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

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

- against -

PHILIP PRAVDER

: B e f o r e

: HON. WARREN W. FOSTER, J.,

: And a Jury.
-----X

New York, Friday, February 28th, 1913.

THE DEFENDANT IS INDICTED FOR FORGERY IN THE SECOND DEGREE.
INDICTMENT FILED OCTOBER 11th, 1912.

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

W. H. L. EDWARDS, Esq., Assistant District Attorney,
For The People.

HAROLD SPIELBERG, Esq.,
For the Defendant.

(A Jury is duly impaneled and sworn.)

T H E P E O P L E ' S C A S E

(Mr. Edwards opens the case to the Jury on behalf
of The People.)

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C H A R L E S J A C O B, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS.

Q What is your name ? A Charles Jacob.

Q Where do you live ? A 58 West Fifty-ninth Street.

Q What is your business ? A Piano manufacturer.

Q And connected with what Company ? A Jacob Brothers Company.

Q That is a New York State corporation ? A Yes, sir.

Q And what position do you hold with that Company ?

A President of the Company.

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

Q How long have you known him ? A About two or nearly three years, I think.

Q Was he employed as a salesman by your Company ?

A Yes, sir.

Q Under his employment, did you consign pianos to him for sale under what you term your consignment agreement ?

A Yes, sir.

Q I show you a paper, and ask you what that is (handing paper to witness) ? A This is a contract under which a piano was consigned to Pravder for sale, and the proceeds to be turned back -

Q That is the consignment agreement referring to a

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particular piano by number, is it not? A Yes, sir.

Q Do you know the defendant's handwriting? A Yes, sir.

Q Ever seen him write? A Yes, many times.

Q And is that his signature on that paper?

A Yes, sir, that is his signature.

MR. EDWARDS: I offer it in evidence.

MR. SPIELBERG: No objection.

(Received in evidence and marked "People's Exhibit No. 1", of this date.)

Q Now, Mr. Jacob, when did you next receive any report from this defendant with respect to that piano, number 16,690? A In December, he said that he had the piano on approval with someone.

Q Is it your custom in your business with this defendant, and also with your other agents, to receive reports from them from time to time? A Yes, sir.

Q I show you a report on one of your Company's blanks, and ask you whether or not that signature is the signature of this defendant (handing paper to witness)? A Yes, sir, that is.

Q Does that report include a report on this particular piano? A Yes, sir.

Q And the report ^{has} ~~is~~ written on the right-hand side a description of the instrument, and the date? A Yes, sir.

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MR. EDWARDS: I offer in evidence so much of this report as includes the heading of all the columns and the signature, with the specific report of this particular piano, number 16,690.

MR. SPIELBERG: No objection.

(Received in evidence and marked "People's Exhibit No. 2", of this date.)

Q Now, Mr. Jacobs, when subsequent to that did you receive any word from this defendant with respect to this particular piano? A About December - I had a letter from him, where he said he was going to close a sale.

MR. SPIELBERG: Objected to.

Q Don't tell us the contents of the letter. I show you two papers, and ask you whether or not you at any time received those from the defendant (handing papers to witness)? A Yes, I received this agreement on December 27th, at my office.

Q And does that agreement bear the signature of the defendant as a witness? A Yes, sir, and he handed it to me personally.

Q Look at the second paper, and state whether that bears the defendant's signature? A Yes, sir, it does.

Q That is the assignment of the pink contract to your company? A Yes, sir.

MR. EDWARDS: I offer those in evidence.

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MR. SPIELBERG: Objected to as incompetent, irrelevant and immaterial, and not binding on the defendant. There is no proof as to who signed this paper.

THE COURT: Do you offer it as a standard of comparison, or what ?

MR. EDWARDS: No, sir, it is the document in question the forgery of which is charged.

THE COURT: I will receive them.

MR. SPIELBERG: I respectfully except.

(Received in evidence and marked, respectively, "People's Exhibit No. 3", and "People's Exhibit No. 4", of this date.)

Q Now, Mr. Jacob, when this defendant became your employee, did you provide him with any account books ?

A Yes, sir.

Q I show you a book and ask you if that is an account book which you supplied to the defendant (handing book to witness) ? A Yes, sir; this is our property.

Q Did you tell him what it was for when you gave it to him ? A Yes, sir.

Q What did you tell him ? A He was instructed to keep an account of the pianos which he received from us on consignment, and the payments that were received on account of those pianos.

Q Did he ever show you this book ? A Yes, sir.

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Q Did you ever discuss these entries with him ?

A Yes, sir.

Q Did you ever discuss the entries in this book with respect to piano 16,690 with the defendant ? A Yes, sir.

Q When was that ? A That was along in September, 1912.

Q And what was that conversation, to the best of your recollection ? A I examined this book, and found that he had entered payments as having been received from this man -

Q Before you go into that, will you state whether or not the entries which you discussed with him with respect to that piano are contained on the left-hand page that I now show you (exhibiting same to witness) ? A Yes, sir.

Q With the book before you, will you tell us what your conversation with him was ? A This book shows an entry -

MR. SPIELBERG: Objected to.

MR. EDWARDS: I offer this page of the book in evidence.

MR. SPIELBERG: No objection.

(Received in evidence and marked "People's Exhibit No. 5", of this date.)

Q Now, taking "People's Exhibit No. 5", of this date, will you tell us the conversation you had with the defendant with respect to those entries ? A I asked Pravder why he

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entered these payments in this book, and he said that corresponds with the money that he had sent to us, and then I said to him "That was done to hide the fact that you had stolen the money that you got from Nussbaum", and he said, "Well, yes".

