest in the contract? A Absolutely.

Q That is, you and Larimer? A Both of us jointly. for half of the profits each.

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Q I understand, Mr. Joice, you have a son who lives in Washington? A Yes, sir.

Q That is the son you spoke of to Mr. Fabricant as presenting the check, People's Exhibit 3, and which was refused? A Yes, sir.

Q Now did he tell you at any time what he did with this money you had given him?

THE COURT: Referring to the \$5000.

MR. DONAHUE: Well, referring to all of it, sir.

MR. FABRICANT: I object to all of this.

Q Well did he say what his financial condition was on or about September 5th to 6th, 1930?

MR. FABRICANT: I object on the ground that it is irrelevant.

THE COURT: I will allow it.

THE WITNESS: He told me to come over to Philadelphia.

THE COURT: Just yes or no.

Q Did he say what it was? A Yes, sir.

Q Did he have any money or was he broke or prosperous, or what?

MR. FABRICANT: I object to that.

THE COURT: Sustained.

Q What did you say was his financial condition?

MR. FABRICANT: I object to that on the same ground, if the Court please.

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THE COURT: Well I don't see how it is material.
It is after the date.

MR. DONAHUE: I want to show, if I can, what he did with the \$5000 he received. I can show what he did with it. I will put another question, I will withdraw that.

THE COURT: I do not see it is material, as long as there is no contention that the defendant denied he got the money. That is my understanding of his defense, isn't that so, Mr. Fabricant?

MR. FABRICANT: Yes.

MR. DONAHUE: Your contention is that he did not get the money at all?

MR. FABRICANT: Not on August 30th. That is the defendant's claim.

Q Did you ever see people's exhibit No. 8 for identification before? A Yes, sir.

Q Where did you get it from? A From Mr. Larimer's office.

Q Did he give you it himself? A No, he gave me an order for it.

Q Where was his office? A The Real Estate Trust Building, Philadelphia; 900 I think is the number of the room, something like that.

THE COURT: In Philadelphia?

THE WITNESS: Yes, sir, in Philadelphia.

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MR. DONAHUE: May I have the book marked for identification.

(The book above referred to is received and marked People's Exhibit No. 9 for identification.)

Q Did you ever see People's Exhibit No. 9 for identification before this morning? A Yes, sir.

Q Where did you see that? A I saw it first in R. G. Larimer's office.

Q Where is that? A 900, I think that is the number, Real Estate Trust Building, Philadelphia.

Q Did you take possession of it at that time? A Yes, sir.

Q After you took possession of that book did you turn it over to the District Attorney? A Yes, sir, later.

Q Did you make any changes in the book while in your possession? A No, sir.

Q Did you make any change in this book while you had it in your possession?

THE COURT: Referring now to what?

MR. DONAHUE: People's Exhibit 8, sir.

Q Did you go over these books at any time with Mr. Larimer? A Yes, sir.

Q Did you go over any particular items in the book? A The special account; his expense account.

Q Did you go over this particular page, Mr. Joice?

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THE COURT: Page number.

MR. DONAHUE: Under the letter "J."

Q Did you go over an account with him? A Yes, sir.

Q Did you have any talk with him in regard to that particular account? A No special reference, except to find out--

Q Just tell us what he said?

THE COURT: That is all.

A No, we never discussed the special or the particular page.

Q On that page, was that in the same condition when you received it from Mr. Larimer? A Yes, sir.

Q And when going over it with Mr. Larimer, as it is now? A Yes, sir.

RECROSS EXAMINATION BY MR. FABRICANT:

Q Joice, you said a little while ago you were looking at a sheet from which you refreshed your recollection, that you advanced \$5000 to Mr. Larimer on account of this Gleason contract?

A Yes, sir.

Q Can you tell us when that \$5000 was advanced by looking at that? (Referring to paper) A On August 30th.

Q Wasn't there a \$5000 item that you advanced to Mr. Larimer on July 17th, under the Gleason contract? A No, sir, July 7th.

Q July 7th, I mean? A Yes, sir.

Q Isn't that the \$5000 that you refer to when you say you advanced \$5000 to him on the Gleason contract? A No, sir.

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Q You did advance \$5000 on July 7th on the Gleason contract? A For the specific purpose of putting the money into Norfolk, to handle this pipe.

Q To handle this pipe? A Yes, sir.

Q When he told you he had a contract with Mr. Gleason for that? A Of 1300 tons of pipe, yes, sir.

Q Have you any entry in your document from which you refresh your recollection, as to the additional payment of \$5000 to Mr. Larimer on account of the pipe transaction with Gleason? A Not on that transaction, but on account of the balance of the pipe, the 1500 tons that was ostensibly sold to the Argentine Government.

Q Just tell me how many entries have you in your sheet there of advances of \$5000 on account of the contract of pipe that he had with Gleason? A I had \$5000 advanced for the pipe that was going to the City of Norfolk, and \$5000 that was to be handled for the pipe for the Argentine Government.

Q He told you the pipe he was buying from the Government was to be sold to the ^{City of} Norfolk? A Yes, sir.

Q And he and the Triangle Equipment Company had a joint interest in that transaction? A I was told that.

Q And what made you put your first \$5000 in that transaction, was it to get half of the profits that Larimer might make in that transaction?

MR. DONAHUE: Which \$5000 are you speaking of?

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Q The first \$5000 dated July 7th, 1920? A Yes, sir.

Q That is what you put that in for? A Yes, sir.

Q That transaction went on from time to time? A Yes, sir.

Q And then you say you advanced \$5000 more on August 20th?

A Yes, sir.

Q That was for what? A To buy out Gleason's interest.

Q Then you intended, instead of having a quarter profit, to get half of the profit that might be made on the entire transaction? A Yes, sir.

Q That is what it amounted to? A Yes, sir.

Q Did you contemplate the possibility of a loss in that transaction at all?

MR. DONAHUE: We have gone all over that.

THE COURT: Yes.

MR. FABRICANT: I want to ask one question.

THE COURT: I think you have asked it already.

MR. FABRICANT: Won't your Honor allow me just one question.

Q Did you contemplate the possibility of a loss?

MR. DONAHUE: I object to that. He has already said this, and that he was satisfied to take his chances.

THE COURT: I think we have got it in.

Q Did you expect, Mr. Larimer, to advance any part of the loss that might be sustained in that transaction?

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THE COURT: He has got it in evidence.

MR. FABRICANT: I don't think he has.

MR. DONAHUE: He said he took a chance in with Larimer.

THE COURT: If there was a loss in the transaction, did you expect to bear all the loss, and was the loss to be shared according to your agreement?

THE WITNESS: I would have borne all the loss.

BY MR. FABRICANT:

Q Did you testify some time earlier in the trial that Mr. Larimer would share half of the loss, and that was understood when you went into this transaction?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q Was it so understood?

MR. DONAHUE: I object.

THE COURT: I think we have been all over it, Mr. Fabricant. I don't think you are bringing out anything additional. You examined him at considerable length, very properly, on this subject. The record will show that.

MR. FABRICANT: I don't remember the answer to that particular question. I just wanted to refresh my recollection, as I have no recollection on it.

THE COURT: I think you asked it.

MR. FABRICANT: That is all.

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A L B E R T F. D E X T E R , called as a witness on behalf of the People, being duly sworn, testified as follows:

(Sherman Square Hotel, New York City)

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Dexter, what is your business? A I am not engaged in any particular business at present.

Q Were you associated at any time with Mr. Joice? A Yes, sir.

Q In what way? A Assisting him in disposing of surplus raw material for which he had negotiated.

Q Did you know during that period, Mr. Larimer? A Yes sir.

Q Robert G. Larimer? A Yes, sir.

Q Can you recall when it was Mr. Joice met him? A I cannot remember the date.

Q Approximately? A Well, it was in the spring of the year, this spring.

Q Were you familiar, Mr. Dexter, with what was known as a Gleason proposition? A Yes, sir.

Q And did you know that Mr. Joice and Mr. Larimer had been engaged in a proposition of that kind? A I did.

Q And do you recall Mr. Larimer talking to Mr. Joice some time in the neighborhood of August 16th or 17th of 1920 on that subject? A yes, sir.

Q Do you recall that it was in reference to an assign-

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ment, or a contract---something of that kind? A You mean ^{with} the Triangle Equipment Company?

Q Yes, on August 16th or 17th of 1930? A I don't remember the exact date. I remember several conversations that occurred in Mr. Joice's office ~~in~~ regarding that contract.

Q And do you recall any amount being mentioned of \$5000?

THE COURT: Do not lead him now, at all.

Q Do you recall any talk of money? A Yes, sir.

Q Go ahead and tell us what was said, what Joice said and what Larimer said? A I remember Mr. Larimer saying we could buy out Mr. Gleason's interest for \$7800. I think that is the amount.

Q Go ahead. A (Continued) And wanted Mr. Joice to assist him to do it. Mr. Joice told him if he could do it, he would help him.

THE COURT: Don't lead him. Give us all of the talk, Go ahead, Mr. Dexter. Tell these twelve gentlemen all the talk you heard on that subject between Mr. Joice and Mr. Larimer.

A There were several conversations in regard to it.

Q Pick out the first one on that subject?

THE COURT: Take them one at a time and tell everything.

A The negotiations had been going on for some time and delays had occurred, but up in August, Mr. Larimer told him that he

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thought he could sell the balance of the pipe. The balance that was left after that portion being sold to the City of Norfolk, and that there was a nice profit in it, and that he wanted to buy Gleason out, representing the president, as I understand, the president of the Triangle Equipment Company.

Q We don't want you to understand. A (Continued) Mr. Joice said he would ask him if he could buy him out.

Q Did Mr. Larimer say how much he wanted? A If I remember correctly he said \$7800.

Q Did he say how much he wanted from Mr. Joice? A That I don't recall. I don't remember the exact amount.

Q Did you hear any further talks after that? A Well, I don't recall any further talks after that.

Q Did you hear Mr. Larimer say how this was to be done?

A No.

BY THE COURT:

Q Where was this talk you told us about? A Mr. Joice's office.

Q And where was Mr. Joice's office? A 50 East 43rd Street.

Q Was this talk in the afternoon, or the morning of the day, if you remember? A I don't remember.

Q Who was there at the time of the talk? A I don't think there was anybody there except Mr. Joice, Mr. Larimer and myself.

Q And how did the talk begin? A It began by Mr. Larimer

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saying that he had an opportunity, he thought he could buy Mr. Gleason's interest out, and it would be a good thing to do.

Q When he said that what did Mr. Joice say, if anything?

A Mr. Joice was in favor of doing it.

Q What did you say? A He said he would ask him to do it.

Q And when Mr. Joice said that what did Mr. Larimer say?

A He said he would proceed to negotiate for this interest.

Q And then what did Mr. Joice say? A I cannot remember the exact language that was used, but the impression on my mind---

Q How long did the talk last? A A little over a few minutes; it was not a long talk.

Q And then what happened at that time, if you remember?

A The transaction didn't occur; nothing was done, nothing further than an agreement to go ahead.

Q In writing? A No, sir, I don't think it was put in writing, not in my presence.

Q How long after that was it before you next saw Larimer, about how long? A I saw him almost every time he came to New York from Philadelphia.

Q About how long was it after this talk that you next saw Larimer? A I don't remember.

Q Next day? A I would not say.

Q Did you hear any second talk, say after the one that you have given us, between Mr. Joice and Mr. Larimer, regard-

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ing this same matter? A I don't recall that I ever did.

Q In other words you heard on or about August 20th a talk? A Yes, sir.

Q And you have given us the substance of that talk? A Yes, sir.

Q You saw no writing at that time? A No, sir.

Q I take it, Mr. Joice had in his office a safe? A Why he had some boxes there, not a regular safe. He had metal boxes, better files.

Q What kind of work did you do for Mr. Joice at that time, keep any books for him? A No, sir, I did not; he had a bookkeeper.

Q What was the name of the bookkeeper? A Miss Smith.

Q And your work was office work, or outside work? A Outside work, assisting him in the handling.

Q Not office work? A At this time I was connected with Mr. Joice, acting under a power-of-attorney for him, to conduct his business for him, in his business at the coast. That is the way I happened to be interested in this matter of Mr. Larimer.

Q And the business that you did for Mr. Joice was, to a considerable extent, done outside of the office and not inside? A Yes, sir.

Q And you were not the keeper yourself of any books? A No, sir.

Q You say there was no safe in the office? A No regular

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safe, what you might call a safe; there was some metal boxes.

Q Do you happen to know whether Mr. Joice had any bank account in the month of August? A Yes, sir.

Q Do you happen to know what bank he kept his account in? A Yes, sir.

Q Whereabouts? A The Harriman National Bank. I was with him when he opened the account and introduced him at the bank.

Q As far as you know that is the only bank in which he had a deposit account? A At that time, yes, sir.

Q And when you refer to that time you refer to the month of August? A Yes, sir.

Q Am I right in saying it was August, 1930, Mr. Donahue?

MR. DONAHUE: Yes, your Honor.

THE WITNESS: Yes, sir.

Q Any considerable sums of cash kept in the office during August, 1930? A Never any currency kept in the office except when Mr. Joice was there, he frequently carried quite large sums in his pocket.

Q In other words he might come in with a considerable sum of money, quite a large sum, in his pocket? A Yes, sir.

Q But aside from that, money was not kept in the office? A No, sir, it was not.

Q During the month of August? A No, sir.

Q Were you present at any time in the month of August

when any money or any checks passed, either from Mr. Larimer, or Mr. Joice, or from Mr. Joice to Mr. Larimer? A I think that I deposited a check of \$3000 from Mr. Larimer; I think it was in August.

Q Do you remember being present at the time of ^{the} reception by Mr. Joice of that check? A I do not recall his receiving it. I often deposited a check of \$5000, and the day that I deposited it, I received a telegram from Mr. Larimer telling me not to deposit it, and I went over. In the meantime the check was protested, came back protested. I think it was \$3000. I went over to the bank and withdrew the deposit of \$5000 which I had made before it went through.

Q Is this the \$3000 check you refer to, People's Exhibit No. 5? A I should say it was, yes, sir; that is my endorsement on that.

Q In your own handwriting? A Yes, sir.

Q All of it? A Yes, sir, by Robert S. Dexter, attorney.

Q And is People's Exhibit No. 3, the check you referred to, the one you offered for deposit and then you withdrew it the same day? A Yes, sir.

Q Did you endorse that check? A No, sir.

Q Who did? A Mr. Joice himself.

Q In your presence? A Well I would not say it was in my presence, but I know it is his handwriting.

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BY MR. DONAHUE:

Q You don't know what Mr. Joice did with these large sums of money he had in his pocket, at various times? A No, sir.

Q You don't know whether he carried them in his pocket, or kept them in his bank, or put them in a safety deposit vault?

A I know he had a safety deposit vault. I protested against him carrying so much money in his pocket, and told him it was a mistake.

Q Was it a habit of Mr. Joice to carry large sums of money?

A About that time, yes, sir.

CROSS EXAMINATION BY MR. FABRICANT:

Q Did Mr. Joice ever take other than large sums of money you spoke of; did Mr. Joice take out any of those sums of money?

A Take out from where, out of his pocket? A

Q Yes. A Well, he never took out the whole amount; he would take out a bill from his pocket frequently.

Q You say large amounts. I would like to get an idea of what you mean, if you know? A Several thousand dollars at a time that I know of he is carrying in his pocket in an envelope.

Q You mean two or three thousand or four thousand dollars?

A Yes, sir, more than that, at times.

Q Did it ever run up to fifteen or twenty thousand dollars? A That I would not say; I don't know that it did; I wouldn't know one way or the other.

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Q About August, 1920, about the twentieth of that month, you say you remember conversations with Larimer and with Mr. Joice? A Yes, sir.

Q And you say that Larimer started the conversation by saying that he wanted to buy out Mr. Gleason's interest? A He could buy him out, if he wanted to do so.

Q Did he say he wanted to buy it for himself or for Mr. Joice? A He thought it would be a good thing to do it, so as to acquire the balance of this pipe contract.

Q Did he say from whom he was going to buy it? A He said he wanted us to buy it; he wanted Mr. Joice to help him out on it.

Q To help him buy it? A Yes, sir, to buy this interest.

Q Were you there when the conversation ended? A Well I wouldn't say; it is a little bit long, of course it is some time ago; I wouldn't say I was there when the conversation ended but I heard that part of the conversation.

Q Well, did these two gentlemen leave before you did, or did you leave before they did? A I don't recall.

Q What is your best recollection, were you there during the entire talk? A I think I was there during all that entire conversation, that is my impression.

Q Did you see Mr. Joice take out \$5000 and give it to Mr. Larimer?

MR. DONAHUE: I object to that. He has already

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said he didn't see it.

THE COURT: I think he testified that he didn't see it.

MR. DONAHUE: Why waste time on that. He said he didn't see. He was not there when that happened.

Q Now was there a bookkeeper there at that time? A whether There was in the office, ~~as~~ she was in that room or not, I don't know.

BY THE COURT:

Q How many rooms did Mr. Joice occupy at that time? A Two rooms.

Q They were communicating rooms? A Yes, sir.

Q And your desk was in the room where the bookkeeper was, or in the other room? A Well I occupied both desks, different times.

Q In other words, there were two desks, one desk in one room and one desk in the other; is that so? A Yes, sir, that is right, and a table in the larger office.

Q And the bookkeeper, Miss Smith, you don't know her first name? A Mary, I think it is.

Q Do you know her address? A Yes, sir.

Q Whereabouts does she live at present? A Well I have got it here, if you will pardon me. (Consulting memorandum).

A (Continued) 425 West 75th Street.

BY MR. FABRICANT:

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Q Didn't Mr. Joice have stationery and facilities in his office for writing? A Stationery?

Q Yes. A Yes, sir.

Q He also had telegraph blanks there, didn't he? A Yes, sir.

Q You didn't see any writing of any kind on the day you say this occurrence took place? A I don't recall having seen any.

Q Mr. Larimer came in a few days after, did he not? A I saw him after this conversation, I don't remember what day; I don't remember whether the next day or several days following.

Q Do you remember getting this check, People's Exhibit No 5, dated August 24th? A \$3000?

Q August 24th^{is} the date following the date when this contract took place between Mr. Joice and Mr. Larimer?

MR. DONAHUE: I object to that, what conversation he means, the transaction or the signing of the paper.

THE COURT: I think the date of the alleged transaction was August 20th.

MR. DONAHUE: No question about that, your Honor.

THE COURT: And August 21st, naturally, is the day after.

MR. DONAHUE: Your Honor will recollect this defendant testified to a conversation.

THE COURT: The talk that you refer to, about when

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in August was it?

THE WITNESS: Well, it was somewhere around the middle of August, it was after Mr. Joice returned from the West; that is about how I locate the date.

THE COURT: In order to fix the date with respect to the withdrawal by you from the bank of the \$5,000 check, which you have spoken about, when was this talk, having in mind that you went to the bank and withdrew a \$5,000 check; when was the talk?

THE WITNESS: Well I don't remember, your Honor, whether it was before or after; I could not say.

Q Well, the check for \$5,000 was, I understand, given to you by Mr. Joice? A Was given to me by Mr. Joice, to deposit it.

Q And you deposited it the same day? A The same day he gave it to me I deposited it and withdrew it the same day.

Q When had Mr. Joice come back from the West? A I cannot remember the date.

Q Was he in New York on August 16th? A I think he was---I cannot remember; there is nothing to aid my memory.

BY THE COURT:

Q Have you any means of refreshing your recollection? Is there any paper that you could look at that would refresh your recollection? A I could have told exactly if my

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book had not blurred so much, that I cannot make out the dates; I had the figures all down here. (Referring to a memorandum book and handing same to the Court, who examined it). I put it down in lead pencil, and it blurred.

Q Are these dates in this memorandum book purporting to follow one another consecutively? A Yes sir.

Q Were the different entries made on the dates they purport to show? A Yes sir, they were.

Q In other words, you, on the day referred to made certain entries in this memorandum book; all the dates in August, in this memorandum book? A Yes sir.

Q Do not appear to be blurred? A No sir, they do not; all in August.

Q Now look at that book; does that refresh your recollection as to the day when Mr. Joice came back from the West? A (After examining) I think Mr. Joice had returned from the West, but he made a trip soon after to Chicago; he may have been in Chicago.

Q He may have been in Chicago when? A He may have been in Chicago on the same date; I would not say.
BY MR. FABRICANT:

Q You remember there was something about a check of \$3,000 that Mr. Larimer had given, and that check was protested? A If I remember rightly that check was protested.

Q Now do you remember also a \$2,000 draft that had

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been given by Mr. Larimer and which hadn't gone through yet?

A At that time?

Q Yes? A I don't remember; I don't recall.

Q Let me show you a paper and see if you recognize that.

(Handing witness a paper). A Yes sir.

Q That you recognize? A That I collected.

Q Now do you remember anything about that paper, now that you recollect the paper itself? A I don't remember whether Mr. Larimer gave me that in person, or whether he sent it to me, but I remember that I paid \$2.50 collection fee on it.

Q Do you remember whether there was any question about that draft being paid? A No, I don't.

Q Do you remember Mr. Joice writing to Mr. Larimer that there had not been any report at the bank concerning the payment of the \$2,000 draft?

MR. DONAHUE: What Exhibit is that?

MR. FABRICANT: Reading from Defendant's Exhibit B.

A On what date was that?

Q Written by Mr. Joice on August 14th. A No sir, I don't recall anything of that kind; I don't remember those facts, no sir.

Q You notice the date of payment of that draft that you hold in your hand? A Paid in August. I don't see the date here.

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Q There is an arrow there that points to the date August 12th? A It is dim---yes sir, August 12th.

Q Now, when Mr. Joice gave you the \$5,000 check, People's Exhibit No. 2, did you have any talk with him about it at all? A At the time that he gave it to me?

Q Yes? A I think all the talk I had was that he gave it to me to deposit.

Q Did he at any time say to you before September 2nd that Mr. Larimer had gotten \$5,000 in cash from him? A Yes, he gave me to understand that he had advanced \$5,000 to Mr. Larimer for the purpose of buying out---

Q When did he tell you that? A The latter date I cannot recall.

Q Was that before you received the payment of \$2,000 from Mr. Larimer, September 1st? A It was after our conversation, that is all I remember, after the conversation that I overheard between Mr. Larimer and Mr. Joice.

Q It was after that conversation? A Yes sir.

Q Now I show you Defendant's Exhibit A, and ask you whether you recognize that paper? A Yes sir.

Q That was signed by you, was it not? A Yes sir.

Q And is a receipt for \$2,000 for Mr. Larimer? A Yes sir.

Q Do you remember how Mr. Larimer paid that \$2,000? A He never paid it that I know of. I don't know anything about that; I know about the check.

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Q I am talking about the receipt you signed for \$2,000 on September 1st. A There were two checks. I went over to Mr. Larimer, to Philadelphia, to see, to collect the amounts which he promised to pay, and in checking over the statement, these checks for \$1,000 each, were charged against Mr. Larimer on Mr. Joice's account, and Mr. Larimer showed me these two checks that he thought he had overlooked, that these two checks---that Mr. Joice had charged to him was his own money, understand---instead of being money that Mr. Joice had paid. Then he showed me his evidence that was his money, that that \$2,000 Mr. Joice had charged him should not have been charged against him, and I took those checks over with me, to try and trace them, you understand, to see whether he was right in his claim or not, and I gave him this receipt for those two checks, agreeing to return them.

Q And did you credit his account? A Yes sir---I don't know that I individually credited it, but I represented to Mr. Joice that I thought that Mr. Larimer was right, that is as far as I could see, they were checks that he drew himself, and that he must have used in his payments.

Q And then they were credited on the books at that time? A They were at the time, but afterwards Mr. Joice differed with me in regard to it.

Q There is not anything else further you can tell us

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about the transaction of the buying out of Gleason's interest, can you? A No, I had nothing to do with the balance of that at all.

MR. FABRICANT: That is all.

MR. DONAHUE: That is all.

JUROR NO. 5: I would like to ask a question, please, your Honor.

THE COURT: Yes.

BY JUROR NO. 5:

Q How do you know, of your own knowledge, that Mr. Joice had large sums of money in his pocket? Did you ever count the money? A No, I never counted the money, but I saw an envelope, and I saw him take the money out and take out large bills from the package, and often, on several occasions, protested against his carrying so much money with him, and told him that some day---

Q How much did you ever see at any one time that Mr. Joice brought from his pocketbook, of your own knowledge? A I never did count his money, no; I only noted that he had a large number of bills and that the denominations were large.

THE COURT: Did you note the denominations?

THE WITNESS: Yes sir; I know furthermore that he told me that he had large sum.

BY MR. FABRICANT:

Q Well, Mr. Dexter, you say that the \$2,000 credit on

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September 1st was just practically a book entry; didn't you notice you signed this receipt that the \$2,000 was represented by cashier checks?

MR. DONAHUE: He admitted that before. He said that Larimer claimed he was entitled to---

Q Did he give you the actual check on that day, September 1st? A No sir.

Q You say here "was represented by cashier's check on the Metropolitan Trust Company, Fifth Avenue Branch, dated September 1st 1920"? A Perhaps I have got the wrong receipt here; I didn't read it.

Q Supposing you do read it. A That is this two thousand; this is not these two checks at all; have nothing to do with those checks.

Q Then you withdraw that? A Yes sir.

Q That was the only payment made to Mr. Joice on September 1st? A Yes sir.

Q You were going on the appearances, generally? A In that I made a mistake.

BY THE COURT:

Q In other words, you made a mistake inadvertently, when you say that paper was given because you had received those two checks? A This is a receipt for \$2,000 which I received from Mr. Larimer and credited to Mr. Joice, deposited to his account. These two checks I did give a receipt for and I supposed that was the receipt for them.

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BY MR. DONAHUE:

Q That is what you meant to say, you were given a receipt for two checks which have been shown to you, but the receipt you were shown was a receipt made out by you? A Yes sir, for \$2,000.

BY MR. FABRICANT:

Q Did you tell Mr. Joice about the receipt of that \$2,000? A Certainly; I gave a credit to his account.

Q You told Mr. Joice about that? A Yes sir.

Q Did Mr. Joice tell you at the time that Larimer had stolen \$5,000 from him?

MR. DONAHUE: I object to that.

MR. FABRICANT: I am asking this witness whether Mr. Joice treated this transaction of August 20th, shortly thereafter, as a larceny, or whether he treated it as an accounting proposition.

THE COURT: I think you are calling for a conclusion of the witness.

MR. FABRICANT: I am asking him what Mr. Joice told him.

THE COURT: You have a right to elicit from the witness what Mr. Joice may have said about it.

BY THE COURT:

Q Did Mr. Joice ever talk to you about the \$5,000 transaction after the alleged payment of the money; did he talk to you about it, yes or no? A Yes sir.

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THE COURT: Now do you want, Mr. Fabricant, what Mr. Joice said regarding it?

MR. FABRICANT: Yes, your Honor.

MR. DONAHUE: About this particular \$5,000 check that he withdraw---

THE COURT: If Mr. Fabricant wishes the talk which this witness now says Mr. Joice had with him regarding the \$5,000 which Mr. Joice has claimed he paid to the Defendant, I will let the witness tell us that.

MR. DONAHUE: Your Honor will recall there were two \$5,000 instances here, one on July 7th and one on August 20th. I don't want to have them confused.

BY THE COURT:

Q Now confining yourself to the alleged \$5,000 item of August 20th, did Mr. Joice talk to you about that alleged payment? A I don't remember any particular conversation except that he told me that he had given \$5,000 towards the purchase of Gleason's interest. That is all I remember about it.