Q That was the substance of your conversation with him at that time, was it ? A Yes, sir.

Q Now, what did you do after that conversation ?
A We took the matter to the District Attorney's office.

Q And made a complaint against the defendant ?
A Yes, sir.

MR. EDWARDS: With the Court's permission, I will read parts of these exhibits to the Jury. (Reads)

CROSS EXAMINATION BY MR. SPIELBERG.

Q Mr. Jacobs, you have been engaged in the piano business for a good number of years in New York ? A Yes, sir.

Q And you sell pianoes for cash and installment ?
A Yes, sir.

Q And your arrangement with the defendant Pravder is practically embodied in this agreement, People's Exhibit No. one ? A It is embodied in that agreement, yes, sir.

Q Under this agreement, Mr. Jacob, you give Pravder various rights to dispose of the property ? A Well, the rights are all designated there.

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Q You understand the contents of this agreement ?

A I do, yes, sir.

Q You know what it contains ? A I do, yes.

Q And under that contract Pravder had a right to sell pianoes for cash ? A Yes, sir.

Q And on the installment plan ? A He did, yes.

Q In what manner did you remunerate Pravder for his services ? Did you pay him a salary ? A The contract provides there -

Q Did you pay him a salary ? A Not a direct salary, no.

Q Did you pay him a commission ? A Not a direct commission, either.

Q If I understand the arrangement properly, you sold the piano to Mr. Pravder for a certain amount of money, and allowed him to re-sell it to a prospective customer, adding his profit ? A No.

THE COURT: You have a written instrument there; it is offered in evidence; that is the contract. There is no reason for understandings coming in here, in view of a written contract.

Q In this particular instance, did you sell this piano in question, the one that was delivered to Mr. Nussbaum ?

A Yes.

Q What price two hundred and twenty-five dollars ?

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A No, sir. We sold the piano to Nussbaum. We did not sell it to Pravder.

Q You did not sell it to Pravder? A No, sir.

Q You gave him permission to sell it? A That is right.

Q How much did you charge Pravder for the piano?

A We didn't charge him anything.

Q How much did you tell Pravder to charge Nussbaum?

A Didn't stipulate any price.

Q Was there no conversation as to the amount?

A Other than what is in the contract there.

Q This contract speaks of the value as two hundred and twenty-five dollars? A That is the consigned value.

Q What do you mean by that? A It is stipulated that he should sell it at least thirty per cent more than that price, higher if he wished to.

Q Was there any stipulation as to him retaining that thirty per cent for himself? A None whatsoever.

Q Which part was he to retain for himself? A He was not to retain anything. Every penny he collected he was to turn over, according to the agreement.

Q And how was he to be paid? A He could be paid then by us, and would be paid by us.

BY THE COURT.

Q The whole terms of the contract are in the contract,

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are they ? A Yes, sir.

BY MR. SPIELBERG.

Q Is the amount of compensation contained in this contract ? A Yes, sir.

Q The defendant is the consignee, and you are the consignor ? A Yes, sir.

Q Did you ever discuss paragraph ~~am~~ number one with the defendant, as to in whose name the piano should be sold ?

A There was no occasion for any discussion.

Q Under this paragraph he could sell the piano in the name of Jacob Brothers as owner, or in the name of Philip Pravder ?

THE COURT: Does that need testimony from Mr.

Jacob ? There is a written agreement. It is so plain that every juror can understand it.

Q Was I correct in stating that the difference between two hundred and twenty-five mentioned in your contract and the amount for which the piano was actually sold was to be compensation for Mr. Pravder's services ? A If we would have gotten the money, we would have given him the difference.

Q But he was to retain the difference ? A No, sir, he was not.

Q You were to give him the difference ? A The contract ~~provides~~ provides that, yes, sir.

Q The amount of compensation was the difference

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between the price at which the piano was consigned to him and the price for which he was able to sell it to someone else ? A The price at which he sold it to someone else and gave us the money, the difference would have been the compensation that we would have given him, yes, sir.

Q In this particular instance, do you know how much he sold the piano for ? A Yes, sir.

Q How much ? A Three hundred and fifty dollars.

Q And in this particular instance this piano was consigned to him for two hundred and twenty-five dollars ?

A Yes, sir.

Q So that, his compensation was to be one hundred and twenty-five dollars ? A Two hundred and twenty-five was the consigned value, and he sold it for three hundred and fifty.

Q One hundred and twenty-five was to be his compensation ? A One hundred and twenty-five dollars would be what we would have paid him if he had given us the money, yes.

Q Did you make a complaint against this defendant in the Magistrate's Court ? A Yes, sir.

Q And did you charge this defendant with forgery ? A Yes, sir.

Q Did you state in this affidavit that he wilfully knowingly uttered a false -

THE COURT: The affidavit shows that. The affi-

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davit says "Wherefore I charge the defendant with having committed the crime of forgery in the second degree", and so on.

Q After the piano was delivered to Nussbaum, the defendant paid you ten dollars every month, did he not ?

A No, not right away.

Q He did pay you some money, did he not ? A Beginning with December, 1911, yes.

Q How much did he pay you in December, 1911 ?

A At the time he brought me the agreement he gave me fifteen dollars, which purported to be a part payment by Nussbaum.

Q You accepted that ? A Yes.

Q The following month, he paid you ten dollars ?

A Yes, sir.

Q And again ten dollars the following month ?

A He made four or five payments.

Q He continued to pay that ? A I received ten dollars for four or five months.