BY MR. FABRICANT:

Q About when was that statement made, have you any idea? A I cannot recall those dates, they are little dim; it is some time ago, and I have not had occasion to keep them in mind.

Q Was it after you deposited the \$5,000 check dated

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August 24th? A Yes sir, I think it was after that.

Q About how long after? A Well, I don't know.

Q Some time anyhow; it may have been within a day or two? A I don't know.

Q A few days, you think? A I cannot recall.

THE COURT: I think we will take a recess now.

Gentlemen of the Jury you are admonished not to converse amongst yourselves on any subject connected with this trial, or to form or express any opinion thereon until the same is submitted to you. The Court will take a recess today until a quarter past two.

(Whereupon an adjournment was taken until 2.15 p. m.)

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THE PEOPLE against R. G. LARIMER.

New York, June 14, 1921.

TRIAL CONTINUED AFTER RECESS:

A L B E R T F . D E X T E R , resumes the stand
and testifies as follows:

DIRECT EXAMINATION CONTINUED BY MR. DONAHUE:

Q Mr. Dexter, this morning you said there were some
tin boxes, or boxes, in Mr. Joice's office? A Yes sir.

Q Will you kindly describe the kind of boxes that
were in there about August 20th of last year? A They
are sheet steel boxes, and stand as high as your head.

Q With drawers in them? A With drawers and doors
and a combination lock.

Q Made of steel? A I presume they are steel.

Q They looked like steel to you? A Yes sir.

Q How many of them were there? A There are in the
front office, there are three in the front office, including
filing cases, which are also of the same material, with
combination locks on them, and there is one out in the other
office.

Q And these you say have different compartments, have
a combination lock on them? A No, the combination lock
is on the outside; I don't know whether it is inside or not.

Q Is there just one combination lock? A On the out-
side door.

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Q In other words, there are various compartments which are in turn covered by steel clad doors, and on these doors are those combination locks? A Yes sir.

Q One of the Jurors asked you this morning if you had ever seen any large sums of money in the possession of Mr. Joice. Do you recall whether or not Mr. Joice, at various times, had sent you out for instance, to Long Beach and various places, with large amounts of cash? A With currency. At Long Beach we put up some houses and sold them to Mr. L. G. Bush; they were put up at Long Beach.

Q About how many times, Mr. Dexter, did you go out on these missions where you had currency with you? A Just a few times.

Q How much did you have with you at the most, at one time?

MR. FAERICANT: I object to that, as not being competent.

THE COURT: I will allow it.

A I recall at one time having \$700, I think that is the most I had.

Q Do you recall going to Long Beach once with thirty odd thousand dollars? A No, I don't.

Q Or any odd thousands in cash? A No.

Q These are some of the time at least that Mr. Joice had in his pocket, or whatever he had them in? A He took them out of the envelope that he carried; at that time there

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was no bank at Long Beach and the men had to be paid off and freight bills paid.

BY MR. FABRICANT:

Q You said this morning, you have seen him with large sums of money in his pocket? A Very often.

Q On August 20th Mr. Joice had a bank account, did he not? A Yes sir.

MR. DONAHUE: We have already gone over that; we admitted that.

Q Where was the bank located?

THE COURT: I will allow the question.

A Yes sir, at the Harriman National Bank.

Q How far away from Mr. Joice's office was that? A About four blocks, about three or four blocks.

Q And these steel safes that you have described now, were they regular safes with combination locks on? A I wouldn't call them burglar-proof safes or anything of that kind; they are perhaps what might be terms thief-proof safes.

Q What distinction do you draw between thief-proof and burglar-proof? A When the question was asked me this morning I supposed you referred to one of those which hold iron safes; but these are cases, steel cases.

THE COURT: Filing cabinets?

THE WITNESS: Yes sir, cabinets for papers.

Q Are they tin boxes, as you called them this morning?

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A No sir.

Q What did you refer to when you said they were tin boxes? A I referred to those boxes being metal boxes, but not what I would term regular safes. As I understand it, a regular safe is burglar-proof safe.

Q Do you know whether or not Mr. Joice ever kept in those boxes large sums of currency like \$25,000 or \$30,000?

A I never knew of him doing it.

MR. DONAHUE: That is the People's case, if your Honor please.

MR. FABRICANT: I respectfully move to dismiss the indictment on both counts, on the ground that there is not evidence in law to sustain the charge of larceny.

THE COURT: I think there is some testimony given by the complaining witness, which, if credited by the jury, tends to substantiate the charge.

MR. FABRICANT: Will your Honor be good enough to hear me on that question?

THE COURT: I will hear you. He has said certain things, in answer to questions that you put at times during the examination, which, perhaps militate against the validity of the charge. But, on the other hand, he has stated some things, which tend to support the charge, and I think that on the whole the People have made out a prima facie case. I have in mind, among other things, an Exhibit which has been offered

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and received in evidence, which purports to have been signed by the Defendant.

MR. FABRICANT: Well, if the Court please, in respect to that Exhibit, there is another one which modified it subsequently, which is also in evidence, and on this motion I point to the subsequent conduct----

THE COURT: Well, I think on the whole the case should go to the Jury, as it stands now.

MR. FABRICANT: May I except to the Court's ruling.

THE COURT: Yes.

MR. FABRICANT: I would like to have that motion made specific in respect to the first count of the indictment, and also specifically in respect to the second count of the indictment.

THE COURT: There are two counts in this indictment, one charges larceny of the Common Law form, and the other charges larceny as bailee. Which count do you want to go to the jury on?

MR. DONAHUE: I think we will go to the jury on both, sir.

THE COURT: Can you show a Common Law larceny here?

MR. DONAHUE: Yes, we have a common Law larceny by trick and device. We have this trick and device, by saying that he had this contract, and afterwards admitted that he did not have it, and he gave us a bad check, and we are out \$5,000.

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THE COURT: I think I will not require the District Attorney to elect now. You may proceed with your defense.

MR. FABRICANT: Does your Honor reserve decision on this motion?

THE COURT: Yes.

MR. FABRICANT: For fear I may not take an exception to the ruling afterwards, I would like to note an exception now.

(Mr. Fabricant opened the case to the Jury for the Defense).

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New York, June 14, 1921.

(DEFENSE).

R. G. L A R I M E R, the defendant, called as a witness, in his own behalf, being first duly sworn, testified as follows:
(16 Louella Park, Wayne, Pa.)

DIRECT EXAMINATION BY MR. FABRICANT:

Q First, Mr. Larimer, how old a man are you? A 43.

Q And in 1920 what was your business? A I was in the steel and equipment business.

Q In business for yourself? A Yes, sir, as R. G. Larimer & Company.

Q Did you have an office? A Yes, sir.

Q Where? A 905 Real Estate Building, Philadelphia.

Q Did you have an office in New York? A No.

Q The Philadelphia office was the only one you had? A Yes, sir.

Q You were trading under the name of R. G. Larimer & Company?

A Yes, sir.

THE COURT: I did not quite understand what line of business you said you were in?

THE WITNESS: Steel and equipment business.

Q What does that include? A Well, I went into that to buy war supplies, material from the Government, such as locomotive trains, steel rails, pipe, wires, etc.

Q How long had you been in that business? A Since November 1919.

Q What was your business prior to that? A I was furnishing

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the United States Government with railroad ties, cord wood, etc.

Q How long had you been doing that? A Since 1916, from the outbreak of the War.

Q Prior to that what had you been doing? A Prior to that I was in the automobile business.

Q Where was that? A In Philadelphia.

Q How long had you been in the automobile business? A Since 1910.

Q In 1910, was it, that you were convicted in Manitoba?
A Yes, sir.

Q What were you convicted of? A Shall I make a statement in my own way?

THE COURT: No. Just name the crime of which you were convicted?

THE WITNESS: As I recall it, it was for larceny or embezzlement; I just cannot recall which at the moment.

Q In what court were you convicted? A In the City Court, in the City of Winnipeg.

Q Were you sentenced on that conviction? A I pleaded to technical guilt.

Q You pleaded guilty? A Yes, sir.

Q And were you sentenced on that plea? A Yes, sir.

Q For how long? A I think the sentence ran from two and a half to four years, as I recall now.

Q How long did you serve? A Less than a year.

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Q And were you pardoned? A Yes, sir.

Q By whom were you pardoned? A By the Minister of Justice.

Q The Minister of Justice, where? A I believe it is in Montreal.

Q And you served less than a year? A Yes, sir.

Q And was it after that you went into the automobile business? A I was in the automobile business at that time.

Q You continued in the automobile business until 1916?

A With the same firm I was connected with in Winnipeg.

Q You mean with the same firm that complained against you?

A They didn't complain against me; it was through them and with a series of notes. May I make an explanation?

Q Was it the same firm who complained against you or not?

A Yes, sir.

Q I show you People's Exhibit No.1, and ask you if you ever saw that paper before the commencement of this trial? A No, I never did until yesterday in this Court.

Q I call your attention to the signature at the bottom of the paper, and ask you if that is your signature? A It is not.

Q Did you ever receive \$5,000.00 from Mr. Joice, either on August 20th, 1920, or on any other day? A Yes sir -- not on August 20th.

Q \$5,000.00 in cash? A No.

Q Did you ever receive that amount in cash from Mr. Joice?

A No, sir.

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Q Now when did you first meet Mr. Joice? A I met him in New York, in company with --

Q When? A In the Spring of -- in the Winter of 1920; I think it was January or February.

Q Now you started some transaction with Mr. Joice, did you not? A Yes, sir.

Q And the account which is in evidence as Defendant's Exhibit "E" represents the state of the account between you and Mr. Joice? A (after examining People's Exhibit "E") No, sir, it does not.

Q In what respect does that account differ from --

MR. DONAHUE: I object to that being called an account. That is a statement made up by Mr. Joice for what was due. We do not contend that it is a true account. Just a letter written and acknowledged by Mr. Larimer.

THE WITNESS: (Interrupting) That is no letter at all.

MR. DONAHUE: Now, please, you be quiet. (Addressing the witness).

THE COURT: That is the account, Mr. Donahue.

MR. DONAHUE: (After examining same). Your Honor is right. I had the other paper, the blue one, in mind.

Q Now I show you this paper, Defendant's Exhibit "E", and ask you whether -- where did you receive that from, by the way?

A It was handed to me by Mr. Joice, in my office in Philadelphia.

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Q And when was that? A Sometime in the latter part of August; I would say along about the 26th or 30th of August.

Q And you say that that account is not correct. In what respect is it not correct? A It is not correct in the items shown as advanced by him on April 21st of \$1,000.00.--

MR. DONAHUE: How much?

THE WITNESS: April 21st, \$1,000.00, and April 22nd, \$1,000.00.

Q There is an item given as of August 20th -- A And the item of August 20th of \$5,000.00 is not correct.

Q That account was given to you by Mr. Joice? A Yes, sir.

Q Those transactions that are mentioned in that account, had you them with Mr. Joice? A Yes, sir.

Q And you had received the monies there specified with the exception of the three items which you mentioned? A Yes, sir.

Q And had you paid the monies to him that are there specified? A Yes, sir.

Q And those payments were made how? A They were made by check with the exception of the item of July 29th, \$50.00, which I handed to him in cash.

Q Tell us what your arrangement with Mr. Joice was when you started your transactions with him? A The arrangement was that he was to go and advance half of what money was necessary to buy certain Government surplus materials and other materials that might be offered to me from time to time, and that I was to

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re-sell same, and he was to benefit in 50% of the profits that might accrue.

Q Was anything said as to how the money was to be handled?

A Never.

Q How did you handle the money? A I would handle it, receive the money from him in the form of checks; deposit them in my bank, either the Metropolitan Trust Company of New York, the Commercial Trust Company of Philadelphia, and, I think, in one instance, the District National Bank of Washington, D.C.

Q And then what did you do? Were these the only monies you had in the bank that you mentioned? A No, sir.

Q You had money from other sources? A Yes, sir.

Q And then when you had a transaction did you check out against those funds? A Yes, sir.

Q You mingled those checks with your regular deposits, did you not? A Yes, sir.

Q When did you commence to have any relationship with the Triangle Company, or Mr. Gleason, of Norfolk, Virginia? A On May 3rd, 1920.

Q And did you enter into a written contract with the Triangle Equipment Company? A I did.

Q At that time did you tell Mr. Joice anything about the transaction? A No, sir.

Q When was the first time that you mentioned the Gleason or Triangle Equipment Company transaction to Mr. Joice? A I would say it was about the first part of June or the middle of June.

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Q Now I show you a paper and ask you whether this is the contract that you made with the Triangle Equipment Company? A (after examining) Yes, sir, it is.

MR. FABRICANT: I offer that paper in evidence, if the Court please.

MR. DONAHUE: I object to it, if your Honor please, on the ground that it is not the best evidence. There is nobody here to identify the paper.

THE COURT: I think I will receive it.

MR. DONAHUE: I object to it, in the first place, because we have no proof here as to whose signature that is there on the bottom. We do not know whether this man got up the paper and had somebody outside of the relationship sign it.

THE COURT: You have merely the testimony of the witness himself.

MR. DONAHUE: Yes. He might have made it out of the whole cloth.

THE COURT: I will receive it for what it is worth.
(Received in evidence and marked Defendant's Exhibit "J").

THE COURT: You have got to ask the proper questions of the witness as to the signatures.

Q Mr. Larimer was this contract signed in your presence?

A Yes, sir.

Q By whom was it signed? A Signed by Mr. W.P. Gleason,

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President of the Triangle Equipment Company, and myself.

Q And was it with him you had the transactions of the Triangle Equipment Company? A Yes, sir.

Q Where was that transaction had? A Washington, D.C.

Q And did you sign this paper, too? A I did.

MR. FABRICANT: May I read this paper to the jury, please?

THE COURT: Yes.

(Mr. Fabricant read Defendant's Exhibit "J" to the jury).

Q When you entered into that transaction, did you put up any money to start with? A Yes, sir, I advanced \$3,500.00 to the Triangle Equipment Company.

Q To whom did you advance that money? A To the Triangle Equipment Company.

Q Now I show you a paper and ask you whether you identify that (showing witness a paper) A (after examining same) Yes, sir.

Q And how did you pay this money to the Triangle Equipment Company? A By check.

Q \$3500.00? A \$3500.00.

Q And was that receipt given to you by the Triangle Equipment Company concern? A It was, yes, sir.

MR. FABRICANT: I offer that receipt in evidence.

MR. DONAHUE: I think, if your Honor please, the best way to prove the receipts is to have here some one from

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the Triangle Equipment Company. It does not mean anything offering a paper with the name of the Triangle Equipment Company on it.

THE COURT: Does not that go to the weight of the evidence rather than to the competency?

MR. DONAHUE: We could encumber this court room with all kinds of papers signed under that condition.

MR. FABRICANT: We are not going to offer papers without some proof of the authenticity of the papers.

THE COURT: There was some testimony given by the complaining witness going to the point that certain representations were made by the defendant regarding the defendant's relationship with the Triangle Equipment Company. I do not think myself that that testimony directly related to the transactions that we are investigating, but inasmuch as it is in the record, I think it is proper to receive the evidence. Just confine yourself to the general outline of that relationship between the defendant and the Triangle Equipment Company for the purpose of showing that in point of fact there was a bonafide relationship between the defendant and that concern, and what it was.

(Paper above referred to received in evidence and marked Defendant's Exhibit "K").

(Mr. Fabricant read Defendant's Exhibit "K" to the jury).

Q Subsequently and about July 15, 1920, did you enter into an agreement with the Triangle Equipment Company and explaining

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the terms of your arrangements with them concerning this pipe?

A I did.

Q I show you a paper and ask you to look over that and tell us whether that is the agreement you made with them?

A (after examining same) Yes, sir, it is.

Q Now this amendment to the original contract was it signed by Mr. Gleason in your presence? A Yes, sir.

Q And signed by you? A Yes, sir.

Q This signature, R. G. Larimer, is your signature? A Yes.

Q And put on there on July 15th? A Yes, sir.

Q And at that time did you have any talk with Mr. Joice about this transaction? A Yes, sir, I had.

Q And on July 7th had you received from Mr. Joice \$5,000.00? Yes, sir, I had.

Q And tell us what the talk was that you had with Mr. Joice about that \$5,000.00? A I told him that it was necessary to have \$5,000.00 in order to start the shipment of pipes to the City of Norfolk. By that I meant it was necessary to have \$5,000.00, between \$3,000.00 to \$5,000.00 -- I did not know just what would be required at the moment, or something like that at Norfolk, to start paying the Government for the first shipment of pipe that would be shipped to the City of Norfolk, and the funds I had were tied up. Mr. Joice advanced me \$5,000.00, which was deposited by me in the Metropolitan Trust Company of New York and \$4,000.00 of it was --

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Q How did Mr. Joice give you that \$5,000.00? A In the form of a bank draft.

Q And you deposited that in the Metropolitan Trust Company?

A Yes, sir.

Q Now did you subsequently use that money in connection with that transaction? A I did.

Q I show you a check dated July 20th for \$4,000.00, and ask you whether you paid that check to the United States Army Officer on this contract?

MR. DONAHUE: I object to that. It is entirely immaterial. How does that affect this issue we are trying here?

THE COURT: I will allow it.

Q And that bears your signature? A No, my agent's signature.

Q Who was your agent? A C. J. Cibrowski.

Q He was your agent at where? A Norfolk and Newport News.

THE COURT: I call your attention to the fact, Mr. Fabricant, that the paper which you showed the witness, purporting to be an amendment of the contract was not marked for identification.

MR. FABRICANT: I wanted to offer that in evidence.

MR. DONAHUE: I object to that, if the Court please.

THE COURT: I will receive it.

(The paper referred to received in evidence and marked Defendant's Exhibit "L".)

MR. DONAHUE: If your Honor please, there are four or five sheets to this Exhibit "L". We do not know whether

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it was intact at the time, or whether they were signed, or how they came here, or where they have been since the signing or anything else.

MR. FABRICANT: I will establish all that.

THE COURT: Interrogate this witness regarding it.

Q Are these four sheets and the signatures on it originally as when signed? A Yes, sir.

Q How many copies of this were signed? A Two.

Q One was left where? A One was taken by the Triangle Equipment Company and one given to me.

Q And is this the one that was given to you (referring to Defendant's Exhibit "L")? A Yes, sir.

Q And bears your signature? A Yes, sir.

Q And you have had it ever since? A Yes, sir.

(Mr. Fabricant read the Exhibit to the jury).

Q Now, on July 7th you received \$5,000.00, as you say, and you made this payment of \$4,000.00 on July 20th? A Yes, sir.

Q Was that payment of \$4,000.00 made out of the funds which you had received from Mr. Joice? A It was.

Q And it was made on account of the pipe which you were dealing in with the Triangle Equipment Company? A Yes, sir.

MR. FABRICANT: I now offer this check in evidence.

(The check for \$4,000.00, above referred to, received in evidence and marked Defendant's Exhibit "M").

(Mr. Fabricant read the same to the jury).

Q Now I show you Defendant's Exhibit "F", which is the contract

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entered into between you and Mr. Joice on July 9th, and ask you whether you notice there that it says, "These purchases were to be made not as a partnership transaction, but you are acting as my agent in connection therewith? Do you remember that in the contract? A I do.

Q Will you tell us how that came about?

MR. DONAHUE: If your Honor please, the contract speaks for itself.

THE COURT: I will allow it. Let him tell the conversation at the time.

A At the time the contract was made by Mr. Field, Mr. Joice's attorney, it occurred on the eve of Mr. Joice's trip West, and he came to me at the Biltmore Hotel, on the morning of July 9th, saying he expected to leave that night for the West, and as he was making certain settlements with his family, and as the trip was to be rather a long one, he felt that, under the circumstances, he ought to have something in writing, which we had never had theretofore. I agreed with him entirely as to it being only just and right, and later on, in the afternoon, he called me up and asked me if I would meet him in Mr. Field's office, here in New York, to have this agreement drawn up. I said I would gladly do so. I went down to Mr. Field's office, I believe it was, and Mr. Field had already had that agreement drawn up. I read it over and objected to the terms which made me his agent instead of a partner. Mr. Joice at that time said, "You and I have done business together,

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for a number of months without any question", and he said, "You need not have any fear of me taking exceptions to anything you are doing." Mr. Field also agreed with me at the same time. At that time I took exception to the two items which he mentions in there of April 21st and 22nd of a \$1,000.00 each, and I told Mr. Joice that I did not think he had advanced me those two amounts; that there was a mix-up in the amounts. He told me at that time, that if such was the case he would rectify it. He was anxious to get away that evening and wanted to know it was all right. I also took exception to the profits designated in the contract at that time, telling him it was expressly determined on some transaction that while those were approximate, I could not guarantee them to be exact. Both he and Mr. Field assured me that if there was anything in the contract that was not right they would rectify it, and having every confidence in Mr. Joice, our relations theretofore having been pleasant, I signed it. Later on, that same afternoon, after I had gotten back to the Biltmore Hotel, and reading up the contract again, while going up in the subway, I realized that --

MR. DONAHUE: I object to all this "realizing".

Q Never mind the realizing. Tell us what did you do about it? A When I got back to the Biltmore Hotel, I got up that subsequent letter.

Q And Mr. Joice signed that? A Mr. Joice signed that part

Q You state in that letter, "It is, however, understood, that in the several negotiations mentioned in your letter of July 9

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and in other negotiations that might come up from this on, we are expressly agreed that the writer has to use judgment." What did you have reference to there? A I had reference to not being -- that I was to be allowed, as I had always been allowed in the business, to use my full judgment in all such transactions.

Q In the previous transactions, had you consulted with Mr. Joice at all about what to do with them? A Always.

Q Had you ever paid back any money to him? A Yes, sir.

Q And this agreement of July 9th was after all these transactions were finished, were they not? A Yes, sir, they were.

Q And did you ever have any transaction with Mr. Joice after July 9th? A Pardon me. I said they were all finished. They were not all finished at that time; it was the last advance he had made to me. Some transactions were out that date, not completed.

Q Did you enter into any new transactions after this contract was made? A No.

Q And this contract related to the transactions he had entered into? A Yes, sir.

THE COURT: In other words, you say that you only got \$5,000.00, in connection with what I shall call the Triangle-Gleason matter, and that you got on the 7th of July, and that you did not receive any money on August 20th from Mr. Joyce?

THE WITNESS: No, sir.

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THE COURT: That is what you say?

THE WITNESS: Yes, sir.

THE COURT: In other words, Mr. Joice claims that on two occasions he gave you \$5,000.00 in connection with the Triangle-Gleason matter, once with respect to an alleged agreement between that concern and the City of Norfolk; once on August 20th respecting the possibility of the sale of certain property by that concern to the Argentine Republic. You admit the receipt of the first \$5,000.00. You deny the receipt of the \$5,000.00, which is said to be the subject matter of this charge?

THE WITNESS: Yes, sir.

Q Now on the first \$5,000.00 that his Honor has mentioned, that was included in this agreement that was drawn up on July 9th.

A yes, sir, it was.

Q And it says here, in this agreement, that you had purchased about 2800 tons of cast iron pipe for a total sum of \$63,000; this purchase being made through you by the Triangle Equipment Company of Washington, D. C.? A Yes, sir.

Q Did that refer to this agreement that has now been offered in evidence, between you and the Triangle Equipment Company, dated May 3rd.? A Yes, sir.

Q And you did have that contract? A Yes, sir.

Q And the agreement said, that the material was being purchased by this Company, that is, the Triangle Equipment Company, from the Utility Division of the United States Army? A Yes, sir.

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Q And it was being purchased that way? A Yes, sir.

Q And this check of \$4,000.00 was paid by you to the Utility Division of the U. S. Army? A Yes, sir.

Q On August 20th, did you make out this deposit slip, Defendant's Exhibit "H", in the Metropolitan Trust Company? A I did, yes, sir.

Q That is your handwriting on there? A Yes, sir.

Q The R. G. Laramie was written by you? A Yes, sir.

Q Is everything on there (referring to Exhibit "H") in your handwriting? A Yes, sir, outside of that (indicating) -- the date, the name, and the amount, and "from" were my handwriting.

Q That is your usual signature, the same as you write? A Yes.

Q Now what did you deposit that day in the Metropolitan Trust Company? A I deposited a bank draft on August 20th.

Q On August 20th? A Yes, sir. I deposited a check given to me by R. G. Hise, President of the Roberts Numbering Machine Company, 700 Jamaica Avenue, Brooklyn, for \$5,000.00, and a \$1,000 telegraphic order from my agent in Norfolk for \$1,000.00.

Q Now, I show you a check and ask you whether that is the check which you deposited that day with that deposit slip, representing the \$5,000.00 item? A Yes, sir, it is.

MR. FABRICANT: I offer it in evidence.

THE COURT: Show it to Mr. Donahue.

(Mr. Donahue examines same).

(Received in evidence, check above referred to, and marked Defendant's Exhibit "N").

Q Now on that day did you get \$5,000.00 in cash from Mr. Joie?
A No, sir, I did not.

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Q And did you deposit about that time a bank check for \$5,000.00? A No, sir, I did not.

Q And the check that you did deposit was this check, Defendant's Exhibit "A"? A Yes, sir.

MR. FABRICANT: I would like to show that to the jury, your Honor?

THE COURT: You may do so.

(Mr. Fabricant shows same to the jury, who examined it).

Q Under this contract that you had in connection with the Triangle Equipment Company for the purchase of the pipe from the United States Government, were purchases made? A Yes, sir, they were made.

Q And how much did you cause to be paid to the United States Government altogether on account of that contract? A Approximately \$35,000.00.

MR. FABRICANT: If your Honor please, I offer that in evidence, and --

MR. DONAHUE: If your Honor please, I object to his stating what the paper is before it is offered.

THE COURT: You offer in evidence the paper which you now hold in your hand?

MR. FABRICANT: Yes, your Honor.

MR. DONAHUE: I object to it.

THE COURT: I think I will reserve decision on it. I will receive proof. It may be marked for identification. I will receive proof later as to the concern from which it

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came. I cannot see how you got it in your possession.

(Received and marked Defendant's Exhibit "O" for identification).

MR. FABRICANT: I now offer in evidence, if the Court please, the paper which I now hold in my hand.

MR. DONAHUE: Same objection.

THE COURT: It will take the same course.

(Received and marked Defendant's Exhibit "P" for identification).

THE COURT: I will give you an opportunity to interrogate the witness as to how it came into your possession.

MR. FABRICANT: I can do that now, your Honor.

THE COURT: You mean to say you received it from him? You may interrogate the witness regarding when he first saw them.

Q I show you Defendant's Exhibit "O" for identification, Mr. Larimer. Will you state whether you ever saw this before? A Yes, sir.

Q Where did you get those from (referring to Defendant's Exhibits "O" and "P" for identification)? A I got them from the officer at Camp Eustis --

MR. DONAHUE: I object to that. He did not get them from him.

THE COURT: Objection sustained.

Q How did they come to you? A By mail.

THE COURT: Have you the envelope in your possession in which they came?

THE WITNESS: No. I have not, your Honor. I am sorry I did not keep it.

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Q Where were you when you get it by mail? A Tombs Prison.

Q And when did you get it? A May 4th or 5th.

Q And how long had you been in the Tombs when you received it? A Since January 6th.

Q And concerning the Defendant's Exhibit "P" for identification, can you state how you got that? A In the same manner.

Q Were you in the Tombs when you received that? A Yes, sir.

Q It came to you by mail? A Yes, sir.

Q How did they come to be received by you?

MR. DONAHUE: I object to that, if your Honor please. He said he received them through the mail.

THE COURT: These papers purport to come from another State.

MR. DONAHUE: My broad objection on that is this. We have an issue here. Mr. Larimer says, or rather Mr. Joice, that he gave \$5,000.00 for a certain purpose. Mr. Laramie says he did not get it.

THE COURT: Why am I receiving these papers? I am receiving them for the reason that during the course of his testimony, not fairly responsive, in my judgment, to the questions put, Mr. Joice made some comments regarding the alleged general falsity of representations, which he says that this present witness made to him, and if those statements are to stand upon the record, I think that this witness should be given an opportunity of disproving them, if he can. I am much more disposed to strike out those general statements made

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by Mr. Joice, because I do not think that they bear on this issue. Mr. Joice, as a witness, under cross examination, impulsively said things which militated, perhaps, against the man, who is now being tried; things that do not immediately relate to the charge which is now pending, and, in the light of these statements, which I cannot repeat accurately from memory, I was disposed to allow this witness, in his own behalf, to show that those statements, if he could, were other than according to fact.

MR. DONAHUE: Your Honor did not quite get my objection. My objection is to their immateriality. I do not care where they came from. I doubt their authenticity; that I am inclined to admit. But my idea is this: Mr. Joice has testified he gave Laramie \$5,000.00 to do a certain thing, or a particular thing, on a certain day. He says he never got this \$5,000.00 at all. Why befog this issue, or throw a smoke screen about it?

THE COURT: I have tried to make it plain in the talk I had in connection with the reception of these papers. Mr. Joice, as a witness for the prosecution, has said that this defendant made, at different times, certain representations to him, and he has characterized these representations as being untrue. That is the purport of his characterization. In part, these repres-

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entations are said to have related to the relations between this witness and the Triangle Equipment Company. If these papers are authentic, they bear upon that disputed matter.

MR. DONAHUE: As I understand it, these papers have no reference whatever to the \$5,000.00 Mr. Joice paid on the 20th. If Mr. Fabricant can tell me that they have any reference whatever to the \$5,000.00, paid on August 20th, I will withdraw my objection.

THE COURT: That apparently they do not.

MR. DONAHUE: I withdraw my objection, your Honor. (Defendant's Exhibits "O" and "P" for identification, now received in evidence).

(Mr. Fabricant read same to the jury).

Q How much did you pay out altogether, \$35,000.00? A To the Government, yes, sir.

Q And how much did you receive from the City of Norfolk? A \$63,000 and some odd dollars.

Q Will you look at Defendant's Exhibit "P", and tell us how much you received from the City of Norfolk? A (after examining Exhibit "P") \$63,364.16, less \$1975.16, which is still unpaid.

Q Is that amount still due on this record? A \$1975.98 still due, according to these records.

Q At the time you had these transactions which are mentioned in the exhibits and contracts, did you have any talk with Mr. Joice about the difficulties you were having with the Triangle Equipment

Company? A I did.

Q Tell us what you said to him about that? A I told him that on account of the subsequent agreement that I had signed with the Triangle Equipment Company on July 15th --

Q That is Defendant's Exhibit "L" here? A Yes, sir. -- And that the delays we were experiencing in getting the Government to ship the pipe to the City of Norfolk -- that the Triangle Equipment Company threatened to terminate their agreement with us, and it was liable to cause us serious trouble with the City of Norfolk and other contracts if they did that, and we were not able to deliver the pipe that we had contracted with them for. The result was a subsequent agreement with the Triangle Equipment Company on July 15th; I agreed to have all pipes shipped, after we had received further assurance from the Government officials at Camp Eustis that there would be no further delay on the shipments of pipe, I guaranteed the Triangle Equipment Company --

Q I am talking about exactly what you said to Mr. Joice? A That is what I did tell him, or words to that effect.

Q A little louder. Tell us what you told him? A That we would have to complete shipments on this pipe by August 5th, and that Mr. Joice -- before any monies could be given to Mr. Joice, or anyone else, the freights and some other items would have to be paid before we would benefit ⁱⁿ any money that we might receive. He agreed to that at that time. There was nothing further said between Mr. Joice and myself.

Q Were you making payments on account of your indebtedness at

that time? A Yes, sir.

Q Did you make a payment on August 2nd of a draft for \$2,000?

A Yes, sir, I did.

Q I show you a paper and ask you whether you paid that to Mr. Joice? A Yes, sir.

MR. DONAHUE: What is that? A \$2,000.00 draft?

MR. FABRICANT: Yes, sir.

Q What is the date of that draft? A August 4th.

Q When was that actually paid? A It was paid by Schmelz National Bank on August 12th.

THE COURT: Is it in evidence, Mr. Fabricant?

MR. FABRICANT: Yes, your Honor.

Q On August 14th Mr. Joice said, "There are no reports at the bank, at noon today with reference to the payment of a \$2,000.00 draft, made against your office at Norfolk." Is this the draft he referred to, that I have just shown to you? A Yes, sir, it is.

Q To whom had you given this draft? A To Mr. Dexter.

Q And that was on August 4th? A Yes, sir.

Q That draft is signed by you, is it? A Yes, sir.

MR. FABRICANT: I offer this draft in evidence, if your Honor please.

(Received in evidence and marked Defendant's Exhibit "Q").

Q Now, then, Mr. Joice also says in this letter, "Nor has anything been received today with reference to the duplicate \$3,000 cashier's check, which was to have been made. If this left Norfolk as promised, it should have been here this morning." What did that

refer to ? A It referred to a \$3,000.00 item that I had promised Mr. Joice, or told Mr. Joice I would get for him from my agent, Cibrowski at Newport News, who had told me he expected further funds in from the City of Norfolk, and if they came in would try and get a cashier's check, payable to Mr. Joice for \$3,000.00.

Q Well, did you see Mr. Joice about this letter and the two items of \$2,000.00 and \$3,000 items mentioned there? A I did.

Q What was said and done? A I received that letter, I believe in Philadelphia on the morning of August 17th. I came to New York, saw Mr. Joice, told him I could not understand why the \$2,000.00 draft had not been paid, and that I had heard nothing further from Cibrowski in regard to the \$3,000.00 check, which he was to send; that I felt sure the \$2,000.00 draft would be paid, and I gave him then a check on the District National Bank at Washington, D. C., for \$3,000.00, under date of August 21st, so that in case Cibrowski could not get the cashier's check, that I could have him transfer \$3,000.00 to the Washington Bank to meet the check given on August 21st.

Q Was that \$3,000.00 check given him -- was that People's Exhibit No.5 here? A Yes, sir.

Q When did you give him that check? A On August 21st.

Q I show you a check for \$5,000.00, bearing date of August 24th. Tell us about that check, please?

THE COURT: In the first place, when did you give it; where were you when you gave it, and under what circumstances

did you give it?

A I gave this check to Mr. Joice in his office, under date of August 17th, the afternoon after I came over, after receiving his letter of the 16th, in payment -- when I afterwards learned that the draft -- Mr. Joice had advised me he received no return on the \$2,000.00 draft, and that he had put through the check for \$3,000.00, which I knew would not be good, as Mr. Cibrowski had advised me he was still unable to get funds from the City of Norfolk.

THE COURT: In other words, you say that the \$5,000.00^{check} which you now hold in your hand, was given to take the place of the \$2,000.00 draft and a check for \$3,000.00, which is Exhibit No.5 in this case?

THE WITNESS: Yes, sir.

THE COURT: And you say that you gave it on August 17th?

THE WITNESS: On August 17th, yes, sir.

Q And it bears date of August 24th? A I dated it August 24th to allow time to elapse, to allow my agent, Mr. Cibrowski, to give him enough time to collect any monies from the City of Norfolk.

Q Now did you telegraph to Mr. Joice about that check afterwards? A Yes, sir. I went back to Philadelphia, and several days later was in a long-distance phone conversation with my agent Mr. Cibrowski, in Newport News, and had been advised by him that the \$2,000.00 draft had been paid on August 12th.

Q That is, this draft, Defendant's Exhibit "Q" now in evi-

dence? A Yes, sir. I then telegraphed Mr. Joice's office. He said that he could not pay out any more money for a few days until he got a further remittance from Norfolk. I then wired Mr. Joice not to use the check of August 24th for the \$5,000.00.

Q Was that check given ^{by} you on August 24th for to pay back \$5,000.00 that you had received in cash on August 20th? A No, sir, it was not.

Q And you knew at the time that you drew this check that your bank account in Washington had no funds; did you know that?

A I didn't have the funds.

Q And you knew that? A Yes, sir.

Q Is that the reason why you dated it ahead? A Yes, sir, because I expected Mr. Cibrowski to wire sufficient funds to this Washington Bank, because at that time Mr. Cibrowski was sending some money to his son in Washington.

Q And you say that check of \$5,000.00, related to these two items, mentioned in Mr. Joice's letter; \$3,000.00 and \$2,000.00? A Yes, sir, it did.

Q What happened to the contract between you and the Triangle Equipment Company? A After August 5th, the Triangle Equipment Company, Mr. Gleason --

THE COURT: I did not hear your answer. Speak louder!

A (continued) After August 5th, Mr. Gleason, President of the Triangle Equipment Company came to me --

MR. DONAHUE: Are we going to have a conversation?

THE COURT: No. I will not allow that.

Q What did you do concerning the contract? Did you settle it; did you wind it up? A Yes, sir.

Q I show you defendant's Exhibits "C" and "D", and ask you whether these two papers were drawn, or what they were drawn for; they are signed by you and the Triangle Equipment Company? A They were in full settlement of the cast iron pipe bought by them from the Utilities Division of the United States Government.

Q When was that done? A Under date of August 26th.

Q Had you told Mr. Joice about the fact that you were going to settle up this contract? A He knew it was necessary.

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

MR. FABRICANT: I offer these two papers in evidence.

MR. DONAHUE: I have the same objection to make as before. Of course, if your Honor is going to allow them in --

THE COURT: I think that the witness Joice testified that he had not seen them; isn't that so?

MR. FABRICANT: Yes, your Honor.

THE COURT: I think I will exclude them.

MR. FABRICANT: May I have an exception to the exclusion of these, your Honor?

THE COURT: Yes.

Q Did you tell Mr. Joice that you had a contract, or an arrangement, with Mr. Gleason to buy out his interest? A Not at that time; no.

Q When did you talk about any such thing? A Along in July.

Q What did you say at that time? A When I signed that subsequent agreement, July 15th, I told ^{him} Mr. Gleason was starting to make trouble on this contract, due to the delay of the Government in shipping out the pipe; that the chances were we would get into difficulties with the City of Norfolk, and that we might lose the other 1200 tons, which were still unsold, and that it was possible, - I thought it would be a good idea to buy Mr. Gleason's interest out.

THE COURT: Have you finished your answer?

THE WITNESS: Yes, sir.

THE COURT: Mr. Fabricant, I think we will take an adjournment now.

Gentlemen of the Jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you.

The Court stands adjourned until tomorrow at 10:30.

(Whereupon an adjournment was taken until Wednesday, June 15th, 1921, at 10:30 A. M.).

(M.A.G.).

Peter P. McLoughlin,
Official Stenographer.

New York, June 15, 1921.

(Trial Continued).

MR. DONAHUE: May I call a witness out of order, your Honor?

THE COURT: Yes.

HERBERT D. ELBERT, called as a witness, on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q Mr. Elder, what is your business, please? A Secretary to the Robert Numbering Machine Company.

Q And where is the Roberts Numbering Machine Company located? A 696 to 710, Jamaica Avenue, Brooklyn.

Q Do you know this defendant here? A I met the gentleman.

Q About when did you meet him? A August 1920.

Q Now I show you Defendant's Exhibit "N" being a check for \$5,000.00, to the order of R. G. Larimer, dated August 20th, 1920, and ask you whether your signature appears on that check? A It does.

Q And this check was issued by the Roberts Numbering Machine Company, on that date, was it? A That is right.

Q Mr. Hice, whose signature appears on this check is President of the Company? A Mr. Hice is President of the Roberts Numbering Machine Company.

Q And is Mr. Hice in New York now? A He is in Boston.

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Q When did he go to Boston? A Sunday night or Monday Morning.

Q Do you know when he is going to return? A I believe he is expected back early or late Friday.

Q This transaction in which this check was given was one conducted by Mr. Hise and this defendant? A It was.

THE COURT: I do not think we are interested in that.

MR. FABRICANT. I will withdraw the question.

Q Was this check given in exchange for \$5,000.00 in cash? No, sir, not as far as I know.

Q Have you the stub of the check here? A The District Attorney has it.

Q Will you kindly turn to the stub of that check, and see if that can refresh your recollection? A As I understand the transaction, the check was given to Mr. Larimer, and the understanding at the present time was an open account on our books. It was not given in exchange for cash, or any of the company's funds.

Q Was an entry made in your regular account? A It was, under the name of R. G. Larimer & Company.

Q And that account still stands on the books? A Yes, sir.

Q Have you in this stub book all your check entries of the deposits made by the Roberts Numbering Machine Company on August 20th, and about that date? A We have.

Q Will you kindly look through there and see if any deposits of the sum of \$5,000.00 cash were made about that time?

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MR. DONAHUE: I object to that.

THE COURT: You have the testimony of the witness that it was not given.

CROSS-EXAMINATION BY MR. DONAHUE:

Q That check was given to Mr. Larimer for \$5,000.00, on account of certain material that was supposed to be in the War Department, was it not? A As I understand so.

Q And these goods have never been delivered?

MR. FABRICANT: I object to that as incompetent and immaterial.

THE COURT: Sustained.

MR. DONAHUE: I ought to show that it is a certain kind of transaction which we are now investigating.

MR. FABRICANT: I object to that, and ask the Court to instruct the jury to disregard that statement.

Q Did you know Larimer, Mr. Elbert? A I met him on the day the check was given.

Q Are you sure that is the date? A No, but I can tell by the stub.

Q Did you make out the check? A No, sir, it was made out by the cashier.

Q Would this refresh your recollection of the date? A I can give the date from that.

Q That is all you know about it? A Yes, sir.

Q Who is the man who knows of the transaction? A Mr. Rice.

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Q What business is your concern in? A Manufacturer of numbering machines.

Q Under what name did you know this defendant at that time? A Mr. Larimer.

Q How long ago was that you say? A August 1930.

Q And what was that check given for you say? A As I understand the transaction it was given by Mr. Hice to Mr. Larimer for the purchase of war material from the Government.

Q Do you know what kind of war materials? A I know nothing about it except what was told me; I was not present at the time the transaction was made.

MR. DONAHUE: That is all.

RE-DIRECT EXAMINATION BY MR. FABRICANT:

Q By the way do you remember what time of the day this transaction occurred? A I am not sure as to that, but it seems to me it was in the afternoon. However, I cannot swear to that.

Q You don't know about what time in the afternoon? A No.

Q My impression is that it was in the afternoon of August 20th? A Yes, sir.

RE-CROSS EXAMINATION BY MR. DONAHUE:

Q Would you say it was after one o'clock? A I could not swear to that. It is my opinion it was.

Q What time do you take lunch? A Twelve to one.

Q It was sometime after you came back from lunch? A As I recollect it.

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Q About how long after you came back from lunch? A I should judge two or three hours; I could not swear to that.

Q Where is your place of business? A 696 to 710 Jamaica Avenue, Brooklyn.

Q How long does it take you to get into New York, we will say to 59th Street and 5th Avenue from your place? A Well, I could not say as to that.

Q About what is the average time it takes to come in from your place? A On the train or how.

Q Any old way. Take the flying machine, first. Did you ever come in a flying machine? A No.

Q Did you ever come in on the subway? A It takes about one hour from here to the office.

MR. FABRICANT: I would like to offer the entry on the stub in evidence.

MR. DONAHUE: That is not in this man's handwriting and he knows nothing about it. I will have to object to it.

THE COURT: I think the objection is good.

MR. FABRICANT: May I have an exception. I also ask to have it marked for identification.

(The stub of the check book, read into the record, as follows, and considered as Defendant's Exhibit "R" for identification:

" Stub of check 3002; 8/30/30. R.G. Larimer & Co.
\$5,000.00, charged direct in cash book."

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ROBERT G. LARIMER, resumes the stand, and testifies as follows:

DIRECT EXAMINATION CONTINUED BY MR. FABRICANT:

Q Now, Mr. Larimer, yesterday/^{when} we wound up the session, I had asked you whether at any time you had a talk with Mr. Joice about the purchase of the interest that Gleason had in this contract with the Government? You remember your reply yesterday? A Yes, sir, that I do.

Q Now, will you kindly repeat your reply about the conversation and when it occurred? A When Mr. Gleason of the Triangle Equipment Company --

Q A little louder. First when did you talk to him about it? A In the latter part of June when we were starting having trouble in getting shipments of pipe out at Camp Eustis on account of the delay of the Government in not being ready to ship this pipe, Mr. Gleason complained about the pipe not being shipped, so that he could dispose of the contract, and I pleaded for time, stating that the Government was not in a position to ship, and along about the first of July, Mr. Gleason came to me, and asked if I would be willing to modify that agreement of May 3rd, and make it a little bit more definite and put a date on which all shipments would be made and sales closed up. At that time, along about the time of the delay, I spoke to Mr. Joice, on the 15th, I think, of Gleason's attitude and said that it would be possible to buy Gleason's interest out, in the pipe. He advised me to do it. Mr. Joice men-

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tioned several times that he thought it would be a good idea to do it and left it to me, to see what I could do. After I had signed the agreement with Gleason on July 15th -

Q You mean with Mr. Gleason? A Yes, sir, I still endeavored on numerous occasions to try and get Mr. Gleason to sell his interest out and let me handle the matter entirely. Of course we knew what profits were to be expected on the pipe, on the lot of pipe sold to the City of Norfolk, in addition to that amount of pipe sold to the City of Norfolk there was approximately 1100 tons, of a different size pipe that was in that lot, which I had been trying to sell to the Argentine Government, and in the agreement of July 15th, on the day agreed with by Mr. Gleason to dispose of all the pipe by August 5th. During the month of July the Government was still holding us up on shipments, Gleason was after me all the time to clean the matter up, and on August 5th, after probably sixty per cent of the Norfolk pipe had been shipped, and on advice of counsel, I was compelled to make a full settlement with Mr. Gleason along about the date of August 26th.

Q The result of that settlement was what? A The result of that settlement and the amount of rejected pipe sold to the City of Norfolk, which in our agreement the Triangle Equipment Company was not to stand any losses, I was forced to a settlement with Gleason on the pipe shipped to Norfolk, and in addition to that, he took away the sale of the pipe, of the 27-1/2 inch, or the 1100 tons still remaining unshipped and unsold.

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Q Now in defendant's Exhibit "D", from which statement it appears that your company paid \$3500.00 to the Government how much was that of your own money? A Approximately \$11,000.00.

Q And how much money did you get from Mr. Joice on July 7th, by his check on the Chatham National Bank, and how much did you use in connection with that transaction? A \$4,000.00.

Q And where did the balance of the money come from that was paid to the United States Government? A It came from the returns from the City of Norfolk.

Q Now after your settlement with Gleason, did you see Mr. Joice about the state of your account with him? A Yes, sir, on numerous occasion.

Q Where did you see him? A Both in New York and Philadelphia.

Q And will you tell the jury what arrangements, if any, were made by you on account of your indebtedness to him? A After I made the settlement with Mr. Gleason of the Triangle Equipment Company, and the claims which they made, which I disputed, and which were afterwards put in the hands of an attorney for settlement --

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q Just tell us what arrangements you made with Mr. Joice

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about your indebtedness? A On September 1, I got him \$2,000, through Mr. Dexter, his attorney in fact; I turned over to him my Stutz automobile --

MR. DONAHUE: I object to that on the ground that it is not in response to the question.

THE COURT: Yes, I think it is. Go ahead.

A (continued) I turned over my Stutz automobile to him, which he agreed to allow me for at that time.

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q What was said about your turning over the Stutz automobile? How much credit was to be given for that on your account? A \$2,5000.00.

Q What else? And I had then a credit of an amount due me by the J. K. Wenderling Company of New York, which I assigned over to Mr. Joice, and of which he collected \$500.00.

MR. DONAHUE: I object to that.

THE COURT: Sustained.

What was the amount of the claim you assigned?

THE WITNESS: Whatever was coming to me; no specific amount.

THE COURT: I think he has testified to that.

Q After September 1st, how much did you actually turn over to Mr. Joice on your own account? A In cash and from the automobile?

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A Total credits?

THE COURT: How much?

THE WITNESS: According to my figures, \$3,000;
\$2500 on the machine, and \$500. from Wenderling.

Q And on September 1st, you also gave him \$2000? A Yes.

Q That would make you \$5,000? A Yes, sir.

Q Mr. Joice has given you credit for \$4100? A yes, sir.

Q You claim there is a difference between you and him as to
the amount of credit to be given for the Stutz automobile? A
Yes, sir.

Q You claim there is a difference between you and him?

A yes, sir.

Q On that account? A yes, sir.

Q Were you sued by Mr. Joice for the amount of the account?

A I was not.

MR. DONAHUE: I object to that.

THE COURT: I will allow it.

Q Did you have any talk with any lawyer in Philadelphia
representing Mr. Joice?

MR. DONAHUE: Objected to.

THE COURT: Objection sustained.

MR. FABRICANT: The complainant has testified that he
handed the amount to the account in Philadelphia to be sued
on, and in view of this amount, we are acting as his repre-
sentatives, as agents, and any acts they may perform in that
capacity and any conversations they may have had with Lar-

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mer would become relevant.

MR. DONAHUE: He also said he spoke to the District Attorney in Philadelphia. May I be allowed to bring over the District Attorney, according to the same argument?

MR. FABRICANT: He did not become his agent, any more than you are the agent of him, but his attorneys became his agent.

THE COURT: I do not think I ought to allow any evidence on the general talk between the witness and the attorney, the lawyer. Anything that relates to this particular issue in this case; a lawyer representing the complaining witness might be.

Q Did you have any talk with Mr. Joice about going to his lawyer? A yes, sir.

Q Tell us what arrangement you made about that? A Mr. Joice met me in my office in Philadelphia after September 1st. I told him the condition of my finances and my inability at that time to raise any further money, and we went over to Mr. Louis G. Field.

Q Was Mr. Joice with you? A yes, sir, in the Stock Exchange Building, in Philadelphia, and we went over fully the accounts of Mr. Joice and myself.

Q Did you go over this account in your books? A No, not with the books; with the statement that Mr. Joice has presented to me of the monies owing him.

Q Is this (showing) one of the statements presented by

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him?

MR. DONAHUE: If it will shorten the matter, I will concede Mr. Joice went to his lawyers and endeavored to collect this amount of money.

MR. FABRICANT: I would like to know what arrangement was made concerning it?

MR. DONAHUE: What do you want to get at?

Q What arrangements were made as to the amount of the indebtedness appearing in the accounts?

MR. DONAHUE: What the proceedings were is entirely immaterial; just a motive or reason.

MR. FABRICANT: I am sorry I cannot agree with Mr. Donahue's version of that. I think it depends entirely on the original version in the handling of these monies, and whether this man is to be treated as a debtor or felon. If he were treated as a debtor, that would bear upon this case very materially.

MR. DONAHUE: Isn't that a conclusion, for which the jury has been brought here to decide?

MR. FABRICANT: They cannot decide without evidence as to how Mr. Joice treated the relations between them.

MR. DONAHUE: It is a question for the jury. The mere fact that a man has ^{been} ^{by} flim-flamed another is no indication that he did not treat it as a larceny.

MR. FABRICANT: I don't like to get into an argument with Mr. Donahue on that point.

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MR. DONAHUE: I am talking generalities not specifically as to that.

THE COURT: You may ask if there were different papers signed at that time. Were there any papers signed at that time. I think the matters were reduced to writing.

Q Have you a copy of any such papers? A They were judgment mand/notes.

Q You delivered them to whom? A Mr. Joice and Mr. Buhler.

Q How much were these demand notes? A Approximately \$20,000.00; it was undetermined what the amount actually was.

Q They were payable on demand? A Yes, sir, for different amounts.

Q When did that transaction take place? A I cannot recall the specific date, but I would say it was between the 15th and the 22nd of September.

CROSS-EXAMINATION BY MR. DONAHUE:

Q Do I understand, Mr. Larimer, that you said you signed judgment notes for from \$15,000 to \$20,000, about the 15th of September? A Yes, sir, I did.

Q Did you admit at that time you owed so much money? A No, I did not, because it was undetermined, on account of the profits, about just what the amount owing Mr. Joice actually was.

Q How much did you sign those notes for? A I would say approximately \$20,000.00.

Q Why did you sign them? A Because I knew I owed a considerable amount of money.

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Q You felt on September 15th that you owed him \$20,000?

A Yes, sir, and I desired to protect him as much as possible.

Q You had collected \$63,000 from the City of Norfolk? A I had.

Q And you had collected about \$8,000 more from other concerns, had you not, making your total collections \$71,000? A I do not know what you mean by \$8,000.

Q Had you collected more than \$63,000? A Yes, sir.

Q How much more? A I cannot say.

Q During this time you knew you were going acting for Mr. Joice, or with him? A I was acting with him as a partner only.

Q You believed that he was entitled to half of what you collected? A Yes, sir, absolutely.

Q When did you collect this \$63,000, about when, approximately? A I would say ~~from~~, approximately, up until August 16th.

Q 1920? A Yes, sir.

Q And you turned over to Mr. Joice, from March until September about \$3900? A No, sir, I did not.

Q How much did you turn over? A Approximately \$10,000.

Q You turned over to him \$10,000? A In cash and otherwise.

Q In July -- A Did you say up to September?

Q Just a minute, Mr. Larimer. Didn't you on July 9th sign that Defendant's Exhibit "F", in which you say you only turned over \$3700? A Yes, sir.

Q That was correct? A Absolutely.

Q Why didn't you turn over some of that \$63,000 to Mr. Joice?

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A Because there were other payments that had to be made before Mr. Joice or myself was to benefit from any payments.

Q As a matter of fact, didn't you have a profit in the earlier part of September of \$12,000? A On what?

Q On this whole situation? A No, sir.

Q How much profit did you have? A A profit on the Norfolk pipe which amounted to less than \$800, and probably will be a big loss yet.

Q Why didn't you sell it to the City of Norfolk for \$62,000, and didn't you only pay \$35,000 for it to the Government? A Yes, sir, that is true, but there were the freights and the Triangle Equipment Company, and rejected pipe and other things.

Q By the way where were you born? A I was born in Pennsylvania.

Q What was your father and mothers' names? A My father's name?

Q I mean what was your father's name when you were born? A Larimer.

Q And when did you first become known by the name of Curtis? A I was never known by the name of Curtis, except that I took the name of Curtis in Chicago.

Q Was that before or after your conviction in Canada? A After.

Q And what was your purpose in assuming the name of Curtis in Chicago? A The purpose was that at that time I was in

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Chicago with a young lady.

Q With a young lady? A Yes, sir.

Q Is that the only reason? A yes, sir.

Q While you were in Chicago you did not try to hold your identity under the name of Curtis? A In what way.

Q While you were in Chicago did you do anything that you did not want to be known as doing under the name of Larimer?

A Not necessarily.

Q What was the reason? A I told you.

Q Tell me again? A On account of the young lady.

Q There were a lot of young ladies in Chicago. Tell us about your reason?

MR. FABRICANT: I object on the ground that that does not affect his credibility.

THE COURT: I do not think his answer means much, on account of a young lady.

MR. FABRICANT: May I say at this point --

THE COURT: I am going to let him explain.

A I was living in a hotel in Chicago with a young lady.

THE COURT: Talk up, so that we can all hear you.

A (continued) I was living in a hotel in Chicago with a young lady.

Q And what was the young lady's name?

MR. FABRICANT: Objected to.

THE COURT: Sustained.

Q You were married at that time?

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MR. FABRICANT: Objected to.