Q And it was your act which stopped his payments ? You had him locked up ? A It was not, no, sir.

Q He did not fall behind in his payments, did he ?

A Yes, sir, he did.

Q When ? A August was the last payment.

Q And in September you had him locked up ?

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A Yes, sir, I believe it was.

Q Did you make any demand for continued payments ?

A I did not, no, sir.

Q Once these payments came in regularly to you in compensation for this particular piano, you were satisfied ?

A Those payments were fooling us.

Q But he had a right to sell this particular piano under such arrangements, did he not ?

MR. EDWARDS: Objected to.

THE COURT: Objection sustained.

Q When you accepted the first payments you were satisfied to accept it in compensation for that particular piano, were you not ? A No, not in compensation for the piano.

Q In part ~~payment~~ compensation, as an installment ?

A I accepted it as an installment from Nussbaum which was represented by a paper which afterwards proved was not signed by Nussbaum.

Q But you accepted the money from the defendant ?

A I accepted it from him at his hands, yes, sir.

Q And the following month the same way ? A Yes.

Q And in September you had him arrested ? A Yes, sir.

Q In spite of the fact that he had continued paying you for the piano ? A There was no spite about it.

Q I say, in spite of the fact -

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THE COURT: You have your facts. I don't see that you are asking for anything further in your questions.

Q Did you, in the month of September, understand the piano was your property ? A In the month of September, I understood it was with Nussbaum under this supposed agreement.

Q Under this contract, it was still your property, was it not ? A No.

THE COURT: That is a question of law. Is it worth while to ask him about that ?

Q Did you make an attempt to replevin the piano ?

MR. EDWARDS: Objected to.

THE COURT: He may say whether he did, or not.

A I not only didn't, but I couldn't.

Q You did not, as a matter of fact ? A I could not, either, if I wanted to.

Q Did you, in your affidavit on the 28th day of September, 1912, say that Philip Pravder uttered an instrument well knowing that the same was forged ?

THE COURT: You have the affidavit.

MR. SPIELBERG: Yes.

BY THE COURT.

Q Mr. Jacob, is that your signature (handing affidavit to witness) ? A Yes, sir.

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Q And did you swear to that affidavit? A Yes, sir.

MR. SPIELBERG: I offer the affidavit in evidence.

THE COURT: Certainly; the affidavit is before the Court, and may be read.

BY MR. SPIELBERG.

Q Did you swear in that affidavit -

THE COURT: No; the affidavit speaks for itself.

Q In spite of the fact that Mr. Pravder made regular monthly payments for this piano, so as to reimburse you for same, you preferred the charge and swore that he knowingly and wilfully and with intent to defraud ~~made~~ you forged an instrument; isn't that so?

MR. EDWARDS: Objected to as argumentative.

THE COURT: Objection sustained.

MR. SPIELBERG: I take an exception.

Q Did you make a demand on Pravder before you had him arrested, asking either for the piano or for the money?

A I asked him for the money.

Q When was that? A In September.

Q What did he say? A Said he didn't have it. He said he used it.

Q Did he offer to pay it to you in monthly installments?

MR. EDWARDS: Objected to as immaterial.

THE COURT: I think Mr. Jacob may say what was said.

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Q Did he ? A He did not, no.

Q And so, as you looked at this book, you said to him "You stole the money from Nussbaum", did you not ? A Yes, sir.

Q And what did he say to that ? A He said "Yes".

Q He had stolen it ? A Yes.

Q Did he say he was willing to continue paying the monthly installments ? A No.

Q He refused to pay it ? A He did not refuse. I didn't ask him to pay it in monthly installments.

Q Did you ask him for the full amount ? A Yes, sir.

Q At that time, did your firm owe any money to this defendant ? A Not then, nor now.

Q When you asked him to give you the full amount of money, did you ask him for any specific amount ? A I told him to give me the money that he received from Nussbaum.

Q How much did you ask him for ? A Three hundred and fifty dollars.

Q Were you entitled to three hundred and fifty dollars ? A Yes, sir.

Q I show you this agreement, marked Exhibit one, and ask you whether it does not say the value of that piano was two hundred and twenty-five dollars ?

MR. EDWARDS: Objected to, on the ground the agreement speaks for itself.

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THE COURT: Objection sustained.

Q Why did you ask him for three hundred and fifty dollars ? A Because I had learned at that time that he had sold it for three hundred and fifty dollars, and we were entitled to that.

Q To the whole three hundred and fifty dollars ?

A Yes, sir.

Q Are you familiar with paragraph eight of your contract ? A Yes, sir.

Q And in spite of paragraph eight you insisted upon the full amount for which he sold the piano ?

MR. EDWARDS: Objected to as argumentative.

THE COURT: I will receive it.

BY THE COURT.

Q You asked him for how much ? A I asked him for the proceeds he sold the piano for, and that was three hundred and fifty dollars.

BY MR. SPIELBERG.

Q Did you ask him for three hundred and fifty dollars ?

A I did.

Q You had received fifty-five dollars on account, had you not ? A Not on account, no.

Q Not on account of the piano ? A No.

Q Didn't Mr. Pravder pay you fifteen dollars the first month, and four months thereafter ten dollars each month, on

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account of this particular piano ? A Under a deception he paid us that money, yes, sir.

Q But you had received the money, whether under a deception or otherwise ? Didn't you take fifty-five dollars ? A Yes, sir.

Q And didn't you give him credit for these fifty-five dollars ? A No, didn't give Pravder credit, no.

Q You gave Nussbaum credit ? A Yes, sir, that is right.

Q Yet, in spite of the fact you had received fifty-five dollars, and in spite of the fact the original contract was for two hundred and twenty-five, you asked him for three hundred and fifty dollars ? A Yes, sir.

Q How do you explain that to the Jury ? A Because the contract strictly calls for the proceeds of a sale, and the proceeds of this sale was three hundred and fifty dollars, and Pravder would have lost nothing by giving the three hundred and fifty dollars, because he would have received his out of the three hundred and fifty dollars.

MR. SPIELBERG: That is all, Mr. Jacobs.

RE-DIRECT EXAMINATION BY MR. EDWARDS.

Q In other words, Mr. Jacob, as I understand it, when you received these payments from Pravder, you had in your possession this contract purporting to be signed by Nussbaum and its assignment ? A Yes, sir.

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Q And it was your belief, when you received those payments, they were payments by Nussbaum on account of this contract ? A Yes, sir.

Q And it was not until you discovered the fact that Nussbaum had not signed the contract that you made any further claim on Pravder ? A That is right.

RE-CROSS EXAMINATION BY MR. SPIELBERG.

Q Didn't you charge Pravder with larceny before you ascertained this was not signed by Nussbaum ? A No, sir.

Q Didn't you testify before that by examining his book and looking over these monthly payments you said to him "You stole the money" ? A What is the question ?

Q Didn't you testify, before, when you examined these books and saw the monthly payments contained therein, you told Pravder "You stole the money", and he said "Yes, I stole the money" ? A In September ?

Q Of 1912 ? A Yes, sir.
BY MR. EDWARDS.

Q And that was after you found out Nussbaum had not signed that agreement ? A Yes, sir.
BY MR. SPIELBERG.

Q Had you seen Nussbaum ? A Personally, I had not seen him, no.

Q But you heard about it ? A I heard about it, yes.

Q When you consigned this piano to Pravder, did you

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know of Nussbaum? A No, sir.

Q Didn't know whether any such person existed?

A No, sir.

Q What you were after was to get the cash for this piano; isn't that so? A The proceeds of the sale.

Q Either in cash or on the installment plan?

A Yes, sir.

BY MR. EDWARDS.

Q You sent ~~xxxxxx~~ an agent over to see Nussbaum from your Company, who reported back to you what the facts were?

A Yes, sir.

L O U I S N U S S B A U M, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS.

Q What is your name? A Louis Nussbaum.

Q Where do you live? A 1326 Southern Boulevard, Bronx.

MR. SPIEIBERG: I now ask your Honor to exclude any other witness who may be in Court.

THE COURT: Yes. Let the other witnesses step out of the room, and remain outside.

Q What is your business? A Tailor.

Q Where do you live? A In the Bronx.

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Q And what number ? What street ? A 1326
Southern Boulevard.

Q Where did you live in September, 1911 ? A 152
Sumner Avenue, Brooklyn.

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

Q Did you buy a piano from him at any time during
1911 ? A Yes, sir.

Q What did you pay him for it ? A Three hundred
and fifty.

Q Three hundred and fifty dollars ? A Yes, sir.

Q Did you pay him in cash ? A Cash.

Q Did you hand it to him personally ? A Yes.

Q Did you receive anything from him at the time ?

A A receipt.

Q And I show you this paper, and ask you if that is
the receipt you received from him ? A Yes, sir.

Q Did you see him sign it ? A He wrote it out.

Q And you saw him sign it ? A He signed it, sure.

MR. EDWARDS: I offer it in evidence.

MR. SPIELBERG: Objected to, on the ground this
entire transaction took place before the contract and
arrangement was entered into between the defendant and
Pravder.

THE COURT: Objection overruled.

MR. SPIELBERG: I respectfully except.

(Received in evidence and marked "People's Exhibit

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No. 6", of this date.)

MR. SPIELBERG: I did not state in my objection that this contract offered in evidence by The People states it was signed the 20th of September, 1911, and this receipt bears date the 13th of September, 1911. I should have made my objection specific.

THE COURT: I will receive it.

MR. SPIELBERG: I take an exception.

Q At the time when you made that payment and received this receipt, had you already received the piano ? A Sure.

Q How long afterwards did you get the piano ? A The same day when I got the piano I got the receipt, and I paid him the money.

Q At the time you paid him the money and got the receipt, had you already received the piano ? A Sure.

Q It was in your house ? A Yes.

Q Had you had it there any length of time before you paid for it ? A No.

Q You paid for it the day you got it ? A Sure.

Q Did Pravder come over there with it ? A Yes.

Q I show you People's Exhibit No. three, and ask you whether you ever saw that before (handing same to witness) ?
A Never.

Q I show you the signature on the right hand side, Louis Nussbaum. Is that your signature ? A No, sir.

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Q Did you ever sign that ? A No, sir.

Q You never saw it before ? A No, sir.

MR. EDWARDS: That is all.

CROSS EXAMINATION BY MR. SPIELBERG.

Q Have you a boy named Nathan ? A Yes.

Q How old a boy is he ? A Which boy ?

Q Nathan ? A What has Nathan got to do with it ?

Nathan is dead already.

Q Was he alive in September, 1911 ? A Yes, sir.

Q Did you have any friends in New Rochelle ? A Yes.

Q People who lived there ? A Yes, sir.

Q You say you paid for the piano the same day you got it ? A Yes.

Q That was in September, 1911 ? A I don't know when it was. It is in the receipt. I don't remember the day.

C H A R L E S J C A O B, being recalled on behalf of

The People, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS.