THE COURT: Objection sustained.

MR. DONAHUE: May I not go into his family history and show what he was doing; test his credibility? If I can show that he took a young lady from New York to Chicago, while a married man, does not that bear on his credibility?

THE COURT: No.

Q You did take the name of Curtis in Chicago? A Yes, sir.

Q At what hotel did you live at? (No answer).

Q When did you live in Chicago under the name of Curtis?

A In December.

Q In December of what year? A 1920.

Q December of 1920? A Yes, sir.

Q And do you recall ever living under any other name besides that of Curtis? A Only that I was at the time I was arrested in January --

MR. FABRICANT: If your Honor please, I object to all of this as being after the date of the indictment, and having nothing whatever to do with the indictment.

THE COURT: I will allow it.

MR. FABRICANT: Exception.

Q Mr. Larimer, will you tell me whether you lived under any other name besides that of Larimer and Curtis? A I was --

Q I don't care whether you were arrested or not? A At the Hotel Seville, New York City.

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Q Under what name? A Gibson.

Q So you have been known as Larimer, Curtis and Gibson, have you not? A Yes, sir.

Q What was the purpose of your assuming the name of Gibson? A I was at that time estranged from my wife.

Q What? A Separated from my wife.

Q And what was the reason of your assuming that name?

A To protect the young lady.

Q The same young lady? A No.

Q A different one? A Yes, sir.

Q How were you protecting this young lady's name by assuming at that time the name of Gibson?

MR. FABRICANT: I object to that.

THE COURT: Sustained.

Q You did assume the name of Gibson? A yes, sir.

Q And you lived in New York under the name of Gibson?

A No, sir.

Q You were not, by any chance, trying to hide from the authorities in New York? A No.

Q You did not know they were looking for you? A No.

Q You did not know that Mr. Joice had been looking for you? A I did not.

Q That was not your reason? A No.

Q You had no inkling of that? A No.

Q When did you first assume the name of Gibson?

MR. FABRICANT: There is no evidence that he assumed

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the name of Gibson. The evidence is that he used the name of Gibson. I do not believe that is an assuming of the name.

MR. DONAHUE: I will change my question.

Q When did you first use the name of Gibson? A When I arrived in New York in January, on the second or third of January.

Q When were you arrested in this particular case? A I believe it was the 5th or 6th of January.

Q And you have been in the City Prison, have you not, since that time? A Yes, sir.

Q So it must have been before January, before you used the name of Gibson? A I said the second or third.

Q How long did you use the name of Gibson, Mr. Larimer?

A From the second or the third of January up until the 5th or 6th of January, when I was arrested.

Q Just two days. Didn't you say before, Mr. Larimer that you were stopping at the Hotel Seville? A yes, sir.

Q Well, as a matter of fact, were you not arrested as you got off a train in New York? A No.

Q Where were you arrested? A At the Hotel Seville.

Q On what date? A January 5th or 6th.

Q And how long before had you been using that name? A The second or the third of January.

Q And when did you stop using the name of Curtis? A When I left Chicago.

Q When did you leave Chicago? A On the first or second of January.

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Q And when did you first use the name of Curtis? A When I went to Chicago.

Q Well, when was that? A That was in November.

Q Now, as a matter of fact, Mr. Larimer, didn't you use the names of Curtis and Gibson because you knew that Mr. Joice had made a complaint against you in the District Attorney's office in Philadelphia? A Absolutely not.

Q No reason at all? A No.

Q You were not traveling with your wife at all during that time? A No, sir, I was not.

Q Didn't you while you were in Chicago, Mr. Larimer, forge a check for \$265, under the name of Curtis? A No, sir, I did not.

Q You did not? A No.

Q Did you by any chance happen to know whether or not, you had a check in your possession on the Bank of Tacoma, in Washington? A I did.

Q Payable to the --

MR. FABRICANT: I object on the same grounds that it is immaterial irrelevant and immaterial --

MR. DONAHUE: May I finish my question before you object?

Q (continued) Payable to the order of George B. Bunkle for \$265, and didn't you have that check cashed?

MR. FABRICANT: I object on the ground that the question does not call for an answer; incompetent and irrelevant to this issue.

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THE COURT: I will allow it.

Q Did you not, Mr. Larimer? A I did, near Chicago.

Q I don't care where it was? A In the District of Columbia, yes, sir.

Q Didn't you forge the signature to that check? A No, sir.

Q Did the check belong to you? A No.

Q Didn't you forge the indorsement? A No, sir. I signed my name on the back of that check.

Q You knew you had no right to do that? A No, sir, I didn't.

Q You believed you had a right? A yes, sir, I thought the check was perfectly good.

Q It was not perfectly good. A I heard since that it was not.

MR. FABRICANT: I ask that the answer be stricken out as not bearing on the credibility of the witness.

MR. DONAHUE: It goes to his credibility. He signed his name on the check.

MR. FABRICANT: That is not a crime. I sign my name to a check almost every day and I do not know whether it is good or bad.

I move to strike out the answer.

THE COURT: Strike it out.

Q Did you know the check was good? Did you think it was good when you signed it? A Yes, sir.

Q It was not made to your order? A No.

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Q Where did you get the check from?

MR. FABRICANT. I object to that.

THE COURT. I think we will not go into that any further.

MR. DONAHUE: May I not, if I can, show that he committed a crime in the District of Columbia?

THE COURT: You can show he committed a crime.

Q Did you endorse that check? A Yes, sir.

Q And how did you endorse it?

MR. FABRICANT: If your Honor please, I beg to note an objection at this point to the District Attorney endeavoring to show other crimes at this stage. He has no right to show them unless he asks the witness specifically if he committed a crime.

THE COURT: Objection overruled.

MR. FABRICANT: Exception.

Q Did you, Mr. Larimer? A Ask that question again?

Q You signed that check, did you not? A Yes, sir.

Q Did you endorse it or sign it as the maker? A I endorsed the check, R. G. Larimer, or R. G. Larimer & Company.

Q And was the check made out to your order? A No.

Q Why did you sign it? A In order to get it cashed.

Q You found out afterwards that the check was not good? A I have since found out that it was not good.

Q And it was a forgery? A I did not know.

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Q Do you remember, Mr. Larimer, how you happened to get that check, Defendant's Exhibit No. 2? A Yes, sir, that check was given to me by Mr. G. S. Hise.

Q For what purpose? A For the purpose of buying certain materials.

Q Materials from the War Department, was it not? A No.

Q From where? A From the Shipping Board.

Q These goods have never been delivered?

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

MR. DONAHUE: We contend we can show a crime in this connection, too.

MR. FABRICANT: I object on the ground that it is incompetent, irrelevant and immaterial, as to whether the goods were ever delivered or not. It does not make a particle of difference. We offered the check to show that it was not received because of an exchange of cash.

MR. DONAHUE: Won't your Honor allow me to show for what purpose that check was given, if I can show it?

THE COURT: No. I think it would unduly prolong the trial.

Q Did you ever, Mr. Larimer personate a United States officer? A I never did.

Q Never did for the purpose of getting money? A Never.

Q Were you ever in Pittsburg? A Yes, sir, I was.

Q When were you in Pittsburg? A I believe it was in

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October 1920.

Q October when? A I cannot recall.

Q 1920? A Yes, sir.

Q You are sure it was not November 1915, are you? A No, I don't believe I was in Pittsburg in 1915. I might have been passing through there.

Q I mean November 15, 1920? A Yes, sir, perhaps, I was.

Q And while you were there did you ever meet a man named C. L. Saxton? A I did, sir.

Q Did you represent to Mr. Saxton that you had contracts with the Government for \$2400.00, and did you tell him that you would give him an assignment of these contracts?

MR. FABRICANT: I object on the ground that it is incompetent.

Q And did you get his money and keep it, and never gave him any assignment?

MR. FABRICANT: Objected to.

THE COURT: Sustained.

Q Did you take \$1400 from a man named Saxton in Pittsburg, on the pretense that you had a contract with the Government for buying certain goods from the War Department? A I did --

MR. FABRICANT: I object on the grounds that it is incompetent.

MR. DONAHUE: I had not finished my question.

Q And did you not, as a matter of fact, have no contract with the Government? A Did I have a contract with the Govern-

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ment at that time?

Q Yes? A I did not, no, sir.

Q You took the money under the pretense that you had

one? A I did not.

Q Did you ever give Mr. Saxton his \$1400 back?

MR. FABRICANT: Objected to.

THE COURT: Sustained.

Q You have been in the State of Illinois many times have you not? A I was in Illinois, in 1930.

Q And when before that? A In 1913 and a part of 1914.

Q And did you ever tell a Mr. Stover in Chicago, Ill., that you represented the Government of the United States for the purpose of disposing of goods that had been left over after the War? A No, sir.

Q Never told anybody that? A No.

Q Did you at any time pretend to act on behalf of the Government in disposing of goods left over after the War? A No.

Q How old are you? A 43.

Q Where were you born? A Lock Haven, Pa.

Q And how long did you live there? A Until I was eight or nine years old.

Q Did you go to School during your life? A Yes, sir.

Q What school did you go to? A I went to school in Omaha, Nebraska.

Q For how long? A Up until I was 19 years of age.

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Q You went to Grammar Schoo, and did you go to High School?

A Yes, sir.

Q To a business school? A Not to a business school.

Q Did you go to College? A No, sir.

Q And you have been since that time engaged in business, have you not? A yes, sir.

Q What was your first undertaking? A I got my first position in Omaha, in the Omaha Savings Bank.

Q In a Savings Bank? A Yes, sir.

Q As what? A Assistant bookkeeper, I think it was.

Q How long did you stay there as an assistant bookkeeper?

A I would say I was there may be two or three years.

Q Did you leave of your own accord? A Yes, sir.

Q Where did you go after that? A I think I worked then with the Swift Packing Company in South Omaha.

Q What did you do there? A Clerk.

Q Bookkeeper? A Generally.

Q How long did you stay there? A I was in Omaha until my father died in 1898.

BY THE COURT:

Q How long did you stay with that concern? How long did you stay in Omaha? A I cannot recall.

Q About how long? A Say two or three years; a couple of years.

BY MR. DONAHUE:

Q In 1908 A 1898.

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Q In 1898, you left there to go where? A If I recall I went to Kansas City.

Q Doing what? A I was clerk in a grain office.

Q How long did you work there? A I would say approximately a year.

Q And after that where did you go? A I came East.

Q What part of the East did you come to? A Bellefonte, Pa.

Q What did you do there? A Then I went to Pittsburg with the Washburn people.

Q How long were you there? A Approximately a couple of years.

Q Doing bookkeeping and general clerical work? A No, I was assistant to the General Sales Manager.

Q Still had something to do in the clerical line? A Yes, sir.

Q General supervision over the bookkeepers? A Not bookkeeping.

Q Clerking or clerical help? A Not necessarily that; I was more in the Sales Department.

Q You made made memorandum of sales and had supervision over the books? A Yes, sir.

Q Did you not? A Yes, sir.

Q After that where did you go? A I went in the coal business; that was in Bellefonte, Pa.

Q How long did you stay there? A I would say approximately about a year and then moved to Philadelphia.

Q And you left all these places of your own accord? A Yes.

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Q You had not been convicted of crime then? A Yes, sir, that is, if you call pleading guilty that.

Q I am speaking of before the instance in Canada? A No.

Q Had you been convicted at all up until 1898? A No.

Q You say you were in Philadelphia at this time? A Yes.

Q What did you do in Philadelphia? A I was in the coal business.

Q What do you mean by being in the coal business? A Selling bituminous coal.

Q How long did you stay there? A I have been there practically on and off ever since.

BY THE COURT:

Q How long did you stay there at that time, in that line of business? A In that line of business, I would say about five to seven years.

BY MR. DONAHUE:

Q Continuously in Philadelphia? A Off and on.

Q Why, weren't you in Canada, in the meantime? A No, I did not go to Canada until 1918 or 1911.

Q I see. Well, you finally arrived in Canada? A Yes, sir.

Q What was your business immediately before you arrived in Canada? A My health failed, and I gave up my business and went home to Bellefonte, Pa.; from there I went to Detroit.

Q What were you doing at this time? A I was doing nothing.

Q For how long were you doing nothing? A Probably four or five months.

Q What was your business? A I was in the coal business.

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Q Did you go to Canada when you were doing nothing?

A I went home.

Q And you went to Detroit? A Yes, sir, from there.

Q How long did you saty there in Detroit? A I was there three or four months.

Q And what business were you in there? A I was connected with the Anderson Eleotric Car Company of Detroit.

Q Doing what? A Salesman.

Q After that where di you go? A I went to Winnipeg, Canada, representing the The Anderson Electric Car Company.

Q How long were you in Winnipeg, Canada? That is, altogether, before you were convicted or pleaded guilty? A I was there about a year and a half to two years.

Q What were you doing in Canada? A I was representing The Detroit Eleotric Automobile Company.

Q Doing what? A Acting as their agent.

Q What kind of an agent? A Selling their product in Winnipeg.

Q What was their product? A Detroit Electric Automobiles.

Q You were sebling their automobiles in Canada? A Yes, sir.

Q And during that time you unfortunately pleaded guilt to grand larceny? A Yes, sir, if that was it.

Q MR. FABRICANT: I ask that the word "unfortunately" be left out.

THE COURT: Yes, sir.

Q Yesterday you pleaded guilty, did you not? A Yes, sir.

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Q To what? A I cannot recall at the moment whether the charge was actual embezzlement or larceny?

Q You cannot recall? The details have escaped you?

A Yes, sir, at this time.

Q You don't remember? A No.

Q How long did you stay in prison? A It was less than a year.

Q You are sure of that? A I would say positive.

Q What was your sentence, do you recall? A If I recall correctly I think it was four years.

Q You have changed your mind since yesterday.

Q A I said yesterday from 2-1/2 to four years.

Q Didn't you say yesterday 2 1/2? A No.

Q As a matter of fact wasn't it four years and six months?
A I don't think so.

Q Don't you know? A No.

Q You have no recollection whether it was four or four and a half? A No, sir.

Q Do you recall that you pleaded guilty to sixteen different counts on that day? A Yes, sir.

Q In Canada? A Yes, sir.

Q Yes, sir, sixteen different charges?

MR. FABRICANT: I object to that as not being competent.

THE COURT: You mean different offenses.

MR. DONAHUE: The same kind of offenses but different

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offenses, who are complaining witnesses.

THE COURT: I will allow it.

Q Isn't that correct, Mr. Larimer, there were sixteen different complaints against you and you pleaded guilty to each one, yes or no? A Yes, sir.

Q You pleaded guilty to each one? A Yes, sir.

Q You said yesterday that was a technical violation of law. Did you mean that? A Yes, sir, I admit it.

Q And for that technical violation of law, on which you were sent to jail in Canada for four years and six months -- A Yes, sir.

Q That technical violation of law for which you received quite a good deal of money from those sixteen different people --

A In connection with my business.

Q Yes or no? A Yes, sir.

Q How much money did you receive, do you remember? A Altogether, I think the whole amount, approximated --

MR. FABRICANT: Just a moment, I object to that as not being competent.

MR. DONAHUE: Will your Honor make a ruling?

THE COURT: As to the amount, I think it bears on the question of a felony or misdemeanor.

MR. FABRICANT: He admits it.

THE COURT: No, he says he does not know whether it was for embezzlement or larceny. I will receive evidence of the amount. Objection overruled.

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Q Answer the question? A I would say \$25,000 to \$30,000

Q And how did you get that money, by pretending you were something that you were not? A No, sir.

Q How did you get it? A It was gotten by these machines; these machines were sold on notes to customers. These notes were deposited by me in the various banks in Winnipeg. Later when a number of customers could not pay their full amount for their cars, it was found that I had no right to borrow money on these notes, and that I used some of the money, unintentionally, for the purposes of business of the company.

Q You used it in the business on behalf of your employers? A Yes, sir.

Q And the Judge in Canada knew all those facts? A It was not known at the time of the sentence.

Q Was it a secret? A No.

Q Didn't you tell the judge? A No; the feeling at that time was bitter and there were things that did not become known for several months after.

Q Do you mean to say that the Judge sent you to jail for four and a half years, after you pleaded guilty of sixteen different counts, that he did not know the facts? A I cannot say that.

Q Did you ever tell the facts to him? A I explained the situation to him at that time.

Q You didn't, by any chance, Mr. Larimer, pawn those cars

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that belonged to your employer and tell different people they belonged to you? A No.

Q Nothing like that at all? A No.

Q You say it was a technical violation of law? A No, I unintentionally committed a crime, without intent to do it.

Q You kept the money that belonged to others? A I didn't; the money went into the business.

Q Didn't you get \$20,000 or \$25,000 out of it? A No. that was later, --

Q Who got the money? A It went into the business. The people who seized the business later on after my failure.

Q And you were sent to jail for it? A Yes, sir.

Q A martyr of your devotion to your employers' interests?

THE COURT: Go on to something else.

Q Well, any way after you left this jail, for this technical violation of law, where did you go? A To Chicago.

Q And when did you arrive in Chicago? A I would say in January, 1913.

Q And you were convicted in Canada in 1910, were you not?

A In 1912.

Q Wasn't it in 1910? A No.

Q Sure? A I went to Canada; I went to Detroit and Winnipeg in 1910; this trouble occurred in 1912.

Q You went to Chicago in 1913? A 1911 or 1912.

Q You are not sure. That didn't make much impression on your mind? A Yes, sir; I paid for it many times since.

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Q You cannot recall whether it was in 1911 or 1912? A It was in the Fall of -- I will correct that -- it was in the Fall of 1911.

Q You went to Chicago immediately after getting out of jail and you arrived in Chicago in 1913? A Yes, sir.

Q What part of 1913? A February or March -- January.

Q You did serve more than nine months in a Canadian jail?

A I believe I did.

Q You said yesterday you only served nine months? A Less than a year.

Q As a matter of fact you served more than a year? A Yes, sir.

Q Anyhow you arrived in Chicago? A Yes, sir.

Q Under what name? A R. G. Larimer.

Q How long did you stay in Chicago? A I was there until the Summer of 1913.

Q Doing what? A Working for the Anderson Electric Car Company.

Q Under what name? A R. G. Larimer.

Q R. G. Larimer, all the time? A Yes, sir.

Q Doing what? A Selling automobiles for the Anderson Electric Car Company.

Q What did you do after that? A I went to Detroit with the Anderson Electric Car Company.

Q What did you do? A I was with the Anderson Electric Car Company.

Q What kind of work did you do? A Selling automobiles.

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Q How long did you stay there? A Until the Fall of that year.

Q After that, where did you go? A I came to Philadelphia.

Q Engaged in the automobile business there? A Yes, sir, I procured a position with the Studebaker Corporation, of Detroit.

Q Didn't you have your own business in Philadelphia? A No.

Q Was you associated with anybody who had a business there?

A I was selling Studebaker cars in Philadelphia.

Q During all the time you were in Philadelphia, engaged by
or
the Studebaker people, were you in business also for yourself?

A I was in business for myself also.

Q What kind of business were you in for yourself? A Selling
cord wood.

Q What? A Selling cord, railroad ties, to the United States
Government Camps.

Q When did you start that? A In the Spring of 1916.

Q And how long did you stay in that business? A I was in
that business up until shortly after the Armistice was signed.

Q When was that? A In November 1918.

Q And after that what did you do? Oh, by the way you accumulated a good deal of indebtedness --

MR. FABRICANT: I object to that as incompetent.

MR. DONAHUE: I am going to show --

MR. FABRICANT: I object to his making a statement.

MR. DONAHUE: I am going to make a statement whether you

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like it or not. I am going to show that at the time he took the money from Mr. Joice, and I can show that from the money he received from Mr. Joice, that he paid off some of that indebtedness.

MR. FABRICANT: I object on the ground that that is entirely incompetent and prejudicial, and not within the issues of this case. I am going to make a formal motion on the record to withdraw a juror on account of that statement as not being competent.

THE COURT: The motion is denied. You have an exception. The issue in this case is alleged misappropriation of \$5,000. The People have the right to show, if they can, that this defendant received that \$5,000, and received it for a certain purpose and used it for another.

MR. FABRICANT: I have no objection to that. He was talking about all the money received from Mr. Joice, which is not in issue here at all.

THE COURT: Well, we have gone into it pretty full on cross-examination/ I will allow the District Attorney's question.

MR. FABRICANT: I would like to have my exception noted.

Q Did you not at that time incur some indebtedness for Wood claims; they were notes? A Yes, sir.

Q About how much did that amount to at that time? A Altogether I would say \$10,000 to \$13,000 to \$15,000.

Q And was that money you had received from people on the as-

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assumption that you had contracts with the Government? A No, sir, it was not.

Q But you did owe that much money? A Yes, sir.

Q And did you owe that much money when you first met Mr. Joice? A Yes, sir.

Q And did you pay it after you met Mr. Joice? A No, sir.

Q You have never paid any of it at all? A No.

Q Do you mean that Mr. Larimer? A I have paid some of my debtors, but not with money that I received from Mr. Joice.

Q You say when you first met Mr. Joice, you still owed Wood about \$20,000.00? A Yes, sir.

Q After you met Mr. Joice somehow or other you paid these claims? A Not all of them.

Q Substantially all? A I would say I paid them from time to time, paid off approximately a couple of thousands.

Q What do you mean by approximately? A A couple of thousands.

Q What do you mean, a couple means two. Do you mean three when you say a couple? A I would say approximately \$2,000.

Q Now after you engaged in this business, you say for the selling of the material to the Government, you were in that business until Armistice Day; is that correct? A A couple of months after.

Q That was about, we will say, January 1918? A Yes, sir.

Q What did you do after?

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THE COURT: You don't meant that, January 1919?

MR. DONAHUE: No, January 1918.

A The Armistice was signed in November, 1918..

Q What did you do in the year of 1918, Mr. Laramer?

A I was buying materials from the War Department, the Shipping Board and from other concerns.

Q These were materials, I understand, which were left over after the War? A Yes, sir.

Q And they were offered for sale by the Government?

A Yes, sir, and other people.

Q And during all that time, as I asked you before, didn't you represent yourself as a Government official? A Never, absolutely not.

Q And that was your whole business for 1918? A Yes, sir.

Q And up until the time you met Mr. Joice, that was your business? A Yes, sir.

Q Do you recall when you met Mr. Joice for the first time?

A In a restaurant in the Equitable Trust Company building in New York, in company with his son, Stewart Joice.

Q And do you recall whether he introduced you to him?

A His son, Stewart Joice.

THE COURT: How long had you known Mr. Joice at that time?

THE WITNESS: Probably two months.

Q And the very first day you met Mr. Joice, you gave him this proposition of buying goods from the Government? A I mentioned the fact to him because he was also doing it in the same

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business.

Q And you asked him to go in with you and to advance you some money? A Not at that time.

Q How long after would you say? A Two months after.

Q And had you met him again between the time you first met him in the Equitable Trust Building and that? A I don't remember. I might have ran into him occasionally.

Q In the meantime where was your office? A In the Real Estate Trust Building, Philadelphia.

Q You kept ordinary books of account? A My bookkeepers did; my stenographers.

Q Under your supervision or control those books were kept? A Yes, sir.

Q You kept a check book? A Yes, sir.

Q Cash book and ledger? A Yes, sir.

Q And those were kept under your supervision? A yes, sir.

Q And of course you knew the handwriting of your employees, did you not? A I think I did.

Q And who kept your check book, do you remember? A Well, during those periods I had two or three stenographers; I changed them.

Q Now, is people's Exhibit No. 8, your check book, Mr. Larimer? A Yes, sir.

Q Don't look at it for the time being, please. And who kept that book for you during January, February and March of 1919? (No answer).

Q If the handwriting will refresh your recollection, I

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have no objection to your looking at it? A No one kept it, because this particular kind was not in existence at that time.

Q I am speaking of January, February and March of 1919?

A I had no account with that bank in January, February or March, 1919.

Q We will say in June, July, August and September, who kept it? A It was kept by Miss Mooney, a stenographer, and Mr. Diamant.

Q And they kept it under your supervision and control, did they not? In other words, you supervised their keeping of it? A Not necessarily; I left it to them.

Q You knew approximately how much your balance was each day? A Yes, sir.

Q And you knew how much you put in the bank and how much you took out? A Approximately, yes, sir.

Q And you knew that on the fly leaf or stub of these checks, your balance was kept? A As a rule, it is generally the case --

Q That was the rule, that was your instructions? A It has always been the regular way, I believe.

Q In other words, you wanted to know each day, when you made out a check, just how much you had in your bank? A Yes, sir.

Q It was your instructions to keep on the slip or stub, just what your daily balance was? A Yes, sir.

Q Did you instruct your employees to put on the flap, where this money came from. That is to say, there is a balance, we

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will say, on September 1st, of \$2,000.00. If there was a deposit made there of John Smith's, would John Smith's name go down as one of a dozen of that name, under the word, "balance"? A yes, sir.

Q Take one particular entry here. We will take the entry, for instance, -- turn to June 25th, Mr. Larimer, and you will notice there -- stand up please, Mr. Larimer -- I will take another entry; that is not the one I want. You will notice there, (indicating) "\$570.69." is that the balance?

A Yes, sir.

Q Then the deposits, "J. K. Joice, \$5,000.00." That means, does it, that you got that much money that particular day from that particular man; that is July 2, Mr. Larimer?

A yes, sir.

Q Is that what that means? And as the book went along you kept the balance each day and adding each day to the deposits?

A Yes, sir.

Q And of course you relied on this book in making out your checks as to what the balance was? A yes, sir.

Q I understood you to say, Mr. Larimer, that you never received this \$5,000.00 on August 20th at all? A No, sir.

Q Positive? A Yes, sir.

Q You never received any money, as I understand it, after July 7th? A Only on one occasion.

Q When was that? A I would say in September.

Q And what was that? A \$250, check.

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Q That is right. Now the last large amount you received was on July 7th? A Yes, sir, \$5,000.00.

Q And that amount is in this book? A yes, sir.

Q Mr. Larimer, you say you didn't receive any large amounts or any amount, in fact, except \$250.00 after July 7th? A You mean from Mr. Joice.

Q From Mr. Joice? A No, sir, I never did.

Q Now will you please look at that particular page and tell me, if you can, Mr. Larimer, whether or not you received \$5,000 on August 17th, 1920? A No, sir, I never did.

Q What does that entry there mean? A (after examining)
A It means, it says here, that was received from J. K. Joice.

Q On what date? A On August 20th.

Q No, it does not say that. Read it again? A Balance \$465.83; deposited \$820; certified Schmele National Bank, Newport News; J. K. Joice \$5,000.

Q Now the top figures, as you said, before, represented a balance? A yes, sir.

Q And the next figure underneath that represented the deposit for that day.

THE COURT: Pardon me. It is confusing to the jury. He has not read the figures that purport to show the balance.

Q Mr. Larimer, didn't you say before, if I am right, that the first line represented your daily balance? A yes, sir.

Q The second line represented what you received on that particular day? A That is right.

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Q Just a minute, please. And doesn't that show that you received \$5,000 on August 20th from Mr. Joice? A It shows that here but that is an error on the part of the bookkeeper.

Q Just a minute, please. You recognize the handwriting there, do you not? A No.

Q You don't recognize the handwriting? A No. It may be Mr. Diamant's, or it may be Miss Mooney's.

Q You are not sure which? A No, sir.

MR. DONAHUE: I offer it in evidence.

THE COURT: Just pardon me a moment. Will you have the kindness to look and see if that amount is carried forward.

(The page referred to above, received in evidence and marked People's Exhibit 8-A).

THE COURT: Mr. Larimer, will you have the kindness to look at that deposit entry, in your check book, and tell me, if you can, in whose handwriting the first line is. That is to say, the line/has reference to \$1,000?