Q Mr. Jacob, I forgot to ask you one question. I note that People's Exhibit One, the consignment agreement, is dated September 11th, 1911, and the testimonial clause is dated September 20th. Will you tell me when the piano was shipped, after what conversation, if any, with Prayder it

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was shipped ? A This piano -

MR. SPIELBERG: Objected to as not being re-direct/

THE COURT: It may be answered.

MR. SPIELBERG: I take an exception.

A (Continuing) This piano was sent over to Brooklyn, at the request of Pravder, to Nussbaum's house, September, 1911.
BY THE COURT.

Q You don't mean Brooklyn ? A Yes; and Pravder signed this on the 20th. He kept reporting that the piano was there with Nussbaum on approval, and that he expected to make a sale of it. Then, on the 26th of September, he said he had made a sale.

BY MR. EDWARDS.

Q After the shipment of the piano, this was signed by Pravder ? A Yes, sir.

Q Although it was made out on the date of shipment ?

A On the 20th he signed it, yes, sir.

MR. EDWARDS: That is all.

CROSS EXAMINATION BY MR. SPIELBERG.

Q Did you sign a copy of this contract, too ? A No.

Q No officer of your firm signed that ? A There was no copy signed. Mr. Pravder had a copy of it.

Q He signed a copy binding himself with your concern. Did you sign any contract so as to make it binding to him ?

A On this particular instrument, I don't know whether there

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was any copy, or not. Mr. Pravder had copies of that agreement, as many as thirty or forty copies.

Q I am not asking about this particular instrument, but I ask you whether you, or any member of your corporation, signed any agreement and handed it over to Mr. Pravder?

A I don't recall that I signed a copy of that one. Mr. Pravder had thirty or forty just like it.

Q Signed by you? A Yes, sir.

Q Personally? A Yes, sir.

Q So, you did sign an agreement? A Mr. Pravder had those copies from time to time.

Q Blank copies? A Yes, sir.

Q Why did you give him thirty or forty agreements?

A Because he had thirty or forty pianos.

Q In this particular instance, was any agreement entered into? A I won't say whether there was, or not.

Q And if there was an agreement entered into it was seven days after the piano was shipped? A No; the agreement was always the same. Mr. Pravder had agreements with us for others in the same way. Each piano that was sent to Pravder was sent to him under the same identical agreement as that, and he signed an agreement for each piano.

Q This particular agreement, wasn't this seven days after the piano was sent? A Yes, sir.

MR. EDWARDS: Objected to, on the ground the

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dates show on the instrument.

THE COURT: The question is answered. Anything else now?

MR. SPIELBERG: That is all.

BY MR. EDWARDS.

Q What you mean is, you have no specific recollection of signing a duplicate of this agreement? A No, sir.

Q But it was your custom to sign duplicates always?

A Yes, sir.

THE PEOPLE REST

MR. SPIELBERG: I move that the complaint be dismissed and the defendant discharged, on the ground the People have failed to prove the first count in the indictment, charging the defendant with forging an instrument, and, secondly, uttering a forged instrument knowing the same to be fraudulent, with intent to defraud Mr. Jacob.

THE COURT: Which count do you rely on?

MR. EDWARDS: I think both counts should be submitted.

THE COURT: I will deny your motion at this time.

MR. SPIELBERG: Also as to the second count. The People have failed to prove affirmatively any intent on

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the part of the defendant to defraud the complainant.
On the contrary, we have proof he made every effort to
pay back the money, and not deprive the complainant of
any money or property at all.

THE COURT: Motion denied.

MR. SPIELBERG: Exception.

THE DEFENDANT'S CASE

PHILIP PRAVDER, the defendant herein, called
as a witness in his own behalf, being first duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. SPIELBERG.

Q What is your name ? A Philip Pravder.

Q Where do you live ? A 172 Union Avenue, New
Rochelle.

Q How long have you been living in New Rochelle ?

A Two Years.

Q What is your business ? A Pianos.

Q Have you a store ? A Yes, sir.

Q Where ? A Now it is 172 Union Avenue.

Q New Rochelle ? A Yes.

Q Whose pianos have you ? A Arnold and Davis.

Q Are they a New Rochelle concern ? A A New York
concern.

Q You have pianos in your store ? A Yes, sir.

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Q What else ? A Pianos, phonographs and pictures .

Q The store is in your own name ? A Yes, sir.

Q Have you a bank account ? A Yes, sir.

Q Were you ever convicted of a felony or misdemeanor ?

A No, sir.

Q Ever been arrested in your life ? A No, sir.

Q When did you enter into an arrangement with Mr.

Jacob ? A Sometime in May, 1911.

Q What was that arrangement ?

MR. EDWARDS : Objected to.

THE COURT: Objection sustained.

Q When did you sell a piano to Mr. Nussbaum ? A The piano was delivered to him on about the 11th day of September ; it was either the end of December or the beginning of January the sale has been made, but I couldn't recollect the very date.

Q Did you get the three hundred and fifty dollars from Nussbaum on the 11th of September ? A No, sir; it was the end of December, or beginning of January.

Q Why didn't you get the money before the end of December ? A I couldn't get Mr. Nussbaum.

Q Why not ? A He was sick.

Q Was he in the City ? A No, sir.

Q Out of town ? A Out of town.

Q This contract is supposed to have been signed by

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Mr. Nussbaum to Jacob ? A Yes, sir.

Q Is that your signature ? A There is my signature (indicating).

Q Did you sign the name of Nussbaum to that paper ?

A No, sir.