THE WITNESS: You mean that item there (indicating)?

THE COURT: You have got an item there of \$1000. Now in whose handwriting is that writing?

THE WITNESS: I am not familiar enough, at this time, with the writing to say whose it is. It is either that of Miss Mooney or Mr. Diamant. I cannot actually say which it is; it is one of the two.

THE COURT: It is either in the handwriting of one or the other?

THE WITNESS: Yes.

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THE COURT: Now, I call your attention to the item that is immediately underneath it. What did you say in regard to that handwriting, that is, the \$5000 writing?

THE WITNESS: I would say it was either in Miss Mooney's or Mr. Diamant.

THE COURT: Would you say it was in the same handwriting as the \$1000 writing?

THE WITNESS: No, sir, I don't think it is.

BY MR. DONAHUE:

Q Will you look at the page before, Mr. Larimer, and tell me what the balance was on that day? A \$455.83.

Q Will you tell me what you carried over to the next page? A \$455.83.

Q Will you tell me -- A You mean what they carried, not I?

Q I mean, your employees.

MR. DONAHUE: May I show this to the jury, if your Honor please?

THE COURT: Just see what the balance is that is carried forward after those two items.

Q Will you turn to the page after the one we are discussing, and tell me what was the balance that was carried over?

A \$3755.80.

Q And what was the balance after the day was over? A \$3923.28.

BY THE COURT:

Q I call your attention to the fact, Mr. Larimer, that on

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the stub of the check book, under date of August 17, 1920, there appears to have been drawn a check numbered 37, to the order of the Triangle Equipment Company, for \$2500 on account, and I call your attention to the fact that apparently by this check book the balance, as of the 17th of August, in your bank, was \$455.83? A Yes, sir.

Q Do you note that? A Yes, sir, that is carried forward, the balance.

Q I say that check book indicates that at a time when the balance to the credit of your account was \$555.83, there was drawn a check in the sum of \$2500; isn't that so? A Yes, your Honor.

MR. DONAHUE: May I show it to the jury now?

THE COURT: Yes.

(Examined by the jury):

JUROR NO. 12: May I see that check for \$5000?

(after examining): Is there any stub for this check?

MR. DONAHUE: No.

MR. FABRICANT: We had it. It bears the endorsement of the Metropolitan Trust Company, of the Fifth Avenue Branch.

THE COURT: The claim of the defendant, as I understand it, is that that \$5000 item entry on the stub, not that check book, under the name of Joyce, represents the check for \$5000, which he received, as he says, from the

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company.

MR. DONAHUE: He has not said that, your Honor.

MR. FABRICANT: That is precisely the point.

THE COURT: The claim, as I understand this defendant, is that the \$5000 item was represented by an exhibit --

MR. FABRICANT: By Defendant's Exhibit N.

THE COURT: As I understand, your claim is that on August 20th you received but one sum of \$5000, and that the sum of \$5000 came to you, represented by a check, drawn on the Bank of the Manhattan Company, at Woodhaven, by the Roberts Numbering Machine Company?

THE WITNESS: Yes, sir.

Q You say that the entry of the word, "Joyce" on the stub of your check book is in error? A Yes, sir.

BY MR. DONAHUE:

Q Now, Mr. Larimer, it is a fact --

THE COURT: I think it would be a good plan, Mr. Donahue, to look at that check book.

MR. DONAHUE: I was just going to question him about that, your Honor.

Q Mr. Larimer, it is a fact, is it not, that you only received a \$5000 payment from Mr. Joyce; is that right?

A Only what?

Q You do admit, do you not, that you received a \$5000 payment on July 2nd; that is correct? A Yes, sir.

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Q That was entered in your check book, I believe it was? A Yes, sir.

Q And this is the entry here for that \$5000? A Yes.

Q Will you read that yourself and see if that refreshes your recollection? A (after examining) Why, yes, sir, it refreshes my recollection, because I admit --

Q You admit receiving that \$5000? A Yes, sir.

Q And in the ordinary course of business, Mr. Larimer, that \$5000 was put in your bank and an entry of it made on the stub of your check book? A Yes, sir.

Q That is the usual way for you to do business? A Yes.
(Page of book indicated marked People's Exhibit 8-B in evidence).

THE COURT: There is no entry, Mr. Donahue, is there, in the check book, of the deposit of the \$5000 item, represented by the defendant's exhibit there, that check book, of the Roberts Numbering Machine Company's check, apart from this entry of \$5000?

MR. DONAHUE: None that I know of, your Honor.

Q Now, Mr. Larimer, whose handwriting is that, July 7th entry in, do you know? A I couldn't say whether it is Mr. Diament's or Miss Mooney's,

Q It is either one of them? A Yes, sir, I could reasonably say it was.

Q Do you notice, Mr. Larimer, or can you tell, the handwriting of August 20th and July 7th, is that the same hand-

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writing? A Yes, sir, it looks as though it was.

Q In your opinion they were made by the same hand?

A Yes, sir, I am reasonably sure of it.

BY THE COURT:

Q All the entries in that book are in a man's handwriting, are they not? A No, I think part of them --

Q Just look to see if there is any entry by other than a man? A She wrote very much like a man on some occasions. I would say offhand that would be Miss Mooney's.

Q What would you think is that of August 20th, is it Miss Mooney's? A It looks so to me.

BY MR. DONAHUE:

Q You had only two employees at that time, Mr. Larimer?

A Yes, sir.

Q Who were they? A I had three employees.

Q Who had access to these books? A Miss Mooney and Mr. Diamant.

Q You say, Mr. Larimer, you cannot identify the handwriting in this book? A I don't say that I --

Q This was a very valuable book to you? A Yes, sir.

Q More or less personal than the others? A Not more than others.

Q You wanted it kept with accuracy? A Most undoubtedly.

Q Didn't you go over those items to see whether they were correct? A Occasionally, because I was only doing business

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with a few people and I therefore knew-I had to refer, of course--

Q As a matter of fact, all you had in the world was represented by a deposit in the Metropolitan Trust Company? A No.

Q Substantially? A I had claims outside, uncollected.

Q All the cash you had in the world was represented by this book? A Yes, sir, and in the Commercial Trust Company of Philadelphia.

Q The Commercial Trust Company of Philadelphia was a very small account? A At times.

Q This was a bigger and more important account? A Not necessarily. I imagine that would run probably more.

Q Anyway, you were careful of this book? A No more than I was of the others.

Q You were more careful of this book than the other ordinary books that you had around the office, in which you kept receipts? A Not necessarily. A check book is generally kept like it; it was not thrown around promiscuously.

Q You kept, did you not, Mr. Larimer, a cash book? A Yes.

Q Who kept that for you? A At times Miss Mooney, at times Mr. Diamant.

Q What was that kept for? A For the purpose of showing what moneys were paid out and what moneys came in.

Q Exactly. Do you recognise People's Exhibit 9, Mr. Larimer? Just look at it please? A Yes, sir.

Q What book is that? A The ledger.

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Q And in this book, Mr. Larimer, you kept the accounts under the individual names, did you not? A They were.

Q You kept, for instance, how much was received from Mr. John Smith, and how much paid out to Mr. John Smith, and the same thing applies to any of your customers? A That would be it.

Q You kept an account of money received and paid out on behalf of Mr. Joyce? A Yes, sir.

Q You supervised this book in a general way? A I never referred to it particularly, because I always had in mind what was owing Mr. Joyce.

Q It was kept by your employees? A Yes, sir.

Q And the information they got was what they received from you? A Yes, sir.

Q Or in the course of the business? A Yes, sir, but on some occasions --

Q The book containing the cash accounts were kept as given by you substantially? A Yes, sir.

Q In other words, your accounts were personal, any big amounts that came in, you took care of them? A Yes, sir, as a rule.

Q Now, will you look, Mr. Larimer, at the page I show you, and tell me just what that page is, if you know? A It shows --

Q No, just tell me what it is. A A ledger of the ac-

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count of J. K. Joice.

Q And it was kept by whom, do you know? A I would say all this handwriting on here (indicating) and here (indicating) was Mr. Diamant's. I could not swear to it; I assume it was.

Q That book was kept, Mr. Larimer, was it not, in the general routine of your business? A Yes, sir.

Q Did you notice, Mr. Larimer, in that book an entry of \$5000, J. K. Joice, on August 20th? A I did, and it is an error.

Q Now please.

THE COURT: Strike out "it is an error."

Q Do you notice it? A Yes, sir.

Q That was made by one of your employees? A Yes, sir.

MR. DONAHUE: I offer it in evidence.

MR. FABRICANT: No objection at all.

THE COURT: Received.

(Page of book referred to, marked People's Exhibit 9-A in evidence).

Q Now, Mr. Larimer, you also notice, do you not, an entry there, "Received \$5000 on July 7th," do you? A Yes, sir.

Q That is in the same handwriting, is it not, Mr. Larimer, that the entry of August 20th is in? A I would take it to be so.

Q And you recognize that handwriting as one of your employees? A Yes, sir.

BY THE COURT:

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Q Mr. Larimer, is there any account in that book between yourself and the Roberts Numbering Machine Company? A No, your Honor.

Q No account at all? A No, sir.

BY MR. DONAHUE:

Q There is no mention, is there, Mr. Larimer, of the \$5000 check that is represented by Defendants' Exhibit E?

A No, sir, evidently not, according to the dates in this book there is not.

Q That is your ledger? A Yes, sir.

Q A book kept in your office? A Yes, sir, kept in my office.

Q And as you said before, a book showing how much was received and how much was paid out in individual accounts?

A Yes, sir, a loose leaf system as it were.

MR. DONAHUE: May I first show the Joice account to the jury, sir?

THE COURT: Yes.

(Mr. Donahue shows the Joice account to the jury).

BY ERROR NO. 5:

Q I should like to ask the witness where is that item of August 20th, of \$5000, posted, from what book? A I would say it should be posted from the check book.

Q Known as folio 820 in your ledger? A Yes, sir, I believe so.

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BY MR. DONAHUE:

Q Do you know where that book is? A No, sir. The last I heard of my books was that they were in the hands of Mr. Joice; he seized them at that time.

Q Is this another one of your books, Mr. Larimer (showing)? A Yes, sir.

MR. DONAHUE: I offer that book in evidence, if your Honor please.

THE COURT: What book is that?

BY MR. DONAHUE:

Q This is a cash book, is it not? A Yes, sir.

Q Will you look at it? A (Witness looks at People's Exhibit 11, Page 20 of cash book).

JUROR NO. 5: May I ask the witness another question?

THE COURT: Certainly, Mr. Juror, but suppose we wait until after the examination of the books. It aids a great deal for jurors who are business men, to ask questions. It helps you in reaching your determination.

BY JUROR NO. 5:

Q Does the item of \$5000, of the Roberts Numbering Machine Company appear either in your cash book or ledger, under date of August 20th, 1920? A According to that it does not.

BY THE COURT:

Q In other words, it does not appear in your check book, on the stub, as a deposit item? A No.

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Q It does not appear in your cash book, nor does it appear in your ledger? A Evidently not, from what I can see. (Jurors examine certain exhibits).

THE COURT: I take it to be likely that both sides will consent to the jurors having the exhibits when they retire to make their determination. It will save some time now, if we act on that assumption. In other words, gentlemen, when you retire to deliberate, both sides will allow you to examine the exhibits, if you wish to do so. However, you may ask any questions now that you seem to think proper. It is a case preeminently in which it is desirable that the jurors should ask questions.

BY JUROR NO. 12:

That check that you claim to have given Mr. Joice for \$5000, on August 17th, dated ahead to the 24th, where does that appear? A It does not appear in there, because at times I would not notify the office that I had issued checks until I knew that they were going to be actually used.

THE COURT: In other words, it does not appear as an entry in your check book.

THE WITNESS: No.

BY MR. DONAHUE:

Q And it further does not appear, Mr. Larimer, either in this book, as you told his Honor before, or in the ledger, or

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in any of your check books, this check which you say you received from the Roberts Numbering Machine Company, that does not appear in your ledger, cash book, or in any of your books? A According to these figures, it does not.

BY THE COURT:

Q Have you any account of that company on your books?

A No, sir, according to the records.

BY MR. DONAHUE:

Q Now, Mr. Larimer, at the time you received this \$5000 in cash, you were having a pretty good time? A I didn't receive --

Q About the time it is said you received the \$5000 in cash you were having a pretty good time around New York?

MR. FABRICANT: I object.

THE COURT: Sustained.

Q Did you spend \$4000, Mr. Larimer, between the last week of August and the first week of September, in roadhouses and clubs in the City and County of New York?

MR. FABRICANT: I object to that.

THE COURT: I will allow it.

A No, sir, I didn't.

Q Did you live at the Biltmore Hotel at that time?

A Yes, sir.

Q And who lived at the Biltmore Hotel with you? A

MR. FABRICANT: I object to that as incompetent.

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THE COURT: Sustained.

MR. DONAHUE: I am showing the large amount of money he spent at that time. Can't I show how he spent this money instead of devoting it for the purposes for which it was given to him?

THE COURT: I think I will leave out the names.

Q Was there somebody living there with you at that time? A Yes, sir.

THE COURT: I think you are entering now on a new field.

Gentlemen of the jury, we will take a recess now until 2 o'clock. You are admonished not to converse amongst yourselves on any subject connected with this trial, or form or express any opinion thereon until the same is submitted to you.

(Recess until 2 p.m.)

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AFTER RECESS, June 15th, 1921.

TRIAL CONTINUED.

ROBERT G. LARIMER, resumes the stand, and testifies as follows:

CROSS-EXAMINATION CONTINUED BY MR. DONAHUE:

Q Mr. Larimer, according to the Defendant's Exhibit P up until about August 18, 1920, you had received \$61,388.18 from the City of Norfolk; is that right? A Yes sir.

Q And up until that date you gave Mr. Joice, in all, \$3,700; is that correct? A Up until August when?

Q Up until July 7th, all you gave Mr. Joice was \$3,700? A To July 7th, yes sir, that is true.

Q What did you do with the difference between the \$61,000 and the \$3,700? A That was August 19 that, August 16th, that last.

Q What did you do with the difference? A \$35,000 of it went to the United States Government; \$3,700 of it---

Q You don't understand me. You said you paid all together to the United States Government \$35,000 for the goods, whatever they were I don't care? A Yes sir.

Q And you subsequently received on August 13th \$61,000? A Yes sir.

Q On August 13th you had \$61,000? A No.

Q You had received that much up to that time A I received that from the City of Norfolk.

Q How much of that was profit? A Of the \$61,000, \$864

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and some odd cents, the way the contract turned out.

Q Why didn't you give Mr. Joice his money back? A I beg your pardon?

(Question read by the stenographer.)

MR. DONAHUE: I am speaking of the money out of this \$5,000, on August 20th.

THE COURT: Pardon me. You say that the statement you hold in your hand shows a receipt by this defendant from the City of Norfolk up to a date in August of \$61,000.

MR. DONAHUE: Yes, your Honor.

Q And you have elicited from defendant that \$3,600, I think it was, he had paid to Mr. Joice up to July 7th?

MR. DONAHUE: Yes, your Honor.

THE COURT: Which is the earlier date. Now this witness says that \$35,000 of the \$61,000 he paid to the United States Government; is that so?

THE WITNESS: Yes sir.

THE COURT: \$35,000.

THE WITNESS: I correct that--yes sir, \$35,000, you are right.

THE COURT: \$35,000 and \$3,000 would be \$38,000.

MR. DONAHUE: Your Honor I do not know whether you quite understand my point. He contends he paid \$35,000 for the goods. That \$35,000 must be gone, and the goods left. My contention is that he sold the goods for

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\$61,000, so he must have had \$61,000 at some time ²⁰⁷ all together. Do you understand that I refer to, your Honor?

THE COURT: You say he received \$61,000 and some odd hundred dollars?

MR. DONAHUE: Yes, your Honor.

THE COURT: He has admitted it and was quizzed about accounting for what he did with that \$61,000.

MR. DONAHUE: My point is he said he paid \$35,000 for a certain amount of goods---

THE WITNESS: (Interrupting) From time to time.

MR. DONAHUE: Pardon me. After he paid for those goods he had nothing at all but the goods we will say, and he subsequently sold goods to the City of Norfolk, for which he received \$61,000, so at one time or another he must have had \$61,000 from the City of Norfolk. That was after he paid the Government for the goods.

THE WITNESS: (Interrupting) I am not taking all, sir.

THE COURT: You keep absolutely quiet, Mr. Larimer.

MR. DONAHUE: Do you see the point, your Honor?

THE COURT: You say \$35,000 had already been disbursed by him.

MR. DONAHUE: Yes, your Honor.

THE COURT: And therefore it didn't come out of the \$61,000?

MR. DONAHUE: That is my contention, your Honor.

THE COURT: His claim is it was out of the \$61,000 he

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paid \$35,000.

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MR. DONAHUE: Is that your contention?

BY MR. DONAHUE:

Q We will say you had \$26,000? A Yes sir.

Q How much of that was profit? A Eight hundred and some odd dollars.

Q Wasn't it practically all profit? A No.

Q Didn't you submit to Mr. Joice, or does not your books show, your total expenses from April 1st until August, 1920 was \$8,251? A I don't remember.

Q Was it substantially that? A I don't know.

Q What was your expenses? A I cannot recall without looking up my books.

Q You have no idea what your expenses were? A No sir.

Q Still you are able to say now you realized a profit of eight hundred and odd dollars? A According to the way the contract turned out.

Q Was that plus the amount of money you put in the contract? Was that plus the \$35,000 that you had originally put in?

MR. FABRICANT: He didn't put in \$35,000. He put in \$3,500.

MR. DONAHUE: He said between him and Mr. Joice he put in \$35,000.

THE WITNESS: No sir.

Q What did you say about the original amount advanced to the Government? A For the pipe before any money was

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5 received from Norfolk was \$4,000.

Q \$4,000? A Yes sir, on the first shipment.

Q How much all together do you say you got from Mr. Joice?

MR. FABRICANT: What do you mean, Mr. Donahue?

MR. DONAHUE: He knows (referring to the witness).

If you have any objection, make it to the Court.

THE COURT: ^{If} You do not understand the question you may say so, if you do, answer it.

THE WITNESS: I don't understand the question.

Q How much money all together did you receive from Mr. Joice as an advancement on these contracts? A I wouldn't want to say without looking at that statement.

Q I can remind you. You told me this morning \$20,000.

A That is what I felt I owed Mr. Joice last September.

Q Keeping that in mind, can you tell us how much Mr. Joice advanced to you? A He would have to look at my statement.

Q Have you any idea? A It runs between \$55,000 and \$30,000.

Q \$30,000 in round figures? A Yes sir.

Q After you got finished with those contracts and you received the last payment from the City of Norfolk, how much money did you have? A I didn't have any.

Q You didn't have any? A No.

Q Did you lose money on the City of Norfolk? A Yes sir.

Q How much did you lose? A That is still undetermined.

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because the balance of the contract is in litigation and dispute with the Triangle Equipment Company at this time, and I am unable to determine just what the profits or losses will actually be.

Q You know that is all that is left over now is \$1975, don't you?
A According to their statement they still owe me \$1975.

Q That is correct, is it not your idea of what is left over?
A Yes sir.

Q The contract, as far as you know, the contract is all over, with the exception of the balance due you of \$1975, is that correct?
A Yes sir.

Q Can't you tell us whether or not you lost money on that contract?
A Certainly I did lose money.

Q How much money did you lose?
A I cannot state at this time, because my account and contract with the Triangle Equipment Company is in dispute and litigation.

Q Have you no idea?
A Yes sir, approximately, an estimated loss, if I should lose the litigation in dispute, \$4861.00 loss.

Q What I am trying to find out is what happened to the money that was advanced contract by Mr. Joice?
A I can give an account for it.

Q You didn't spend it?
A What happened to the money advanced by Mr. Joice?

Q Yes, on these contracts.
A Oh the City of Norfolk

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never paid up for their contract---

Q All of the contracts?

MR. FABRICANT: Your Honor I object to what happened to all the contracts; I think we ought to limit the inquiry as to what happened on this contract.

THE COURT: No, the door has been opened very wide. I will hear it.

Q Let me see if I can refresh your recollection. You were living at the Biltmore during this time, during the months of September and August, 1920? A A couple of days of September.

Q Your expenses were very high, were they not? A I admit at this time---

Q You just considered that? A I didn't consider it at the time that they were.

Q And you at that time did not pay some of these claims, these wood claims, you told us about this morning? A I paid some of the wood claims in June.

Q And in July? A Yes sir.

Q About how much did you pay? A I cannot recall without looking up.

Q You said this morning 4,000? A 3,000, I beg your pardon. A Yes sir.

Q And did you buy any jewelry after August 20th?

MR. FABRICANT: If your Honor please I object to that upon the ground unless the District Attorney attempts to

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show it was paid by the specific money received from Mr. Joice, it is not competent whatever. The account was struck between these men on July 9th.

THE COURT: I think I will sustain the objection.

MR. DONAHUE: This man contends he never received this \$5,000 at all, he says he lost all this money in these different propositions. Would your Honor not allow me to show how he was living at the time and spending his money?

THE COURT: No, I don't think I will allow you to go into it. I won't let you go into it for the reason that it would involve an investigation of the financial resources of this man, entirely apart from anything he may have received from Joice. It is too broad a question. I won't receive the evidence.

Q Did you not from August 15th to August 31st spend \$4,500 for your personal expenses, living expenses?

MR. FABRICANT: I object to that upon the same ground.

THE COURT: Sustained.

Q Oh by the way, were you ever known under the name of Laurie? A They took my---

THE COURT: Now please, yes or no.

THE WITNESS: I was not.

Q In Chicago you were never known by the name of Laurie?

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A Yes sir.

Q But I made a mistake---it was Pittsburg? A They called me Laurie.

Q So you knew I was referring to you when I asked you about Chicago? A No I didn't. You asked me questions of Chicago.

Q I see you have different names in different cities; is that the idea? A No, it is not correct.

Q You were known by the name of Laurie? A They called me Doc Laurie, as a matter of a nickname.

Q Another technical admission?

MR. FABRICANT: I object to that.

THE COURT: Sustained.

Q Do you know where the Buckwood Inn is in the City of New York? A It is not in the City of New York.

Q It is one of the road houses---

MR. FABRICANT: I object to that as incompetent.

Q Did you ever live at the Buckwood Inn?

MR. FABRICANT: I object to that.

THE COURT: Sustained.

Q Were you known at the Buckwood Inn by any other name besides Larimer? A No sir, I was not.

Q Sure? A Absolutely.

Q Were you ever there with a woman other than your wife by the name of Larimer?

MR. FABRICANT: I object to that.

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THE COURT: Sustained.

Q Did you ever live at the Buckwood Inn?

MR. FABRICANT: Mr. Donahue, I object to that.

THE COURT: Sustained. I will hear nothing further along that line.

MR. DONAHUE: May I not ask where he lived and under what name at a certain period?

THE COURT: No.

Q You did receive, did you not, Mr. Larimer, a check from Mr. Joice in September for \$250? A Yes sir.

Q How did you get that check? A He gave it to me in Philadelphia.

Q Do you know what you said to him before you got it?

A I think I mentioned something about some expenses in New York.

Q Did you tell him you were broke? A I believe---

Q That you needed funds? A At the moment, yes sir.

Q As a matter of fact you were not broke? A At that moment I was in need of it or I would not have asked for it.

Q Didn't you have an account in the Commercial Trust Company and also an account in the Metropolitan Trust Company?

A That might be true.

Q Still you told Mr. Joice you were broke? A I spent the moneys in order but I had no funds at the moment.

Q Did you ever live in Atlantic City? A Yes sir.

Q And under what name? A R. G. Larimer.

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Q With whom? A My wife.

MR. FABRICANT: I object to that as incompetent.

THE COURT: I will let the answer stand.

Q You are sure it was your own wife? A Absolutely.

Q Well, Mr. Larimer, on or about August 20, 1920, is it not a fact that you did talk to Mr. Joice with reference to buying out Gleason's interest in that contract? A If I did it was to the effect---

Q Yes or no, please? A No--yes sir, I did.

Q Which is it yes or no? A Yes sir.

Q You did talk to Mr. Joice? A Yes sir.

Q And were you desirous of buying Mr. Gleason's interest?

A Not at that time, no.

Q You were not, what did you talk to him about it for?

A Told him it could not be done.

Q It could not be done? A No.

Q Then you told Mr. Joice it could not be done? A At that time, yes sir.

Q That was about August 20th? A That was August 20th to the 26th.

Q Now these various payments Mr. Larimer, that you made to Mr. Joice, for instance, the one of April 20th of \$500, on April 28th of \$500, did you notice that always when you made these small payments, a couple of days afterwards, you would come back and get a much bigger sum from Joice; was that in your mind?

MR. FABRICANT: I object to that.

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THE COURT: Sustained.

Q You didn't give him these small amounts in the line of bait so he would be more gullible and get a bigger amount from him after that?

MR. FABRICANT: I object to that.

THE COURT: Sustained.

Q When you gave him these amounts, Mr. Larimer, were they half profits of these particular transactions? A They were not.

Q Were they? A No sir, they were not.

Q What were they given as? A Because he would ask me from time to time for various sums of money, which I always gave to him when I had it.

Q On April 20th he asked you for \$500? A Yes sir.

Q Did you give it to him because he told you he was hard up? A Not necessarily. He asked me for it and I gave it to him.

Q On April 21st you went back to him and got a thousand? A Yes sir, if it is there, I probably did.

Q And April 22nd you got a thousand more? A On April 21st and 22nd--no sir, I did not.

Q In your own statement you say you got it? A No sir, I did not.

Q Didn't you sign Defendant's Exhibit F? A Yes sir, I did.

Q And that statement shows that you got it? A That is

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true, I admit it.

Q And didn't you also on May 6th get \$300 from him---I mean you gave him \$300 on May 6th---you take this (handing a paper to the witness)? A Yes sir, that is true.

Q And didn't you go back to him on May 8th and get \$4,750? A That is true.

Q You didn't give him \$300 so that he would give you \$4,750 the next day? A It hardly seems a fair sort of bid.

Q Did you do that? A No.

Q That was not the reason for it at all? A No sir.

Q Now on June 21st you gave him \$400? A Yes sir.

Q And on June 29th he gave you \$3,500 and \$4,500? A Yes sir.

Q And you say now there was no method for paying him that way at all? A No, absolutely no.

Q It just happened this equal division of the profit?

A It happened to be that he asked for this money and he got it.

Q Did he tell you he was hard up and needed the money?

A I don't believe he did.

Q What is your best recollection? A I don't think he was hard up; he probably had a reason for wanting it and I gave it to him.

Q Well, didn't you tell him, Mr. Larimer, at that time that there was an estimated profit of \$7,800? A On what date?

Q On the date of---didn't you tell him, Mr. Larimer, that

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14 there was an estimated profit of \$7,200? A I believe I did, but it was estimated only, not yet determined.

Q Didn't you also tell him at that time, Mr. Larimer, that the goods had already been sold at fixed prices after you got them from the Government? A Not in all cases.

Q Not in all cases but in most cases, substantially so? A Oh a few items probably had been determined.

Q Before you bought these goods at Washington or before the Triangle Equipment Company turned them over to you, didn't you tell Mr. Joice you had already sold them, that you had offered them to the Government of Argentina and the City of Norfolk who had accepted them? A You are talking about the pipe?

Q Pipe and other materials? A No, I didn't sell anything to the City of Norfolk except pipe.

Q You didn't? A No.

Q Didn't you have these goods sold to the City of Norfolk, this \$61,388 worth before you bought them from the Triangle Equipment Company? A Before I got them from the Triangle Equipment Company?