Q Is that your handwriting ? A No, sir.

BY THE COURT.

Q Who did write it ? A I couldn't say, your Honor.

BY MR. SPIELBERG.

Q How did you come in possession of this paper ?

A After having a hard time to get Mr. Nussbaum, I left word to send me this paper, and I got it from a young man named Nathan.

Q Did Nathan come to New Rochelle ? A Yes, sir.

Q And he brought this paper to you ? A Yes, sir.

Q And did you put your name opposite ? A Yes, sir; those contracts, before they are filled out, I have them signed with my name as a witness, because I am the one who has got to sell the pianoes.

Q When did you get the money from Mr. Nussbaum ?

A Either the end of December, or January.

Q Did you turn this money over to Jacob ? A No, sir.

Q Did you keep it yourself ? A Yes, sir.

Q Did you commence to make monthly payments to Mr. Jacobs ? A I did, on the 26th of December.

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Q And are these entries in your books I now show you entries of payments made by you to Jacobs (handing book to witness) ? A Yes, sir.

Q When did you stop paying him ? A After I have got my accounts taken away and all the valuable goods which belonged to me.

Q How many pianoes had you sold for Jacob Brothers ? A I couldn't exactly say. If you will let me see the book, I will be able to tell you.

Q Tell me from the book how many pianoes you had sold for them ? A Yes, sir.

MR. EDWARDS: Objected to as immaterial.

THE COURT: Objection sustained.

Q Can you tell, without refreshing your memory ? A Probably twenty-eight -

THE COURT: The question was objected to, and I sustained the objection.

Q Can you tell, without refreshing your memory, how many pianoes you sold for Jacob Brothers ?

MR. EDWARDS: That is objected to.

THE COURT: The objection is sustained.

MR. SPIELBERG: I take an exception.

Q Was there any money due you at the time from Jacob Brothers ? A Somewhere around three thousand dollars.

MR. EDWARDS: Objected to, and I move to strike it out, on the ground it is collateral matter, which

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was gone into on the cross examination of the complainant, and they are bound by the answers.

THE COURT: The objection is sustained.

MR. SPIELBERG: I respectfully except.

Q Did you continue to make payments to Jacob Brothers until you were arrested? A Yes, sir.

Q Mr. Jacobs testified that he said to you you had stolen the money paid you by Nussbaum, and that you said you did steal it. Is that so? A Yes, sir.

Q Did you say you stole it? A I didn't say I have stole it, but I said, "Mr.--" I came to Mr. Jacobs several times before; I started without any money at all; so they promised me that -

Q What did Mr. Jacobs say? A Mr. Jacobs promised -

MR. EDWARDS: I ask to have the time fixed.

THE COURT: Yes; when was this?

THE WITNESS: When Mr. Jacobs told me?

Q Give me the conversation when Mr. Jacobs told you you had taken the money which you got from Nussbaum? Give me the entire conversation? A I came to Mr. Jacobs and told him - explained the circumstances, that I started without any money, that I have been buying from time to time, and I have been telling Mr. Jacobs that I can't hardly move, I am in debt head over heels; so after long struggling Mr. Jacobs said "You have got to hustle on your collections, and keep it out of your pockets. Naturally, when I got

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this money, I straightened up my debts which was made by running the business and selling the pianoes.

Q Did you intend to keep this money for your own benefit ? A No, sir.

Q Did you make payments ? A Yes, sir.

Q Every month ? A Yes, sir.

Q Did you know that this instrument which you had sent to Jacob Brothers was not sent by Nussbaum, but was a forgery ?

A No, sir.

THE COURT: We can't finish the case today. (To the Jury) Don't talk about this case, gentlemen, nor permit anyone to talk to you about it, nor form nor express any opinion thereon until the case shall finally be submitted to you. Gentlemen, I don't think this case will take long, but my experience with Jurors is it is never safe to give them a case late in the day. They sometimes want ample time for consideration. On Monday morning come back, but not to this room; come to Part Five, down stairs. We will finish this case down there, Monday morning, first thing.

MR. SPIELBERG: Will your Honor make it eleven-thirty ?

THE COURT: I will make it eleven o'clock.

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THE PEOPLE vs PHILIP PRAVDER.

New York, March 3, 1913.

(Trial resumed before Hon. Warren W. Foster, J., in Part V court-room).

A P P E A R A N C E S :

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY W. H. L. EDWARDS.

FOR THE DEFENDANT: MR. HAROLD SPIELBERG.

P H I L I P P R A V D E R, resumes the stand:

DIRECT EXAMINATION CONTINUED BY MR. SPIELBERG:

Q Mr. Pravder, all the transactions between yourself and Mr. Nussbaum took place where? A At New Rochelle.

Q At New Rochelle? A Yes, sir.

Q Did Mr. Nussbaum call on you at the store?

A Yes, sir.

Q On each occasion? A Yes, sir.

Q That is, prior to the sale of this piano? A Yes, sir.

Q Where was the money given to you? A The money for the piano, at Mr. Nussbaum's house.

Q Where is that? A At 252 Sumner avenue, Brooklyn.

Q When you sent in this lease to which Mr. Nussbaum's name is signed, did you take it over yourself or did you mail it? A I mailed it to Jacob Brothers.

Q From New Rochelle? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, you claim that you did not sign this lease?

A No, sir.

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Q That you did not know that it was not signed by Nussbaum? A No, sir.

Q You however kept the money which you received on the piano? A Yes, sir.

Q You did not turn this money over to Jacob Brothers?
A No, sir.