Q Yes. A No sir.

Q Didn't you have the goods in your hand at any time at all? A No, they were ~~not~~ too large for that.

Q I mean under your supervision? A After May 3rd I did.

Q As a matter of fact were not these goods transferred

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from the Triangle Equipment Company to the City of New York without you bothering at all? A No.

Q You mean to say you had some personal negotiations with the City of Norfolk? A I conducted the entire negotiations with the City of Norfolk.

Q That you personally had the goods carted in? A I had the railroad company do it.

Q Under your supervision? A Yes sir.

Q Did you pay for it? A I did, I paid freight charges on the total shipment, \$3,017.41.

Q Wasn't that the only expense you had to undergo? A No sir.

Q What other expenses did you have? A The deductions by the City of Norfolk on defective and cracked pipe amounted to \$1845.56.

Q That is not included in this \$61,000, is it? A Yes sir, it is.

Q Didn't you actually receive from the City of Norfolk \$61,388? A That is true.

Q In cash? A Yes sir.

Q What do you say it was deducted from? A It shows there.

Q Where does it show, on People's Exhibit No. P there, was it deducted? A The price which the City of Norfolk was to pay was for the pipe was \$52 a ton. on item 1 car of pipe containing 8 pieces of pipe, amounting to 16 tons, they

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16 only allowed us \$41 a ton, due to defective pipe. On three cars of pipe amounting to 60 tons, they allowed us \$50 per joint instead of per ton.

Q But don't those 12 items show the actual money you received from the City of Norfolk? A That is true.

Q And does that figure up \$61,388? A That is true.

Q So when you said \$1,800 for defective pipe was deducted, you were mistaken? A No, I virtually received \$63,000 instead of \$61,388.

Q What were your expenses, you say you had \$9,000 of expenses? A I had \$3,000 for cartage, \$30 and \$17.41.

Q What else did you have, what other expenses did you have? A The total expenses, railroad fares---

Q Yes, how much did that amount to? A Amount paid to C. J. Dibroski, who personally handled all the shipments, transfers of money, etcetera.

Q How much? A Approximately----I have to estimate that.

Q Estimate that, that is what I am asking you to do? A \$2700.

Q Go ahead, what else? A There were commissions paid to F. A. Wood for procuring the contract from the City of Norfolk for us.

Q How much? A \$4558.58.

Q Didn't you state that it was only \$1812.64 for that?

A That is the total amount that has been spent or has to be paid to F. A. Wood ~~for~~ before anybody ---

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17 Q It is to be paid, it has not been paid? A Not all together.

Q Anything else? A An additional amount paid by my attorneys in Philadelphia to Mr. Wood.

Q How much all together was paid to Mr. Wood? A The figures I have subject to correction, probably a couple of hundred dollars either way, and it would be \$4558.58.

Q Where did you get those figures from? A The figures came out of the agreement drawn upon by the Triangle Equipment Company, by the lawyers of the Triangle Equipment Company and myself.

Q Don't you know your books were gone over by an expert accountant? A I don't know that.

Q Didn't you know that? A No.

Q You know they show that all you paid to Wood, or that you were supposed to pay to Wood is \$1812? A I may make this statement at this moment; my books are in error, through the entries made by Mr. Diamant.

MR. FABRICANT: in
/ May I get an objection now?

THE COURT: Yes.

MR. FABRICANT: I ask that the answer be stricken out as not responsive. I object to the question on the ground it is immaterial.

THE COURT: I think we won't go into that now, those details.

Q You say now after all these contracts were all finished

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18 you were out? You didn't have anything in the world at all, had no money? A After the 1st---after the 8th or 9th of September, I didn't have anything, and all equities I might have, at this time, are tied up in dispute and in litigation, but I have not this much.

Q You claim that after everything was finished about these contracts you had no money at all; is that right? A Yes sir, that is true.

Q You said you lost it all in the contract practically. You didn't spend on your own personal wants or in luxuries of any kind? A I admit I may be subject to criticism considering the way the contract turned out, but my personal expenses---had I know that these contracts were going to turn out as they did, I never would have spend what I did.

Q Would you glance over this paper, Mr. Larimer, for me and see if that refreshes your recollection, and tell me if that refreshes your recollection as to your expenses in these contracts? I cannot say, I never got up that statement.

Q Did you make up the books yourself? A No.

Q The books are correct, are they not? A I do not know; I do not consider them correct.

Q Why not? A Because I think Mr. Diamant made considerable errors and I discharged him from my employ.

Q Mr. Diamant was the man whom you claim was he not, who made the entry of \$5,000 in this ledger, was he not? A Either Mr. Diamant or Miss Mooney.

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Q Was he also the man who made the entry in your check book of August 20th, \$5,000? A Either Mr. Diamant or Miss Mooney.

Q Don't you know the handwriting of either? A I could not tell you.

Q You cannot tell the difference between the handwriting of those two employees of yours? A Not at this moment.

Q Why not at this moment? A Because I am not familiar with their handwriting.

Q How long were they in your employ? A Mr. Diamant was in my employ for about five weeks.

Q How long was the girl in your employ? A I would say about four months.

Q You don't recognize either one of their handwritings? A Not glancing at it--those items you showed me, I am not prepared to say which is either, or which is right.

Q You wrote to Mr. Joice, did you not sometime after you were arrested in this case, or shortly before you were arrested?

A Before I was arrested, yes I did; that was in September.

Q And begged him not to go to the authorities with your case? A I don't know that I did; I did tell him the circumstances.

Q Did you ask him not to go to the authorities and not press the charge against you? A I have no recollection of that.

Q Do you contend, Mr. Larimer, that you are a partner of

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Mr. Joice? A Absolutely.

Q You believe whatever losses there were in this contract should be shared equally? A That was my understanding.

Q And you believe that he is as much responsible as you are for the losses in a financial way? A Yes sir, under the circumstances.

Q With those facts in your mind you agreed to sign a judgment for \$29,000? A Yes sir, I did.

Q You did sign it? A Yes sir.

Q That was out of the good nature of your heart? A No, it was because I felt Mr. Joice should be protected as much as possible.

Q You still consider it a joint venture? A I still owe Mr. Joice money advanced to me, which, however the contracts turn out as to the profits or loss should be returned to him. That was a different matter.

RE-DIRECT EXAMINATION BY MR. FAHRICANT:

Q These entries in the cash book, in the ledger under date of August 30th, are not in your handwriting are they, Mr. Larimer? A No.

Q When you got this check, Defendant's Exhibit N, with whom were you dealing? A Mr. G. S. Hice,

Q And do you remember where you were when you got this check? A In his office, in Brooklyn, Jamaica Avenue.

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Q Did you deposit this check the same day in your bank?

MR. DONAHUE: I object to that. We have gone all over that.

THE COURT: Yes, we have been all over it.

MR. FABRICANT: I have not gone into the detail of handling these entries at all. It has been very fully elaborated by the District Attorney and I would like to have the opportunity of re-direct examination in this case. I think it is the most crucial part of it.

THE COURT: I think that it appears that the check you hold in your hand, in point of fact, was deposited in the Metropolitan Trust Company on August 20th and, I think that it appears that the one item of \$5,000 entered in the account of the defendant on that day, I think it further appears that on the books of the defendant \$5,000 deposit was credited to his account with Mr. Joice, as though it came from Mr. Joice, and I think in addition it is now made plain by the testimony that the books are devoid of any entries respecting the \$5,000 check which you hold in your hand respecting any account of this defendant and the concern that drew that check.

Q Now can you explain to the jury how it happens that it does not appear in your books of account giving credit to the Roberts Numbering Machine Company, of which concern Mr. Hice was the president? A Yes sir, I can explain that very easily.

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Q Well, please do so? A I would occasionally make deposits while I was in New York, and the office in Philadelphia would not be aware of it until I would tell them of it. Along at this time, of August 20th, when that deposit was made, I had received a thousand dollars telegraphic order from Mr. Dibrowski, in Norfolk, and this check from Mr. Hice. If I recall correctly, at this moment, I was talking with the Philadelphia office from New York, and mentioned to the fact that I had deposited this amount in the Metropolitan Bank, and the only reason that I can give for that name appearing "J. C. Joice" on the stub is that either Mr. Diament or Miss Mooney took it for granted---

MR. DONAHUE: Now I object to all of that. While I want to give Mr. Larimer a full opportunity I think I should object to this.

THE COURT: No, I want to hear his explanation.

MR. DONAHUE: He is just assuming things, not at all stating any facts. He is just giving his opinion of what happened.

THE COURT: Well, he is, in substance, saying that he did not give directions for the putting in of these into his books the name of Joice.

MR. DONAHUE: I have no objection to that.

A I would say it did happen.

THE COURT: You will be quiet, except as you are asked questions. I told you that once before. Objection

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Q What directions did you give as to the entry of this check that you received from the Roberts Numbering Machine Company?

MR. DONAHUE: I ask that the witness be directed to please to state to whom he gave it, and the name of the individual, first.

THE COURT: Did you give directions to anybody in your office with respect to making any entry regarding the check from the Roberts Numbering Machine Company, yes or no?

THE WITNESS No sir---yes sir, I did.

BY THE COURT:

Q To whom did you give it? A Either to Mr. Diamant or Miss Mooney.

Q Where were you at that time? A I was in New York at that time.

Q These two persons that you have referred to were employed at your office in Philadelphia; is that so? A Yes sir.

THE COURT: You may interrogate the witness.

BY MR. FABRICANT:

Did

Q /You mention the name of Mr. Hice at all? A I did.

Q In giving these directions? A I must have done so.

Q Do you remember whether you did or not? A I am sure I did.

Q Now you personally had made a deposit of that check in

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New York, didn't you? A Yes sir.

Q And you made that deposit on the same day you received it here in New York? A Yes sir.

Q Do you know when the entries were made in your three books that were offered in evidence, showing the payment by Mr. Joice of \$5,000 on that day? A Not until the day after or probably two days after.

Q Did this check, Defendant's Exhibit N, pass into the hands of anybody in your Philadelphia office at all? A No sir, it did not.

BY THE COURT:

Q How do you account for the fact that there is no account on your books at all with the company that gave that check? A At that time I was considerably worried about the condition of my contract with the Triangle Equipment Company, with the City of Norfolk, and with them misunderstanding the 'phoning over the items of \$5,000 and \$1,000, and the fact that I had been receiving money from Mr. Joice, and that I had no account with Mr. Hice of the Roberts Numbering Machine Company, that they took it for granted it was Mr. Joice's check and not Mr. Hice's. I later on, after September, when Mr. Joice and I went over the books, I was aware that this \$5,000 had been credited to Mr. Joice, and I called his attention to it and told them to correct it. Evidently, it has never been done. Mr. Joice has been in possession of my books ever since.

Q Now, as a matter of fact, did you have a transaction with

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25 Mr. Hice of the Roberts Numbering Machine Company on August 20th? A Yes sir, I did.

BY THE COURT:

Q What were your movements, as you now recall them, on August 20th, 1920? A I recall calling up Mr. Hice on the 'phone from the Biltmore Hotel about, between 9 and 10 o'clock, I would say, and told him that I wanted to use his \$5,000. He told me to come over. I took the Subway and went down and met him in what they call New York Avenue, I believe in Brooklyn, at the end of the Subway, the Jamaica Line. He met me there in his machine and drove me out to his office at ⁷⁰⁰ Jamaica Avenue.

Q About what hour did you arrive at his office? A I would say between 12 and 1.

Q About how long were you there? A About half an hour at the longest.

Q About what hour was it when you left there? A I would say about 1:30.

Q Where did you go when you left there? A I came right back to New York. He brought me back to Jamaica Avenue, at the end of Jamaica, in his machine. I got on the Subway and came to New York.

Q Got out where? A 42nd Street and Grand Central Station.

Q Then where did you go? A I went to the Biltmore Hotel.

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Q About what time did you reach the Biltmore Hotel? A I would say about a quarter past 2, between 2 and half past.

Q Yes, then where did you go? A From there I went to the Metropolitan Trust Company.

Q Reaching there about what time? A I would say about a quarter to 3 or 3 o'clock.

Q And then where did you go? A I went back to the Biltmore Hotel.

Q Mr. Joice's office at that time was where? A At 50 East 42nd Street, New York City.

Q That is about Madison Avenue? A Yes sir.

Q Were you in Mr. Joice's office on that day? A No sir, I was not.

Q Positive of that? A Absolutely.

Q Do you remember what day of the week it was? A I cannot, your Honor, I can look it up.

Q How soon after that did you go to Philadelphia? A I don't think I was in Philadelphia for a couple of days after that, because I was, I believe I went to Mr. Joice's office on the 21st of August---I generally went into Mr. Joice's whenever I was around.

Q When did you leave the Biltmore Hotel? When did you cease to be a guest at the Biltmore Hotel, in August? A I would say between the 25th of August and the 1st of September; I would say that without being absolutely sure.

Q You went to the Biltmore in August? A I was a guest

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27 at the Biltmore on August 20th.

Q You had been there how long then? A I cannot say, your Honor. Sometimes I would come over and stay a day and sometimes I would stay two or three days.

Q When you say "came over" and "stayed", you mean you came over from Philadelphia? A Yes, your Honor.

BY MR. FABRICANT:

Q Did you give Mr. Joice, People's Exhibit No. 5, dated August 21st, 1920 for the thousand dollars? You gave him that check, did you not? A Yes sir.

Q Where were you when you gave him that? A I cannot recall at the moment. I think that check was handed to Mr. Dexter, and I believe it was handed to Mr. Dexter, either in my Philadelphia office, or Mr. Joice's office; I would not attempt at this time to say which place.

Q That was the day following August 21st, was it? A According to the date of the check.

Q The same date that the check bears? A Yes sir.

Q Did you see Mr. Joice that day at all? A No, I don't believe I did; I cannot recall it at this time, because ~~XXXXXX~~ it bears Mr. Dexter's endorsement, it would not be endorsed by him if Mr. Joice was in town--I don't think.

MR. FABRICANT: That is all.

RE-CROSS-EXAMINATION BY MR. DONAHUE:

Q I understood you to say, Mr. Larimer, that you knew, at the time you made out these checks, that you had no money

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in the bank? A Yes sir.

THE COURT: Referring now to what exhibit?

MR. DONAHUE: To People's Exhibits No. 2 and 5.

THE WITNESS: That is true.

Q Did you know it at that time? A I don't mean to say I had no money in the bank; I probably didn't have that amount.

Q This check is dated, at least, August 24th, and as you got this money from the Government or the City of Norfolk, what did you do with it? A I never received it; Mr. Dibrowski received it.

Q Didn't you get any at all? What banks did you keep it in? A Schmels National Bank.

Q You had many bank accounts? A Four.

Q Why did you want one in New York, you had no business in New York? A Yes sir, I did, because I was in New York considerable of my time.

MR. DONAHUE: That is all.

MR. FABRICANT: That is all. If there is any juror who would like to ask any questions of the witness I would like to submit him to them for examination.

THE COURT: Is there any juror who would care to ask the witness any questions?

(No response.)

MR. FABRICANT: If your Honor please, I have subpoenaed Mr. Haring, the handwriting expert. He is here or will be in a very short time and I would ask your

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Honor's indulgence until Mr. Haring arrives here.

THE COURT: You expect him, do you?

MR. FABRICANT: Yes, your Honor.

If Your Honor please, one of the jurors has asked that Mr. Joice come back to the witness-stand as he would like to ask him a few questions.

THE COURT: Yes. I myself would like to hear Mr. Joice also answer a few questions.

JOHN K. JOICE, recalled, testified as follows:
BY JUROR NO. 5:

Q Mr. Joice, you testified that you had paid Mr. Larimer \$5,000 in cash, at your office on August 20th, 1920? A Yes sir.

Q Have you got the original book of entry or cash book, in which you made that entry on August 20th, 1920? A I am satisfied it is on my books, yes sir; I think I can show you right here (indicating a book) where it came from.

Q I don't want to see the transcript of it. I want to see the original entry, and ascertain who made it.

BY THE COURT:

Q In other words, we want to look at your books or business books? A Yes sir, I can go and get them.

BY MR. DONAHUE:

Q Can you send your son up for them now? A Yes, if necessary.

BY THE COURT:

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Q While you were on the stand, Mr. Joice, I would like to ask you about what hour of the day was it when you say the payment was made? A Around half 9 or 10 o'clock in the morning, Mr. Larimer was in the office and he was going across to Brooklyn. As soon as he left me---

Q You say it was made in the morning? A Yes sir, in the forenoon.

BY MR. FABRICANT:

Q Was Mr. Dexter there? A He was not.

Q There was no witness present at all? A I think I was there all alone; I don't believe the young lady had gotten down who had charge of the office that time.

THE COURT: Allow me to look at that telegraph blank, Mr. Donahue?

(Mr. Donahue hands the telegraph blank requested to the Court.)

BY THE COURT:

Q Where was this exhibit written out? A Right there at the time.

Q Do you recall how it came about that used a telegraph blank rather than a sheet of paper, an ordinary letter paper?

A We have those right on the top of the desk and I just picked them up and wrote most on anything.

Q Which one of the two rooms, the inner or the outer room? A In the outer room, in the back room, on a long flat table, with glass on top of it, like looking out onto 42nd

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31 Street.

Q How much of it did you write? A I wrote all the way down to August 20th.

Q You wrote all the way down to what? A I wrote all of it, right to here (indicating); all the body except the signature.

Q I call your attention to the word "you"---"you" in the line next to the last; did you notice that that is in heavier ink? A I think it was written "me" first; I know that; I changed it. I was writing "to be returned to me," instead of that, he was to sign it, and it was changed after; the "me" was on there.

Q You wrote first "me"? A Yes.

Q Then you changed it? A I said "You are going to return this to me?" Now "If you don't use it, I want this back." I wrote it out, "Return to me," thinking of just what I said to him a moment before, and then I changed it after I wrote it over before he signed it.

Q You were standing up when you wrote this paper? A No sir, I was sitting down.

Q Was the defendant seated alongside of you? A He was walking around the office.

Q Standing or seated? A He was sitting there, using the telephone; I was writing while he was telephoning.

Q When you finished writing, what did you do? A I set it on the table and he turned around and signed it, on the other

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side of the table.

Q Now, I see some writing in pencil---I don't refer to the exhibit marks up at the upper lefthand corner---is that in your handwriting, some figures? A Yes sir, I think that is.

Q When were those figures put on? A While we were working up the account.

Q In other words, not on August 20th? A No sir, later.

Q This was in loose blank, this piece of paper that was on your desk? A Yes sir, there is a block of them.

Q A pad of them? A I pulled it off from the top of a pad in the other room, brought it in there; we keep them in the stenographer's desk.

Q In other words, you went from the outer room into the inner room, in the inner room to the stenographer's desk; from the stenographer's desk you lifted the pad that contained these blanks? A Yes sir.

Q From that pad you pulled off this one? A Yes sir.

Q And then you left the inner room and went to the outer room and sat down at the long desk, with the glass top, and wrote this out; is that so? A Yes sir.

BY MR. FABRICANT:

Q This was before your stenographer had gotten in, Mr. Joice? A Yes sir, just before.

Q Was there any other stationery of the usual kind there in the room when you went into get the paper? A We don't

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33 keep stationery in that outer room.

Q Well in the room where you got this telegraphic blank, the stenographer's room? A In the conference room, there is no stationery.

Q In the room where you went to get this blank? A There is stationery there.

Q You did not take any regular stationery? A No, this block was lying on the top and I just picked it up and walked off.

Q Did you have the money which you say you gave him in your pocket at that time? A Yes sir, I had it in my desk; in my locker of my desk.

Q Had you looked it up ^{the} ~~there~~ night before? A I had.

Q You didn't put it in any of those steel compartments which you had? A No sir, it was in ~~my~~ the desk.

Q How much money did you put in the desk? A \$5,900.

Q In what denominations, if you remember? A Five one thousand dollar bills and nine one hundred dollar bills; I didn't put it in the night before; it had been in the desk a day or two.

Q And how long had it been in the desk? A A day or two.

Q Had the desk been opened at all for two days? A

Only while I am there.

BY JUROR NO. 7:

Q Mr. Joice, what kind of a desk is that? A Roll-top desk with a locker on top, a roll-top.

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Q Had you given Mr. Larimer large sums of money prior to this transaction of August 20th, in cash? A Yes sir, I gave him \$1,500 in Washington, D. C., one day. There is the receipt on his desk for it. (indicating the desk at which Mr. Donahue sat).

BY MR. DONAHUE:

Q Is that the receipt? A Yes sir.

Q Was that made in your presence? A I wrote the upper part of it; he signed it.

Q In your presence? A Yes sir.

MR. DONAHUE: I offer it in evidence.

(The receipt above referred to received and marked People's Exhibit No. 12.)

MR. DONAHUE: May I show it to the jury, your Honor?

THE COURT: Yes.

(Mr. Donahue shows Exhibit 12 to the jury.)

BY JUROR NO. 7:

Q Mr. Joice, did you have any particular reason in giving Mr. Larimer this money in cash on August 20th instead of by check? A He wanted it quick, and I had it in the desk.

Q That is the reason you gave it to him? A Yes sir.

BY MR. FABRICANT:

Q You had your check book there, too, Mr. Joice? A I just had the \$5,000 in the bank; he wanted \$5,000 and I had \$5,000 in the office.

Q Mr. Joice, this telegraph blank, for receipt of \$1500 in cash, that was given Mr. Larimer in a hotel in Washington?

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35 A Yes sir.

Q And you were in the lobby of the hotel? A Yes sir.

Q And you went over and took a telegraphic blank and wrote out that receipt? A Yes sir.

Q When you wrote out this receipt on August 20th, you were in your own office? A Yes sir.

Q And you had your own stationery available in your stenographer's desk? A Yes sir, in the stenographer's desk there was plenty of it.

Q Did you make a personal entry in your cash book of the payment of this \$5,000 in cash? A No.

Q Whom did you instruct to make the entry, if anybody?

A Why, the entries were made by Mr. Smith.

BY MR. DONOHUE:

Q Is Mr. Smith in your employ yet? A Why, he works only periodically, once a week.

Q Is he available? Can we get him by tomorrow? A Yes sir.

Q Can we get your books? A Yes sir.

Q Will you have your books here with Mr. Smith in the morning? A Yes sir.

Q One of the jurors request that you bring your books with that entry in and Mr. Smith? A Yes sir.

BY JUROR NO. 5:

Q On your previous examination you said you had a young lady bookkeeper? A A young lady stenographer.

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Q She keeps your books? A She keeps data for them during the day; Mr. Smith does the accounting.

Q She makes no original entries in your books? A She makes an entry of her own.

BY JUROR NO. 4:

Q Did she make an entry of it that day? A I make a ticket out and put it in her box and she gets it, or Mr. Smith does.

BY MR. FABRICANT:

Q You say this People's Exhibit No. 12, you wrote out the words March 23rd, 1920, ~~xxxxxxxx~~ "Received of J. K. Joice, \$1,500 in cash?" A Yes sir.

Q And then you say that Mr. Larimer signed it? A Yes sir.

JUROR NO. 3: Let me see that?

THE COURT: Well I think we may as well take an adjournment until we get those books back.

MR. DONAHUE: May I ask Mr. Larimer just one or two more questions?

THE COURT: Undoubtedly. I think that is all with Mr. Joice for the moment.

ROBERT G. LARIMER, recalled by Mr. Donahue, testified as follows:

BY MR. DONAHUE:

Q Do you recall this transaction which occurred on March 23rd, 1920? A May I see it?

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Q Is that your signature (indicating signature), A

Yes sir.

Q Did you receive the money in cash? A Yes sir.

Q And the signature is yours? A Yes sir.

Q The body of it "Received of J. K. Joice, \$1,500 cash". A Was written by Mr. Joice.

THE COURT: Gentlemen of the Jury you are admonished not to converse with yourselves on any subject connected with this trial, nor express any opinion thereon until the same is submitted to you.

The Court stands adjourned until tomorrow morning at 10:30 A. M.

Whereupon the Court took an adjournment until Thursday, June 16th, 1921.

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THE PEOPLE v. ROBERT G. LARIMER.

New York, June 16, 1921.

TRIAL CONTINUED.

THE COURT: Recall Mr. Joice.

J O H N K . J O I C E , recalled.

BY THE COURT:

Q Mr. Joice, on August 30th, of 1920, what was your home address, where did you live? A I lived at the Chatham Hotel at 47th and Vanderbilt Avenue.

Q At about what hour on the morning of August 30th, 1920, did you reach your office? A I got in every morning about eight o'clock.

Q And on that morning you got there at eight o'clock?
A I don't recollect that.

Q About the usual time? A Yes, I got up, I always have a call at seven o'clock.

Q Had you any appointment on that day, August 30th?
A Yes, sir, he was to be over there early in the morning, Mr. Larimer.

Q You had an appointment with him for that morning?
A Yes, sir.

Q THE COURT: Do you want to ask him anything further, Mr. Donahue.

MR. DONAHUE: Yes, your Honor.

BY MR. DONAHUE:

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Q Mr. Joice, have you produced your books that were kept in your office on August 20th of last year? A Yes, sir.

Q Have you produced your day book and ledgers? A Yes, all of them.

Q Will you pick out your cash book, whatever you wish, and explain it to us. Get the book of original entry first, Mr. Joice, I want to see the book of original entry first.

A (Witness produced book for counsel).

Q Is that the book of original entry? A Yes, sir.

Q Where are the entries made after they are made in that book, on that page? A I believe in exhibit S for identification.

Q Where is the next entry made after that? A In the journal and the cash book.

Q First get the journal and then the cash book. A That is the journal (indicating book).

Q Will you show us the entries that were made on August 20th 1920? A Right here (indicating).

Q Where was the next entry made? A In Defendant's Exhibit U for identification.

Q What is the next book after that? A That (indicating).

Q Will you please look at People's Exhibit 12 for identification. Do you find any record of your turning over to Mr. Larimer the sum of \$5000 on August 20th? A Yes, sir.

Q Will you show it to us, please. A (Witness indicates).

MR. DONAHUE: Now I offer that in evidence, if your

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Honor please.

MR. FABRICANT: May I ask a few questions?

THE COURT: Yes.

BY MR. FABRICANT:

Q Is this in your handwriting?

MR. DONAHUE: I object to this, at this time.

THE COURT: I will allow Mr. Fabricant to ask a question.

MR. DONAHUE: We concede the books are not in his handwriting.

THE COURT: Do you want to interrogate the witness?
I will hear you.

Q Is that book in your handwriting? A No.

Q Is the entry on August 20th in your handwriting? A No.

Q Was there an original entry made anywhere else, other than in that book by you before it was entered in that book (indicating)? A No.

Q By whom was that entry made, if you know? A Miss Smith.

Q Do you know when it was made? A About that date.

Q Same day? A I am satisfied it was made the same day.

Q In your presence? A I don't know whether it was made in my presence, but during the day.

Q Was it made pursuant to your oral direction, or a written direction? A Oral direction.

MR. FABRICANT: No objection.

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MR. DONAHUE: I now offer it in evidence, People's

Exhibit 12 for identification.

(People's Exhibit 12 for identification marked in evidence).

BY MR. DONAHUE:

Q Now, Mr. Joice, I show you People's Exhibit 13 for identification, and ask you is that the account that was kept in your ledger for Mr. Larimer? A Yes, sir.

Q And does that show whether or not on August 20th, 1920, you paid Mr. Larimer \$5000? A It does.

Q Are these books kept in your office, under your supervision and control? A Yes, sir.

(People's Exhibits 13 and 14 for identification marked in evidence).

Q Which entries do you refer to here, Mr. Joice?