Q But you made a payment of \$15? A Yes, sir.

CROSS EXAMINATION BY MR. EDWARDS:

Q When did you order this piano shipped by Jacob Brothers?
A When I ordered the shipment of this piano?

Q That is what I asked you? A I believe some time in September.

Q Do you remember what day it was shipped in the City of New York? A I do not, sir.

Q Now, when did you receive the money from Mr. Nussbaum for the piano? A That has been either in the end of December or part of January.

Q Do you remember which it was? A No, sir.

Q When did you turn over this lease or contract under which he was to buy it by instalments? A Some time in December.

Q Was that before or after you got the money? A Before I got the money.

Q Sure of that? A Positive.

Q Now, when you received the money from Nussbaum you gave him a receipt, didn't you? A Yes, sir.

Q That receipt is this one, People's Exhibit No. 6, is it

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not? A Yes, sir. What do you mean by No. 6?

Q That is the number of the exhibit in this case, is that the receipt that you gave to Nussbaum? A Well, I don't know what you mean by exhibit.

Q Never mind about that part of it. Is that the receipt, the paper I show you? A That is the paper I gave to Nussbaum.

Q That is on your letterhead? A Yes, sir.

Q Written by you? A Yes, sir.

Q Where did you give it to him? A At the house when I got the money.

Q At his house? A Yes, sir.

Q Now, how much money did you get from him? A \$350.

Q Did you get that money before or after this contract was made? A After this contract had been made.

Q You did not report that fact to Jacob Brothers, did you?
A No, sir.

Q Now, did you receive the money from Nussbaum on the day that you gave them the receipt? A This receipt?

Q Will you answer my question. Did you get the money from Nussbaum on the day you gave them the receipt? A No, sir.

Q When did you give him the receipt? A This receipt has been made out at first, at the same time we were arguing about the money, the price of the piano, somehow or other.

Q When did you give him the receipt. You understand that?
(No answer).

Q When did you give him the receipt? A When I got the

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money.

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Q You gave him the receipt when you got the money?

A Yes, sir.

Q You got the money the day you gave him the receipt?

A Yes, sir.

Q Now, the receipt, People's Exhibit 6, is dated September 13, is it not? A Well, I will answer that yes.

Q Isn't it dated September 13th? A Yes, sir; but allow me---

Q The piano was shipped, you heard Jacobs testify, the 11th of September? A No, sir; I don't remember that.

Q Do you remember whether it was shipped the 11th or not?

A No, sir; I do not.

Q Do you remember whether you ordered it on the 11th of September or not? A No, sir.

Q You signed the contract, People's Exhibit No. 1, the consignment agreement on the 20th of September, 1911, did you not? A This is my signature.

Q You signed it on the date it is dated there, the 20th of September? A Yes, sir.

Q Now, you state, as I understand it, that in spite of the fact that this receipt is dated -- that you gave Nussbaum when he paid you \$350 -- is dated the 13th of September, you did not get that money until the end of December? A The end of December or part of January.

Q But at any rate you got \$350 for him in full payment.

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for the piano? A Yes, sir.

Q Now, when did you receive People's Exhibit No. 3, the contract of Nussbaum with Jacobs & Company under the instalment plan? A That I have received in part of December, I could not say, it was on a Sunday and the following day when I received that paper I mailed it to Jacob Brothers.

Q Was it received by you on the day it is dated or the day after that? A No, sir; that is the day when I sent it to Jacob Brothers.

Q The 26th? A Yes, sir.

Q Wasn't dated when you got it? A No, sir.

Q Nussbaum signed it without date? A Yes, sir.

Q Did you witness his signature on that? A Yes, sir; but that was witnessed before it has been signed.

Q You did not see him sign it? A No, sir.

Q Is it your custom to put your name as a witness on a paper you don't see signed? A Yes, sir.

Q That is your custom? A Yes, sir.

Q This second paper, People's Exhibit No. 4, is the consignment that you made dated the same day as the contract on the instalment plan and gave to Jacob, is that right? A yes, sir.

Q Now, was that made by you on the day it is dated?

A Yes, sir.

Q That was the date that you signed this? A Yes, sir.

Q Sure you sent it by mail instead of taking it in?

A Sent it by mail.

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Q You heard Jacobs testify you brought it ~~in~~ in person?

A I don't know.

Q You say you did not? A No, sir.

Q I call your attention to the fact that the amount or price of the piano is referred to in the contract as \$400?

MR. SPIELBERG: I object to that.

(No answer).

Q The price was \$400? A Yes, sir.

Q Answer the question. You received you say, after that was made, you received \$350 in full payment? A Yes, sir.

Q You never notified Jacob Brothers you had taken less than the contract called for? A No, sir; that money was my own.

Q Now, in your account book it was your custom to keep accounts of all the pianos that you sold, was it not? A Yes, sir.

Q Now, in your account book you opened an account with the piano for \$400, didn't you? A Yes, sir.

Q But you didn't sell it for \$400? A I did, sir.

Q Didn't you sell it for \$350? A Sold it for four hundred.

Q You sold it for four hundred under a contract dated September 26th, 1911? A Yes, sir.

Q You took \$350 for it on your receipt that is dated the 13th of September, 1911? A But the day I made this receipt I didn't get the money until about two months later.

Q Now, you never notified Jacob Brothers of the advance in price? A I don't have to, that is my own money, -- the profit

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he could get is two hundred and fifty ---

Q Did you ever notify Jacob Brothers of the advance in the price? A All he is entitled to is two hundred and fifty.

Question repeated. A No, sir.