THE COURT: I think he had better have the line pointed out to him.

Q That is the line (indicating) August 20th, J-18, \$5000. Mr. Joice are there any other books that you have here, except this one here? A I have a cash book.

MR. DONAHUE: Point out the page to me.

Q On People's Exhibit No. 13, is that kept in your office?

A Yes, sir.

Q Under your supervision? A Yes, sir.

MR. DONAHUE: I offer that in evidence, that page.

THE COURT: Redeived.

(Jurors examine People's Exhibits 13 and 14).

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BY JUROR NO. 12:

Q Is there a cash account? A The cash account shows where I drew the funds from the bank.

Q I would like to see the cash account in that ledger?

A (Witness points it out and the jurors examine same).

THE COURT: I take it the fifth juror wants to ask a question now. You may put your question, Mr. Juror.

BY JUROR NO. 5:

Q How would you account for the fact that in your journal entry you have an item marked in April, presumably the same year, after the entry of August? A Well, the original book of entry is kept by a young lady in the office, and when the auditor works over them he handles it his way.

Q You mean to say that the auditor made entries after August, of March and April? A Yes, sir.

Q Where do those original entries appear? A They are in the back end of that ledger, they are in this book (showing jurors book).

Q In whose handwriting is this kept, Mr. Joice? A That is kept in the handwriting of Miss Smith.

Q This is not the same writing (indicating)? A No, that is a Mr. Smith.

Q You have a Mr. Smith and a Miss Smith? A Yes, sir.

Q Can you explain why Mr. Smith skips a line from

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August 20th to September 10th? They seem to be in chronological order and yet he skips a line. Can you explain that?

A No, I cannot answer that.

Q This does not explain to me why the entries of March and April were posted in that journal, at least entered in that journal after the entry of August 20th?

MR. DONAHUE: The juror is speaking of the journal.

THE COURT: Mr. Juror, are you sure it is March and April of the same year?

JUROR NO. 5: Presumably; there is no other year indicated. I happen to know something, your Honor, about the science of bookkeeping, and this seems very unusual to my mind.

THE COURT: I think we won't have any comment on it at this time, Mr. Juror. You may ask him questions.

JUROR NO. 5: There are items, presumably of the same year, March 10th, and April without specific date, made without specific date, and are entered in the supposed to be original book of entry, the journal, and after that of August 20th.

THE COURT: In other words, how do you account for the fact that seemingly the entries in your book are not made in the sequence or order of time?

THE WITNESS: The auditor can explain that better than I, your Honor.

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BY MR. DONAHUE:

Q Is he here? A Yes, sir.

Q The auditor is here? A Yes, sir, and Miss Smith is here, both of them.

THE COURT: Pardon me. A moment ago Juror No. 51 wanted to ask a question.

JUROR NO. 51: I wanted to know was there a cash account in the ledger.

MR. DONAHUE: I intend to put the auditor on and we can find out then.

THE COURT: I think we had better wait until Mr. Donahue puts the auditor on the stand.

MR. FABRICANT: No further questions.

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J O H N F. H A R I N G, called as a witness, on behalf of the Defendant, being first duly sworn, testified as follows: (114 Park Avenue, Newark, N. J.)

DIRECT EXAMINATION BY MR. FABRICANT:

Q Mr. Haring, what is your profession? A For over thirty-five years I have been engaged in all kinds of penman work, plain and ornamental. I have made copies for educational purposes. For the last twenty years my opinion has been sought regarding questions of handwriting, and for the last ten years I have testified regarding that question in courts.

Q A little louder, Mr. Haring? A (continued) During the last ten years I have testified in courts in New York, New Jersey, Pennsylvania and Maine.

Q About how many cases have you testified in? A Between one and two hundred.

Q And have you testified in cases in the Court of General Sessions of New York? A I have.

Q For the prosecution? A I have.

Q About how many cases have you done that in? A I don't recall.

Q Can you mention some of the cases in which you testified as a handwriting expert? A I remember the George Graham Rice case. I do not recall the names of others just at this moment.

Q Can you say about how many times you have testified in this court in cases for the prosecution? A Why I should

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say in the neighborhood of twenty-five times.

Q Now I show you the following exhibits in this case, People's Exhibits Nos. 1, 2 and 5; Defendant's Exhibits "F", "G", "H", "N" and "Q", and I will ask you if you have ever seen these before? A (After examining them) May I ask if these are the same ones I looked at yesterday?

Q Yes. Then I have seen them before, if these are the same.

Q Where did you see these various exhibits before today?

A In Mr. Donahue's office.

Q And when did you see them? A Yesterday afternoon.

Q Who was present there at that time? A Mr. Donahue, yourself, myself also.

Q And did you then make an examination of those exhibits?

A I did.

Q Will you tell the jury what examination you made and how you made it? A I made the examination with my naked eye; made it with a magnifying glass, made comparisons of form, the character of the line, the connections and disconnections of the line.

Q Now will you kindly take People's Exhibit No. 1, the telegraphic blank, and I ask you to look at the signature on that paper? I ask you now whether you can with reasonable certainty tell whether or not that signature is in the same handwriting as the body of that telegram; the body of that document?

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THE COURT: Yes or no to that.

A Yes, sir.

Q And will you give us your opinion as to whether it is or is not in the same handwriting? A In my opinion it is.

Q Now when you made that examination of these various exhibits, did you see the signatures on all of the other documents I have shown to you, and which I exhibited to you? A I did.

Q Now will you tell us whether the handwriting on People's Exhibit No. 1, both the body of it and the signature, is in the same handwriting as the signatures are of "R. G. Larimer" on the other exhibits? A In my opinion it is not.

Q Now will you tell us upon what you base your opinion?

A The arrangement of the letters, the individual letters themselves; the character of the line, and the general forms.

Q Will you specify in greater detail what differences there are in the signature on People's Exhibit No. 1, and the signatures "R. G. Larimer" on the other exhibits, which have been shown to you? A The standard signature of Larimer -- excuse me, I think you ought to change your question before that, because I see some handwriting that is not Mr. Larimer's and this handwriting that is on here.

Q Referring to Exhibit "G"? A Referring to Exhibit "G".

Q You say that is in the same handwriting as the handwriting on people's Exhibit No. 1? A Yes, sir.

Q Exclude that Exhibit "G". Now will you kindly tell us what the differences are from that on People's Exhibit No. 1 and

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the signatures on the other? A I find another exhibit with some other pencil writing on besides Mr. Larimer's.

Q That is Exhibit 12? A The signature being Mr. Larimer's.

Q And the body of the handwriting you say is different?

A Yes, sir.

Q Now, excluding those two items, can you tell us what the differences are? A Why the arrangement of the initials, as found on the standard writing, the standard signatures of Mr. R. G. Larimer, that appear on those documents, which you gave me for standards, is similar all the way through, while the same initials are differently arranged on the question signature, these initials being "R", "G" and the "L". In the standard the "G" is arranged below the line drawn from the "R" to the "L", the top of the "R" and "L". In the question signature the "G" rises above that point. In all of the standards that is true, the "G" descends below, and in the question signature the "G" is above that line, drawn from the top of the "R" to the top of the "L". That is one point of difference. Another is the movement used in producing the signature. In the standards there is a similar movement, all the way through; through all the signatures throughout the exhibits there is a similar movement. On the question signature, it is a different movement or impulse that made the same line. Then as a matter of form, the finish of the "R" is different on the question signature from any of the "R"s, final "R", in the standard signatures.

The angularity in the question signature, or the slanting of the letter, and the angle at the bottom, that connects that one letter to the other, is different in the question signature from the standard signatures, the standards all being alike in that respect, having a little curve and turn at the bottom, whereas the question one is angular, and the pen lifts that ap-
significant
pear on the question one is ~~added~~ to my analysis of the signature he has made in imitation.

THE COURT: Keep your voice up.

A (continuing) The signature that is made in imitation of another person's signature, and not being made by the same person who owned the signature. In the question one, there is a loop appears at the bottom of the "L" --

Q The capital "L" you mean? A The capital letter "L" in the standard, all the standards, I think there is about in the neighborhood of twenty, the little loop appears at that place but one out of twenty times, and that was made with lead pencil, and not with pen and ink. In the middle of the "R" there is also a loop on the question, and that does not appear on the standards, that is connecting the top and the bottom part of the "R", on the right hand side -- the capital letter "R". I think that covers it.

Q I call your attention to the difference between the sizes of the letter "A" in the name Larimer as relates to the "R" that succeeds it. Is there any point about that? A The point about that is, this, that in all of the standards the "R" is smaller

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than the "A", which precedes it in that name of Larimer. In the question, the "R" is taller, just a small degree, but it is taller, and the final letters, the "I" and the "M", in the standards look like a bunch of "U's or "W's", and in the question one it is a very good looking "M", which it should be, the "M" in Larimer, but in the standards they all look like "U's", and the sweeping finish of the "R" at the end, is out of harmony with the work, as produced on these standard signatures.

Q Will you put that down for a moment. (Witness complies).
I now show you Defendant's Exhibit "G", and ask you to state whether that is in the same handwriting as People's Exhibit No. 1?

A It is.

Q And will you point out why you say that, and what the similarities of that handwriting are?

MR. DONAHUE: What is the reason for doing so? We admit that.

THE COURT: Well, People's Exhibit No. 1 also includes the signature.

A In the signature the "R" in Larimer and in Defendant's Exhibit "G" rises above the letter "A" in a similar way. They both rise above in the question, and in Exhibit "G", "R" rises above the preceding letter, as in the name of Larimer.

Q In the standards, in the name Larimer, after the "A", does the "R" rise above the "A", or did it fall below the "A"? A It fell below.

Q In all the standards that you saw? A I think one may have approached the top of it, but it didn't rise above.

Q In these two Exhibits that you now hold, People's Exhibit No.1 and Defendant's Exhibits "G", you say the "R" rises above the level of the "A"? A It does.

Q Does it do in all signatures of Mr. Larimer's name on Defendant's Exhibit "G"? A Two out of three it does.

Q What other similarities are there? A There is a finishing stroke to the "R", at the final stroke of the name, a swing to the right. There is a loop at the bottom of the "L". There is a loop in the middle of the capital letter "R" connecting the top and bottom part on the right hand sweep.

Q And these two loops you say are present in the signature on people's Exhibit No.1? A Yes, sir.

Q They are absent in the standards? A They are absent in the standards. The swing of the "M" in Larimer, the last name on Exhibit "G" has the same sort of curve to the down strokes, and as they approach the bottom, turn to the left. They do the same on two of the strokes in the "M" on the question signature, making a "pointed" effect on the bottom of that name.

Q Now did you examine the signature on People's Exhibit No.1, under a magnifying glass or under a microscope? A I examined it under both.

Q And did you examine the standards under a microscope? A I did.

Q Can you state whether there is any difference in the appearance of these standards and of the disputed signature, as ex-

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amined under the magnifying glass, and what the differences are, what they indicate? A Looking at the signature with the naked eye, the "R" you see is connected with the "Q", as on the standards. There may be one or two standards that are made disconnecting these letters, but where they are connected, we find that the stroke, the impulse that made the stroke leave from the bottom of the capital letter "R" to the following letter, "Q", is similar all through the standards, when we compare them with the question point at that same place, at that same point, between the "R" and the "Q".

Q Will you please indicate that to the jury? (The witness complies) A Where it connects at the bottom of the "R" leading into the "Q", under the microscope, there is a different impulse observable, showing that the pen was lifted from the paper and carefully placed back at that point, making the connection. But, in the standards, the pen comes down with a final stroke to the "R" and leads right off into the letter "Q".

Q Are there any other places of departure from the standard and the disputed signature? A In the question one, the pen was taken from the paper in the middle of the first loop of the "Q", the top loop of the "Q" and carefully retouched to the paper before that was finished. At the bottom of the "L", the pen was lifted from the paper and carefully put back before the "L" was finished. In the "M" in Larimer the pen was carefully lifted from the paper and carefully returned to finish another stroke.

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At the top of the "E" in Larimer, the pen was carefully put back at that point.

Q In the standards as examined under the magnifying glass, is there anything observable as that to which you have now testified about the lifting of the pen, as indicated? A Not in that way.

Q Have you the magnifying glass here, the one you used in making the examination? A Yes, sir, I have.

Q Would you please produce it? (Produces two magnifying glasses) I think this small glass will be more serviceable (indicating).

MR. FABRICANT: I would like to submit the disputed signature to the jury and give them an opportunity to look at it in the same way as the expert does.

THE COURT: Yes. (The jury examines the signatures).

Any juror who wants to ask the witness a question may do so.

BY JUROR NO. 3:

Q Would you be kind enough to tell us the effect of ink on these two papers before us, one paper having a highly glazed finish, and the other rough surface paper, I refer to the telegraph blank and the draft, and what effect has the ink on the formation of the letters? A Regarding those things I have testified to, it would have no effect.

Q Absolutely none? A No, I cannot see that it would have any effect.

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Q You mean to say if ink is put on this telegraph paper, the same amount, and in the same way, that it would not spread any more in the one than in the other? A Yes, sir, it would spread.

Q Then it does change the formation of the letter, if it spreads? A Some of the letters would be thicker or thinner but the principles upon which I have testified regarding them would not be affected.

Q You have failed to answer my question. If I drop a most minute part of ink on a telegram paper, and the same amount of ink is dropped on glazed paper, would the effect of that ink, in the same quantity, be the same on both papers? A No, it would not; I would not say so.

Q You testified that the commencing stroke of "G" on the disputed signature, on People's Exhibit No. 1, indicates to your mind that the pen was taken off and the pen carefully replaced, and then the stroke placed again; on what do you base your assumption?

A From my observations with the glass.

Q And you testified that at the top of the "G", the pen was taken off and again carefully replaced?

MR. DONAHUE: I object to that. How can an expert tell whether the pen has been so replaced or used.

THE COURT: As a matter of fact, he had used the word "carefully".

A I would say it was not carelessly done. I did not testify as to the top of the "G", but, as you just stated, it is the case. I

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I made that observation but neglected to mention it.

Q I call your attention to another matter, that is the down stroke of the "A" in Larimer, and ask you whether the separation between the upstroke of the letter "A" and the downstroke, appears likewise in the body of People's Exhibit No.1, and in the signatures of People's Exhibit, or rather Defendant's Exhibit, "G"?

A It does.

Q Is that a distinguishing characteristic of handwriting in Defendant's Exhibit "G" and People's Exhibit No.1? A It occurs in both.

Q Now in the standards will you describe how that downstroke in the "A" is made? A The downstroke in the standard signature, the downstroke of the "A" is not separated, as in the question and the writing of Exhibit "G". In the writing of Exhibit "G", and on the question signature, the "A", the back of the "A", and the last part of the loop, would make a "tent", the whole will run right up near the top. On the standards that letter is not split up so far, on none of the standards.

Q You testified that the top of the capital "G", in all of the standards, falls below the line of the top of the capital "R", and the top of the capital "L"? A There may be one that comes among all those standards; there may be one that approaches the top. The rule is they take a dip.

Q You mean if you drew a line from the top of the "R" and the top of the "G", and then to the capital "G", there would be a given curve? A Yes, sir, an under curve.

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Q On the disputed signature you say the stroke takes an opposite direction? A Given an upward curve.

Q I show you Defendant's Exhibit "G", and ask you to look at the three signatures, "Robert G. Larimer" on that and testify if the same number of curves would be present, if you drew some lines? A There would be.

Q Is that a characteristic on the disputed document? A The standard document does the same thing.

Q Now you don't know this defendant? A No, sir, I do not.

Q Have you ever seen him before? A Not to my knowledge.

Q When was the first time you saw him? A Yesterday.

Q At what time? A Half past three or such a matter.

Q When you came into this court room? A Yes, sir.

Q Are you being paid for coming here to testify?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q Are you here pursuant to any agreement for payment?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. FABRICANT: May I not show that, if the Court please.

THE COURT: Witness has appeared here and given testimony.

Q From your examination as testified to by you, are you able to state again, with reasonable certainty, that the signa-

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on the disputed document, People's Exhibit No.1, is in the same handwriting as the rest of that document? A That is my opinion.

Q And you are certain of that? A Pretty certain.

Q When you say "pretty certain", is that qualifying your own mind, your own certainty? A I think it is the product of the same hand.

Q That is what you always testified to?

MR. DONAHUE: I object to that.

THE COURT: Sustained. He has already answered that question, but you may put a similar question to him regarding the other documents. In other words, you may ask him, if he is reasonably certain that the checks, which are in the admitted handwriting of the defendant, were not written out by the person who wrote the signature to Exhibit No.1.

MR. FABRICANT: Will you kindly answer the question just propounded by his Honor?

THE WITNESS: In my opinion, the person who wrote these signatures(indicating) did not write this question signature, People's Exhibit No.1.

CROSS-EXAMINATION BY MR. DONAHUE:

Q Isn't it a fact that pen and paper make a big difference in the handwriting? A Yes, sir.

Q And the position of the writer makes a big difference, does it not? A Yes, sir.

Q And the rapidity and the ease and effort makes a big difference, does it not? A Yes, sir.

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Q For instance, I may write standing up an entirely different hand than I would if I were in a cramped position, and have to write under difficulty? A Yes, sir.

Q And as one of the jurors says, is it not a fact that different kinds of paper make a big difference? A But it wouldn't show in the differences.

Q In the general handwriting? A It might.

Q After all, you are only giving us your opinion? A Yes, sir.

Q It took you sometime to arrive at that opinion? A Yes, sir.

Q By that I mean you were in doubt for a considerable time?

A I would not say that. I had to familiarize myself with the standards.

Q You recall when you first saw this People's Exhibit No. 1?

A Yes, sir.

Q You were in doubt at that time, were you not? A I had not studied them.

Q After studying them for some time you were in doubt? A I had not studied them enough.

Q You studied them some time? A I probably did, if you say so.

Q I mean, picking up People's Exhibit No. 1, don't you recall when you first saw it, you said that you would not give your opinion without first making an exhaustive study of it? A Yes, sir, that is my custom.

Q In other words, you didn't want to say off-handed that this was not all in the one handwriting or was in? A No, I would not.

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Q Now are not some people known as eccentric writers? That is, they don't write the same all the time? A Yes, sir.

Q In other words, their emotions and temperament and health and disposition all have occasion to change their handwriting? A It enters into it; some people more than others.

Q Would you say, Mr. Haring, that both these people -- both the standard and question document here -- write generally the same kind of hand? A The standard, you mean the body writing?

Q Yes, the body writing and signature, generally in the same kind of handwriting? A I don't get that question?

Q By that I mean they write the Spencerian hand, both of them? A Yes, sir.

Q In a general way? A Yes, sir.

Q Don't their handwriting look somewhat alike to you?

A No.

Q You mean to say that there is no resemblance between Mr. Larimer's handwriting and Mr. Joice's -- to you? A There is on the signature, yes, sir.

Q That is what I mean? A Yes, sir.

Q Isn't there a resemblance the way Mr. Joice signs his name?

THE COURT: Suppose you take, if you can, some writing by the defendant, other than his signature, and let the witness compare them, in answer to your question, with

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the writing of Joice.

Q Now, Mr. Haring, we will just take these two -- I won't bother marking them -- isn't there a resemblance in these two?

THE COURT: Are they exhibits in the case?

MR. DONAHUE: No, your Honor.

THE COURT: Better mark them.

(The two specimen handwritings were marked respectively, People's Exhibits Nos. 15 and 16 for identification).

Q Without going into details, will you look at People's Exhibits 15 and 16 for identification, and tell me if there is not some degree of similarity between them; take first the general handwriting? A The general effect, the pictorial effect, is different.

Q Is there anything similar about them at all? A Well --

Q If there is not, say so? A I should say not.

MR. DONAHUE: All right. That is all.

RE-DIRECT EXAMINATION BY MR. FABRICANT:

Q There is no difference between them? A No similarity.

Q Now I ask you whether the characteristics that you have described, as being found in the disputed signature, and which you say are in the standards, are also found in this People's Exhibit No. 15 for identification?

MR. DONAHUE: Haven't we gone into that?

THE COURT: I do not think it is necessary.

A (Interrupting) Pictorially, yes, sir; general appearance.

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Q You mean that the differences which you indicated appear likewise to be present in this People's Exhibit No.15 for identification? A The one that appears, one of these exhibits that was presented to me before, is also present in People's Exhibit No.15 for identification.

Q Assume, for the moment, that this signature, the disputed signature, is in the handwriting of the defendant, Larimer, can you state whether that was a departure from his usual handwriting? A Decidedly.

Q And would you say that the departure was made for the purpose of deceiving --

MR. DONAHUE: That is objected to.

THE COURT: Sustained.

Q Can you state whether the hand that wrote that intended to imitate the standard ⁷⁴which you have seen or did not so intend?

MR. DONAHUE: That also is objected to.

THE COURT: Sustained.

Q Did you look at that Exhibit No.1 through a magnifying glass at any time? A With the magnifyingglass and with a microscope.

BY THE COURT:

Q Did you look at the word, "you" -- y-o-u? A I did.

Q What did you observe through that magnifying glass about it? A I found a different colored ink.

Q In other words, it was a different ink from the balance; is that so? A That is my opinion.

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Q And through the magnifying glass did you observe any writing under? A I saw some writing there; I did not decipher it.

Q In other words, the word "you" had been written over something else? A It had.

BY MR. FABRICANT:

Q You say that was written with a different colored ink?

A The over-writing, it was written with different ink.

MR. FABRICANT: That is all.

MR. DONAHUE: That is all.

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SAMUEL B. McNEILL, called as a witness, by the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q What is your business, please? A Treasurer of the Roberts Numbering Machine Company.

Q So you know this defendant? A I do.

Q And were you Treasurer of your company on or about August 20th, 1920? A I was.

Q Still are? A I am.

Q About what time did you become acquainted with Mr. Larimer? A Subsequent to that.

Q And did you have any talk with him about a transaction that was going on between your company and the defendant? A Subsequent to that I had, yes, sir.

Q Have you produced here the ledger of the Roberts Numbering Machine Company? A I have it here.

MR. DONAHUE: If Mr. Fabricant will tell me the purpose of this, I may be able to concede all this. Is it your purpose to show that he got a check?

MR. FABRICANT: I want to show that he got a check from the Roberts Numbering Machine Company and that an entry was made in their book of account, debiting him with that, and there was subsequent transactions in connection with --

MR. DONAHUE: We are satisfied to concede that.

THE COURT: In other words, I understand that your statement of what you expect to prove by this witness is now,

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for the purpose of shortening the trial, conceded to be correct?

MR. DONAHUE: That he would testify to the effect that Mr. Laramie received a check from that company on that day, and there was an entry in his books to that effect.

MR. FABRICANT: And that the check was not paid in exchange for cash, paid on deposit.

MR. DONAHUE: If they want to go into the question of what it was paid for, I am satisfied. We all know what the transaction is for.

THE COURT: I think he is entitled to show that Mr. Laramie did not turn over to this concern \$5,000.00 in cash on August 20th, and received a check in return.

MR. DONAHUE: . . . As far as the books are shown, or concerned, I will concede, that if they they were produced, it will show that the check was not given for cash, given in an ordinary business transaction.

MR. FABRICANT: That is all the concession I require.

CROSS-EXAMINATION BY MR. DONAHUE:

Q What business is your concern engaged in? A Manufacturing numbering machines.

Q How many employees have you over there? A We have from one hundred to 120.

Q What was this money given for, do you know, this \$5000, if you know now, yourself; don't guess? A In connection with the

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contemplated purchase of Government surplus material.

Q What kind of material was your concern to buy? A No bought material that was over at the Hog Island Shipyard.

Q Was it material to be used in your business? A No, it was to be sold again.

Q It was a business proposition? A Yes, sir.

Q Bought on behalf of the company? A Yes, sir.

Q What is the full name of your company? A The Roberts Numbering Machine Company.

Q It was your concern, this company, with which this defendant was doing business with? A Yes, sir.

Q Not with any individual, with the whole concern? A Our President, Mr. Hice, was acting for the company.

Q This was being done for the company? A Yes, sir.

Q The company's funds being used? A Yes, sir.

Q That was in August, 1920? A Yes, sir, August, 1920.

Q Did you ever get the goods that you paid for?

MR. FABRICANT: That is objected to.

THE COURT: Sustained.

BY MR. FABRICANT:

Q The man who actually had that transaction with Mr. Larimer was G. S. Hice? A Yes, sir, the President of the Company.

BY MR. DONAHUE:

Q Were there subsequent dealings in connection with the transaction? A Subsequent payments.

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Q To Mr. Larimer? A Yes, sir.

Q And that appears on your ledger, yet? A Yes, sir.

Q And still carried on open account? A Yes, sir.

Q Not put down on profit and loss? A Not yet.

Q Or to experience --

BY MR. FABRICANT:

Q It may be? A Yes, sir.

Q You are treating him as a debtor? A So far, but he is not in good standing?

MR. FABRICANT: The defendant rests, if your Honor please.

(R E B U T T A L)

H E R M A N L. S M I T H, called as a witness, on behalf of the People, being first duly sworn, testified as follows: (245 West 52nd Street, N. Y. City).

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Smith, what is your business? A Public accountant.

Q Public accountant? A Yes, sir.

Q And where is your place of business? A 245 West 52nd Street, N. Y. City.

Q Mr. Smith, did you keep the books of John K. Joice during the year 1920, for Mr. Joice? A Yes, sir.

Q And were you employed regularly by him? A Well, I was employed at the end of the year to bring the books up to date.
BY THE COURT:

Q Pardon me. When did you do work for him, first? A In December.

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Q In December of what year? A In December, 1920.
BY MR. DONAHUE:

Q Is that the first time you ever worked for him? A Yes.

THE COURT: I do not think this witness will be of service
but if you want to examine him, you may do so.

Q Do you say you only worked for him from December, 1920?

A Yes, sir.

Q Didn't you work for him during August, 1920? A Yes, sir.

Q You worked for him just at the latter part of that year?

A And part of this year, too, but I started in December working
for him.

Q Is People's Exhibit No. 14, in your handwriting? A Yes.

Q And where did you get it?

THE COURT: Take the page that purports to be the
original entry of these various dates (addressing the wit-
ness).

Q You turn back where that blotter is, Mr. Smith (pointing
to same). When did you see People's Exhibit No. 14?

THE COURT: Ask him if it is in his handwriting.

THE WITNESS: No, sir.

Q When did you first see that, People's Exhibit No. 14?

A When I started to work there for Mr. Joyce.

Q When was that? A In December.

Q And was it in the same condition at that time, do you
know, as it is now? A Yes, sir.

Q Did you make a copy of it? A I copied it in my own
handwriting.

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Q Where did you put that copy of it which you made in your own handwriting? A I put it here (referring to People's Exhibit No.14).

Q You put it there? A Yes, sir.

Q Made an exact copy? A Yes, sir.

Q In your own handwriting? A Yes, sir.

Q And will you look at People's Exhibit No.13, Mr. Smith.
(Witness complies) Did you ever see that before? A Yes, sir.

Q When did you first see that? A I made that after; during that period, December and January.

Q You made it yourself? A Yes, sir.

Q Where did you get your information from? A I got it from the original stubs, the check books, and the checks, and the information that I picked up in the office.

Q Did Mr. Joice tell you to put these entries in there, or did you find evidence of them? A I found them right in the check books, and notes, and receipts on file.

Q And can you account, Mr. Smith, how some of these entries are not in chronological order? A Some of them were taken from the check books and checks, and after I got through with that, I picked up memoranda and receipts, and there were journal entries.

Q In other words, you did not attempt to keep them in chronological order? A No.

Q As you found this evidence of these accounts, you put them down without regard to time or sequence of events? A The checks

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first, and then I went through the records and picked up other items.

CROSS-EXAMINATION BY MR. FABRICANT:

Q Did you come there in December and start a new system of bookkeeping? A There were no books of record as far as ledger and cash books; I opened up books.

Q What books did you open up in December? A I opened up a cash book and a journal and a ledger.

Q Will you show me the cash book that you opened up, please? A The cash book is right there (indicating a book).

Q This one (indicating a book) A Yes, sir.

Q Would you mind turning to the page that contains entries of August, 1920? A What?

Q To the page containing the August 1920 entries? A Yes, sir. (Does so).

Q Do you find an entry there under the date of August 20, 1920, showing a payment of \$5,000? A Yes, sir.

Q Now do you remember where you got that information from? A The \$5000? Is that what you said?

Q YES, on August 20th, 1920? A Not in the cash book.

MR. DONAHUE: I think that is the personal cash book.

Q It is not in the cash book? A No.

THE COURT: I think it has been marked as an exhibit for identification.

THE WITNESS: No such item in the cash books \$5000.

MR. DONAHUE: It is Defendant's Exhibit "B" for identification.

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Q Now, Mr. Smith, will you please turn to the --

THE COURT: Pardon me a moment. I want to understand it.

BY THE COURT:

Q When you came to Mr. Joice's office in the month of December, 1920, I understand that besides making some entries in the books that were already kept there, you opened a new set of books? A That is true.

Q And the cash book that you then opened is the book that you have now been looking at? A That is correct; that is all my work.

BY MR. FABRICANT:

Q In making the entries in that cash book, did you have any other entries before you in some other book? A No. The cash book entries were all taken from the check stubs and followed and verified with the checks.

Q Did the cash book, as you prepared it, in December, purport to show the monies drawn and paid out by Mr. Joice?

MR. DONAHUE: How can he answer that.

THE COURT: Sustained.

BY THE COURT:

Q I understand that the entries, as made in this cash book, which you made, are cash items that you found by an examination of the check book? A That is true.

Q So that you did not enter in the cash book any item of cash money, disbursed? A No, that all went through the journal. This

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item here (indicating) as all referring to the bank. I credited the bank with this money and charged the bank with this money. The other items were journal entries; they might be cash items, but they went through as a journal entry.

BY MR. FABRICANT:

Q Will you kindly show me the entry you made in the journal showing the disbursement of \$5,000 to R. G. Larimer, on August 20, 1920? A August 20, 1920; yes, sir, \$5000. (after looking at the book).

Q When you made that entry in the journal, what information did you have before you upon which to base that entry? A The original memoranda entries in the ledger there, in the part of the ledger that was made up.

THE COURT: He is now turning to People's Exhibit No. 12.

THE WITNESS: These are items that were entered by the girl, the stenographer.

Q Did you see them entered by the stenographer in People's Exhibit No. 12? A No, I didn't see them entered.

Q And this page was taken from a previous page, as far as you know, People's Exhibit No. 12? A Yes, sir; I used those figures.

Q And People's Exhibit No. 12 was given to you as the basis for making the journal entry? A That is true.

Q And did you ever see People's Exhibit No. 1, an alleged receipt for \$5000? A Yes, sir, I have seen that.

Q Was that shown to you, too? A I saw that receipt.

Q That was in December? A Yes, sir.

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Q Well, when you copied People's Exhibit No.12, you made a complete copy of it, did you? A yes, sir.

Q And you based all your other entries upon People's Exhibit No.12, which was then shown to you? A I took out all of those (indicating) from there, and the other items that were not in there, I took from checks.

Q Did you go to original sources in each instance? A Yes, sir, I took the stubs first and then verified with the checks.

Q And when you came to an entry of August 20th, did you ask Mr. Joice to show you where the original stub was, or the original check? A No, I don't think I did.

Q Did you find out whether it was a payment by cash or a payment by check, which was represented by the entry of August 20th? A I didn't trace that down. I took the books as being correct, and used the figures and brought them down.

BY MR. DONAHUE:

Q Did you find an entry of a cash check for \$15,000? A That is in the cash book.

Q Yes, I mean in the cash book? A \$15,000 was withdrawn from the Chatham & Phoenix Bank.

Q \$15,000? A Yes, sir.

Q Cash check does that show? A yes, sir.

BY MR. FABRICANT:

Q When was that, Mr. Smith?

MR. DONAHUE: July 6th.

MR. FABRICANT: I object to that has not being at all relevant on this issue.

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MR. DONAHUE: It is too late now --

MR. FABRICANT: I ask that it be stricken out, your Honor.

THE COURT: It bears, perhaps, upon the possession by the witness Joice of cash.

Q Does that show \$15,000 in cash was drawn or a cashier's check? A This entry is crediting the Chatham & Phoenix Bank with \$15,000, and as being charged to Mr. Joice.

Q What does that mean in plain English? A It means he went to the bank and issued his check for \$15,000, and received -- whether he received a cashier's check or the cash itself, I could not determine, but the amount of money was drawn out by his check.

Q Does it not show in plain English, in some way or other, that he received \$15,000 from that bank? A Absolutely.

MR. FABRICANT: That would not show what he received.

THE WITNESS: He gave his check for \$15,000, and the check was charged to his account and the money charged to him.

MR. FABRICANT: That is all, Mr. Smith.

THE COURT: Gentlemen, we will take a recess. You are admonished, gentlemen of the jury, not to converse amongst yourselves, on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you.

The Court takes a recess until 2 o'clock.

(Whereupon a recess was taken until Two P. M.).

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THE PEOPLE OF THE STATE OF NEW YORK

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-against-

ROBERT G. LARIMER

New York, June 16th, 1921.
2 p.m.

(AFTER RECESS. TRIAL CONTINUED)

M I S S M A R Y F. S M I T H , called as a witness
on behalf of the People, in rebuttal, being first duly
sworn, testified as follows; (Address, 245 West 75th
Street, New York City.)

DIRECT EXAMINATION BY MR. DONAHUE:

Q Miss Smith, are you, or were you in the employ of Mr
Joice? A Yes sir.

Q In what capacity? A Stenographer, secretary, and
bookkeeper.

Q General office work? A Yes sir.

Q Were you employed there in the months of July, August,
and september of last year? A Yes sir.

Q Do you take care of Mr Joice's books? A Yes sir.

Q You recognize this book, Miss Smith? (Showing witness
a book) A Yes sir.

Q Will you turn to the page I have now in front of you?

THE COURT: Referring to what?

MR. DONAHUE: People's Exhibit No. 12.

Q (Continued) And tell me, Miss Smith, whether those

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entries were made in your handwriting by you. A Yes sir.

Q Do you know when they were made? A It is on the dates.

Q On the dates appearing opposite the entry? A Yes sir.

Q Made by you? A Yes sir.

Q Where did you receive the information with reference to these dates and entries? A From the stubs, and from receipts.

THE COURT: Speak a little louder please.

Q Now I call your attention, Miss Smith, to an entry there, made by you on the debit side of that account, where it says "August 20th, \$5000." Can you tell us what that means, please? A Why yes sir; I made that entry from a receipt that Mr Joice gave me.

Q And when you say "a receipt", is this the receipt you have in mind, People's Exhibit No. 1? A Yes sir, that is it.

Q Did Mr Joice give you that? A Yes sir, he did.

Q When did you first see that, Miss Smith, if you can recall? A Why, on that day.

Q On the same day? A Yes sir, on August 20th.

Q And from that receipt you made that entry in the book?

A Yes sir.

Q And that entry was made in the account of R. G. Larimer?

A Yes sir.

Q Made by you, in your own handwriting? A Yes sir.

Q What time of the day, Miss Smith, did you see that receipt, People's Exhibit No. 1? A In the morning when I came in.

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Q About what time did you get in there, do you remember?

A Well, between half past nine and ten o'clock.

THE COURT: Who was there at that time?

THE WITNESS: Mr Joice.

THE COURT: Anybody else?

THE WITNESS: Not that I recollect.

Q As far as you can recall now, Miss Smith, the only one who was there when you arrived was Mr Joice? A Yes sir.

Q Did he give you that particular receipt, People's Exhibit No. 1 at that particular time, some time after you came in? A During the morning.

Q And did you then and there make that entry? A Yes sir.

Q Now, did you make the other entries on that page? A All these. (Indicating)

Q On People's Exhibit No. 12. All in your own handwriting? A Yes sir.

Q Did you keep the ledger itself? A I kept his book. (Indicating People's Exhibit No. 12)

Q Will you look at People's Exhibit No. 14, Miss Smith, and tell me whether or not you made the entries on that page. A No, I didn't.

Q Do you recognize the handwriting? A Yes sir.

Q Whose handwriting is that? A The auditor's.

Q Do you know when they were made? A I don't know the exact date, when he came in December.

Q Some time about December you say? A Yes sir.

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THE COURT: Can you give us his name?

THE WITNESS: Herman L. Smith.

Q And did you and he have consultations? A Oh yes.

Q With reference to those entries? A Yes sir.

Q And generally in reference to that book? A Yes sir.

Q Miss Smith, one of the jurors asked a question this morning, and I would like to have you explain it, if you can: Do you know why there was a space between August 20th entry and September 10th entry on that account?

THE COURT: In other words, where the line is blank, between the two.

THE WITNESS: Why, I think the account was closed. Mr Joice told me it was closed. Then that was like a final payment.

Q That would not account for it, Miss Smith, for you to leave a line there without any writing at all. A No. I didn't leave it for any reason.

Q There was no reason for you doing it? A No.

Q You didn't leave it for the purpose of allowing someone to come in after and make another entry on that book? A No.

Q Are you sure, Miss Smith, that you made the entry on August 20th, \$5000, on that day when Mr Joice gave you People's Exhibit No. 1? A Yes sir.

Q Have you a distinct recollection of that? A Yes sir.

THE COURT: Is the word "Cash" there in your hand-

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writing?

THE WITNESS: Yes sir.

JUROR NO. 5: May I ask a question, your Honor?

THE COURT: Yes.

BY JUROR NO. 5:

Q Miss Smith, what is the name of that book you have before you? A Why, I call it the ledger.

Q Is that your original book of entry? A Yes sir.

Q You have no book or memorandum from which you enter these items in that book? A Only the receipts.

Q And these items were by check? A From the check.

Q From the check book? A From the stub.

Q Did you keep any cash book? A No.

BY THE COURT:

Q In other words, if a sum of money were paid out in cash, say in currency, you would have to get it from some memorandum outside of the check book? A Yes sir; Mr Joice would take a receipt for any money, or if I paid a bill in cash I got the receipted bill for it.

Q Do you remember seeing at any time Mr Larimer, the Defendant? A Yes sir.

Q Inside of the office of Mr Joice? A Yes sir.

Q Do you remember whether or not you saw him sitting in that office at any time during the month of August 1920? A Oh yes sir; I don't remember distinctly, but nearly every time that Mr Larimer was in New York he was in the office.

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Q Do you remember being present at any time during the month of August when there was any conversation or talk between Mr Joice and Mr Larimer? A Well, I cannot remember distinctly but Mr Joice's offices consist of two rooms, and I am in the first; but usually when Mr Joice is talking with any man, he goes in the next room; it is a larger room.

Q The partition goes away up to the ceiling? A Yes sir; just a door into it.

Q In the month of August of 1920 where was the stationery in these offices kept? A Why, what I wanted immediately I kept in my desk, and then I had shelves up above for the reserve stock.

Q I take it that you kept in your desk note paper and letter paper? A Yes sir.

Q And what other kind of paper; carbon? A Carbon paper, Western Union blanks, and memorandum slips.

Q I take it you have no independent recollection of August 1920 as a day? You don't remember anything that occurred on that day? A No sir.

THE COURT: The witness is yours.

CROSS EXAMINATION BY MR. FABRICANT:

Q Are you still employed by Mr Joice? A Yes sir.

Q And will you tell us what the occasion was of the making of the new ledger in 1920? A Why, the auditor came in then. I am really not a full-fledged bookkeeper; I just keep the one book.

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Q And the auditor got up the ledger that is now here? A
Yes sir.

Q You had a loose-leaf ledger before, had you not? A
No.

Q Did you have any ledger at all before the auditor came?
A Only this one.

Q This particular ledger here? A Yes sir.

Q Did the auditor put in a new ledger when he came up?
A Why, he opened up some other books.

Q Did he open up a new ledger? A Well, I don't know
if he calls this the ledger. He uses this as the ledger. As
I say, I am not a bookkeeper; I don't know about the different
books.

Q Is this, physically speaking, the same ledger you had
when you were there in August? A Yes sir.

Q And the paper in that book is the same paper? A Yes
sir.

Q When the auditor came to take the sheet, people's
Exhibit No. 12, which you say is in your handwriting, and put
it in the book---

MR. DONAHUE: Front of the book.

Q And copied all of these entries on another sheet. A
I presume that is just what he done.

Q You don't know what the occasion of that was? A That
in his own handwriting, along with the
he wanted everything
other books. He was the auditor, and did the work, making out

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the Income Tax, and probably he wanted everything done his way.

Q Now you knew where Mr Joice's desk was in the office?

A Yes sir.

Q Where was it? A He has one desk in my room, a roll-top, and a flat-top in the other room.

BY THE COURT:

Q First, in entering that office, you come in from the hall, and a person coming into your office enters yours through the outer hall? A Yes sir.

Q And there was a door communicating with Mr Joice's private room? A Yes sir.

Q Your typewriting desk was in the outer office? A Yes sir.

Q What other office furniture was there? A My files, and Mr Joice's roll-top desk.

Q Then in the inner room there is the large flat desk with the glass top, a sort of conference table, and a roll-top desk and two safes, and another file.

BY MR. FABRICANT:

Q Was the roll-top desk in the other room? A Yes sir.

Q Two roll-top desks in the two offices? A In the two rooms; one in each room.

Q Did you have stationery or letters in the room where the roll-top desk is? A No, I didn't keep any in there.

Q Was there any in there? A No; possibly one sheet from the day before that somebody would take to scribble on,

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ask me for a sheet of paper.

Q Do you know whether Mr Joice kept any currency there?

A Yes sir.

Q Did you ever see any currency in the office? A Yes sir.

Q Did you see any currency on August 20th? A Well, I cannot remember specifically that day.

Q Well, do you remember the following day Mr Larimer coming there and giving a check for \$3000 to Mr Dexter? A I believe I do.

THE COURT: Supposing you show us the check.

Q I show you Exhibit No. 5 and ask you whether you remember seeing that on that day. A (After examining) Why, I believe so.

Q Did you make an entry of a \$3000 credit on Mr Larimer's account on that day? A Well, I will have to see it, to be sure.

Q Well, look at your account and see if you did. A (After examining) No, I didn't.

Q Then you didn't get that that day at all, did you? A No.

Q You never received the information that a \$3000 check was being handed by Mr Larimer to Mr Dexter? A No.

Q Now, will you look at people's Exhibit No. 14, the copy of the account, under the initial "L", in that book, Larimer's account? A Yes sir.

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Q See if you find a credit item there on August 21st for \$3000. A Yes sir.

Q That was not kept in your account, was it? A No.

Q And you note a debit item there under date of August 23rd for \$3002? A Yes sir.

Q That represents the return of that check, protested? A Yes sir.

Q You have not got that entry in your account either? A No, I don't think so.

Q Can you tell us how that omission happened? A Well, the check was possibly deposited, and I would get it at the end of the month from the book, from the bank balance, and I think it was crossed out in the meantime.

THE COURT: Pardon me. Wouldn't you make on the stub of your check book an entry indicating the deposit of that check?

THE WITNESS: No; Mr Joyce sometimes did that.

Q In other words, you made no entries on the stub of the check book indicating deposits? A Sometimes I did. You see I worked under Mr Joyce's direction, and he did a good many of those things himself.

BY MR. FABRICANT:

Q May I see your original account again, please? Just turn to it in the book, if you please. A Let me have it, please. (The witness takes same)

Q When you made these debit entries in your book---

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THE COURT: Referring to Exhibit 12.

Q Yes, referring to People's Exhibit 12. You indicated on each item whether it was a check or not? A Yes sir.

Q Do you remember any earlier occasion entering up an item of \$1500, cash advanced to Mr Larimer? A Well, I don't remember without seeing the book.

Q Look at your book and see if you find any earlier entry of cash payment of \$1500. A March 29th.

Q What is that? A March 29th.

Q Does it say "Cash" there? A Oh no; that is a check---no, I have none for cash.

Q Well, have you got an entry there under date of March 23rd, \$1500 cash, or any other form? A No.

Q I show you People's Exhibit 12, and ask you whether you ever saw that paper before? A Well, I am not so sure; I possibly have, though.

Q Have you any entry in your book, an original entry, showing a payment by Mr Joice to Mr Larimer on August 23rd of \$1500, cash, check or otherwise? A No, I have not any entry.

Q You have not that entry? A No.

THE COURT: Are those words there on that line?

THE WITNESS: Yes sir; "not advanced."

THE COURT: The words "not advanced"?

THE WITNESS: Yes sir.

Q The words "not advanced" are written opposite two items

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of \$1000 each? A Yes sir.

Q That was a correction made by you? A Yes sir.

Q Under whose direction? A There was a little correspondence about it.

Q And ultimately you canceled that by saying "not advanced"? A Yes sir, that is right.

Q Now, are you sure that you made that entry of August 20th? A Yes sir, I remember that.

Q While you had before you this paper, People's Exhibit No. 1? A That is right.

Q And when you made the entry from your check book, where the stubs were, did you put down anything on the stubs to indicate that the entry was made? A Sometimes at the end of the month I checked them when the bank statement came back.

Q When you actually made the entry from the cash stub?

THE COURT: From the check stub.

Q Into your ledger, did you ever put down the page of the ledger? A No.

Q Or the account, or anything of that kind? A No.

Q That you never did? A No.

Q You put down nothing on People's Exhibit 1 to indicate that you had entered it? A No.

Q What did you do with that receipt after you were given it by Mr Joice? A I put it in the receipt files.

Q Did Mr Joice tell you not to enter up that \$5000. to wait for a few days, that he expected to get it back? A This

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one?

Q Yes? A I don't remember specifically.

Q Well if you don't remember, you cannot answer, can you? A No, that is right.

Q What is that? A That is right.

Q Now, have you an entry there of \$5,000 on August 24th, as a credit? A No.

Q Now, I show you People's Exhibit No. 2, and ask you whether you ever saw that check before? A I am not certain, I possibly did; I saw several checks from Mr. Larimer.

Q Do you know whether that check was sent to the bank and deposited at the bank? A I am not so certain.

Q Do you remember receiving a telegram from Mr. Larimer about that check? A Do I remember receiving a telegram about this check?

Q Yes, at the office?

THE COURT: Keep your voice up. Twelve men want to hear you.

A I am not sure, if we have the telegram; I don't know.

If that check was deposited in the bank, and afterwards withdrawn, you didn't know anything about it? A That is possible.

Q You didn't know anything about it? A I say that is possible.

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Q Would there be an entry of the deposit having been made in your original check stub? A I don't think so.

Q Who made the deposits in your office? A Mr. Joice; sometimes I did.

Q And would he give you the deposit slips or the pass book afterwards? A Yes sir.

Q Is that what you entered up the deposits from? A Yes sir.

BY THE COURT:

Q Did you fill out the body of checks yourself in your own handwriting? Did you keep the check book? in other words? A Why, Mr. Joice carried a check book with him. Sometimes he would hand it to me to make out a check.

Q It was not one of the books that was in the office? A No sir; it was a pocket book.

BY MR. FABRICANT:

Q Now I show you a book and call your attention to an entry under date of August 24th; did you ever see that entry before? A Yes sir.

Q Did you see it on August 24th? A No, I could not swear to that.

Q You never made an entry of a \$5,000 deposit on August 24th, did you? A No.

Q And you have not got a credit in the original

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account of a \$5,000 check, have you, on that date? A

No.

Q Did you hear anything about that time of a check having been deposited and having been withdrawn on that date? A I don't remember specifically; there were one or two checks.

Q Mr. Larimer was in the office at that time, wasn't he? A On the 20th?

Q Yes? A Yes sir.

Q On the 20th, you didn't see him? A No, if he was in New York he was possibly in the office.

THE COURT: Strike that out.

Q On the 21st, when that \$3,000 check was given to Mr. Dexter--- A (Interrupting) I remember that, yes sir.

Q And you didn't make that deposit a credit to Mr. Larimer's account? A No, I didn't.

Q Do you know why you didn't? A What date was that? No, I don't remember why I didn't.

Q Did Mr. Joice ever tell you that this check for \$5,000 was given to him dated ahead, and not to enter it in the books? A Possibly that is the reason I didn't.

Q Now tell us, was that the reason? A It possibly is.

Q When you say "possibly is", do you mean that is the reason it was not entered? A No, I cannot say that.

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Q What do you remember about that? A That there was one of the checks protested, so as soon as they were deposited, I don't enter them, because I thought they may have to be stricken off.

Q Was there one check there of \$5,000 that Mr. Joice told you not to enter as a credit to the account, because it was dated ahead? A I cannot remember exactly.

Q Would you say that such a thing did not occur?

MR. DONAHUE: I object to that.

THE COURT: Yes, sustained.

Q Did you ever see any large sums of money, of currency, in the office? A Yes sir.

BY THE COURT:

Q How much? A I have seen as much as \$10,000.

BY MR. FABRICANT:

Q And where was it kept? A In a little private compartment, in Mr. Joice's desk.

Q Do you mean the rolltop desk? A Yes sir.

Q In his office, or your office? A In my office.

Q Out in the outer office? A Yes sir.

Q And it was kept there from time to time, every night, to your own knowledge? A Yes sir.

Q By the way, Miss Smith, have you spoken about this case with your employer? A Spoken about it?

Q Yes? A Why, only in making up the exhibits.

Q You didn't speak to him about it? A I didn't

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speak to him about it. I did what work was given to me on it; maybe a couple of questions I had to ask.

Q Do you remember when the question of this case came up and of going to the files and taking original Exhibit 1 out of the files? A Yes sir, all of the receipts.

Q How many receipts did you have? A I am not sure.

Q Was People's Exhibit No. 12 in the file? A I believe it was; I kept all the receipts.

Q Well, I ask^{ed} you whether you saw that a little while ago? A I cannot swear to that.

Q What is that? A I cannot swear to it.

Q And so far as you know, is this the first time that you have learned about the payment of \$1500 in cash to Mr. Larimer on March 23rd 1920? A Yes sir.

Q This is the first time, today? A If I have not got the entry, it possibly is.

Q You mean that you think possibly it is the first time today, because the entry is not in the book? A Yes sir.

Q When you went to get People's exhibit No. 1 out of the file, didn't you find People's Exhibit No. 12 under the same letter? A I believe so.

Q What is that? A I believe so.

Q Then you have seen the receipt before? A Yes sir, possibly I have, if it was there, if they were all there;

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if Mr. Joice gave them to you, I have taken them out of the receipt file and given them to him.

Q I am not asking you to tell us what the possibilities are, but do you remember when you took People's Exhibit No. 1 out of the file, at the same time taking out People's exhibit No. 12? A I cannot swear to that, but I possibly did take out all the receipts that were there.

Q Those are the only two receipts that you know of, aren't they; the rest are all checks? A If these are all that are here, they are possibly all that we had.

Q Your answer is that you don't know. You are guessing about that. A Slightly.

Q Considerably guessing, aren't you?

MR. DONAHUE: What difference does that make?

MR. FABRICANT: That is all.

MR. DONAHUE: That is all.

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MR. DONAHUE: Your Honor, May I ask Mr. Larimer a few questions?

THE COURT: Yes, he may come back to the witness stand.

ROBERT G. LARIMER, recalled, by Mr. Donahue, testified as follows:

BY MR. DONAHUE:

Q You said yesterday that the City of Norfolk owed you \$1975.98 on these contracts you had with them? A I said, according to their statement they did.

Q Do you say now that they owe you that? A I think so, according to their statement.

Q Were you ever paid that money? A I beg pardon?

Q Have you been paid that money? A Not that I know of.

Q Don't you know whether there is still unpaid to you \$1975.98?

A No. Mr. Cibrowski collected all that money. There may be such profits. I am going on the assumption that they owe me that because their statement shows it.

Q You contend they owe you \$1975.98? A According to their statement.

Q Will you look at this book, and tell me whether you ever saw it before? A (after looking at same) No, sir, I never did.

Q Look at it? A I did look at it. It is a check book of Schmele National Bank.

Q Isn't it yours? A It is mine.

Q Did you ever see it before? A No, because it was kept in Newport News by Mr. Cibrowski, my agent.

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Q Did you ever see it at all? A No.

Q Do you know how it got into this court? A By Mr. Joice.

Q Didn't you give it to him? A No.

Q Never saw it before? A No.

Q Any of your handwriting in there? A No, sir, there is not.

Q Don't you see an entry in there where it says --

MR. FABRICANT: I object to what it shows.

THE COURT: Sustained.

Q Did you give this book to Mr. Joice? A No, sir, I did not.

Q And none of those entries in in your handwriting? A I will have to look at them, first.

Q Well, look at them. Any of your handwriting there at all?

A Just a minute please? (after carefully examining book) Not on the pages I have look at.

Q And you never saw this book before I showed it to you?

A Yes, sir.

Q And you still say the City of Norfolk owes you that money?

A I am making that statement on the assumption that the statement they sent me, while I have been confined in the Tomb, is correct.

BY MR. FABRICANT:

Q You had an agent by the name of Cibrowski? A Yes, sir.

Q Cibrowski conducted that transaction between you and the City of Norfolk? A Yes, sir.

Q Do you know Cibrowski's handwriting? A Yes, sir.

Q Is this (indicating) in Cibrowski's handwriting? A It is.

Q Will you turn to that entry that the District Attorney questioned you about. Do you see an entry there, "Draft \$1975.98 on August 16th?" A (after examining book) Yes, sir.

Q Did you ever receive a draft for that amount? A Never did.

Q When you made your statement that you thought the City of Norfolk hadd you \$1975.98, you based that on Defendant's Exhibit "P" entry of August 16th? A Yes, sir.

Q Did you know there was an entry in that book, under date of August 16th, 1920? No, sir, I did not; never seen it.

Q That entry is correct? A Yes, sir.

Q Then according to that the City of Norfolk does^{not}/owe you that amount? A According to this the City of Norfolk does not owe me \$1975.98.

Q And this statement, People's Exhibit "R" was received by you while you were in the Tomb? A Yes, sir.

Q And bears date of August 18th, 1920?

MR. DONAHUE: I object to that.

MR. FABRICANT: I am reading the sate of the statement of the City of Norfolk. That is all, Mr. Larimer.

MR. DONAHUE: That is all. The People rest.

MR. FABRICANT: The Defendant rests, and if the Court please, I respectfully renew my motion to dismiss the indictment, in its first count, on the ground that the evidence does not warrant in law the conclusion that there is any common law

larceny committed in this case whatever, and I would like to renew my motion to dismiss the second count of the indictment, upon the ground that as a matter of law the evidence discloses that this alleged payment, if it was made, was treated as a debit; that it became part of a general account between these persons; that it was handled as usually indebtedness is handled, and that the subsequent payments were received on account of the general account, including the alleged \$5000, that is supposed to be the subject of a larceny, and that for that reason the matter became a pure indebtedness, and could not become the subject of criminal larceny.

THE COURT: I will reserve my decision on the motion until I have had an opportunity to examine carefully the minutes of the stenographer, and I will on Monday morning announce my decision.

Gentlemen of the Jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you.

The Court stands adjourned until Monday morning, June 20th, 1921, at 10:30 A. M.

(Whereupon an adjournment was taken).

(M. A. G.)

Peter P. McLaughlin,
Official Stenographer.

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