Q You knew that under this contract calling for \$400 ---
A That was the balance of my own money.

Q Didn't you know that under the contract you couldn't sell the piano for \$400? (No answer).

Q Didn't you know you sent in a contract, People's Exhibit No. 3, to Jacob Brothers & Company calling for \$400 for that piano? A Yes, sir; but my book shows that Jacob Brothers were entitled to \$225.

Q Well, now, did you know that Jacob Brothers had this contract calling for \$400 on that piano? A Yes, sir.

Q When you made the sale for \$350 and got the cash you not did notify them of the change in price? A No, sir.

Q You did not send or pay them any of that money? A No, sir.

Q Not a dollar? A They got payments right along after that.

Q You continued, your claim is, to make payments on the contract? A Yes, sir.

Q Although you had all the money in your pocket? A Yes, sir.

Q Although the consignment agreement called on you to pay the money over to them? A No, sir.

Q Hadn't you made the first payment of \$15 under that con-

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tract, hadn't you? A Yes, sir.

Q You made a second payment of ten and a third payment of ten and a fourth and fifth of ten? A Yes, sir.

Q Then you stopped? A Yes, sir; I didn't receive nothing but ---

Q You stopped? A They took all my money from me-- Jacob's took everything belonging to me.

Q On the 2nd of December, 1911, do you remember making a report on this piano to Jacob Brothers? A No, sir; I do not.

Q You know that it was your custom to make reports constantly? A No, sir.

Q Don't you made that you made reports from time to time, which you signed on their blanks, when their agent would come around and ask you where all his pianos were, you would make a statement, a signed report? A Probably.

Q Don't you know that as a fact? A No, sir; I don't remember so far; they have been around once or twice.

Q That is your signature (Showing witness a paper)? A Yes, sir.

Q You are familiar with this blank or style of blank Jacob Brothers were using? A That is not my writing.

Q You are familiar with that sort of writing? A No, sir; I do not remember that that is so far the only report I made--

Q I am asking you if you are familiar with that blank of Jacob Brothers for making reports from their agents?

A No, sir.

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Q But that is your signature? A Yes, sir.

Q Signed by you on the date it bears? A Yes, sir.

Q September 2nd, 1911? A Yes, sir.

Q Now, I show you a contract, another instalment contract, purporting to be made between Philip Pravder and Nathan Levin for a piano numbered 22,278? A This piano is in Jacob Brothers' place.

Q Will you wait and answer the questions when I ask you?

A Yes, sir.

Q Purporting to be signed by Nathan Levin and Philip Pravder and annexed thereto an assignment of that contract to Jacob Brothers & Company, and ask you if those two signatures of Philip Pravder are in your handwriting? A Yes, sir.

Q Is the Philip Pravder on the assignment yours? A Yes, sir.

Q Who signed Nathan Levin's name to that contract?

A Nathan Levin gave it to me.

MR. SPIELBERG: I object to that as immaterial.

I don't see what it is pending to.

THE COURT: He may answer.

Q Did you not sign the name Nathan Levin as well as your own name to that contract? A No, sir.
to

(The paper referred, is marked People's Exhibit 5 for identification).

BY MR. SPIELBERG:

Q Originally you had sold this piano for \$400? A Yes, sir;
on the contract, yes, sir.

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Q On the instalment plan? A Yes, sir.

Q Afterwards the terms of sale were changed to \$350?

A Yes, sir.

Q You had a right to sell this piano for \$400? A Yes, sir.

MR. EDWARDS: I object to that as impeaching the terms of the contract.

Objection sustained. Exception.

Q You lived in the same place in New Rochelle until you were arrested? A Yes, sir.

Q Are you sure you mailed this contract to Jacob Brothers?

A Yes, sir.

I D A P R A V D E R, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SPIELBERG:

Q Where do you live? A 172 Union avenue, New Rochelle.

Q Mrs. Pravder, you are the wife of this defendant?

A Yes, sir.

Q Philip Pravder? A Yes, sir.

Q What business is your husband in? A Piano business, musical instruments.

Q Piano and musical instruments? A Yes, sir.

Q Where? A New Rochelle, 170 Union avenue, just now.

Q How long have you been living in New Rochelle? A This is the second year.

Q Do you know Nussbaum? A yes, sir.

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Q The old gentleman? A Yes, sir.

Q Do you know his family? A Yes, sir.

Q Were they visitors at your place? A We were acquaintances, yes, sir.

Q Do you know Nussbaum's family that lives in New Rochelle?

A Yes, sir.

Q Do you remember last September Nussbaum's boy coming to your store? A Yes, sir.

Q Did you know the boy? A Yes, sir.

Q Did you know his name? A Yes, sir.

Q What was his name? A Nathan.

Q Were you present when he had some conversation with your husband at that time? A Well, I was, just hearing-- we were just altogether about some business matters and Mr. Nussbaum came in.

MR. EDWARDS: I object to that as immaterial, irrelevant and incompetent in this case and not within the issues.

MR. SPIELBERG: It is our defense.

Q Was there some talk between Nathan and your husband?

A Yes, sir; just about the business he came in.

Q Yes or no? A Yes, sir.

Q Was there some talk? A Yes, sir; just a few words.

Q Did he bring any paper? A Yes, sir; he brought the lease.

Q Did you see him deliver it to your husband? A Yes, sir.

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Q Do you know what your husband did with that paper?

A Well, I did not exactly ask him what he did; I didn't take any interest --

Q Do you know what he did with it? A No, sir; I don't know.

Q About two weeks after that your husband was arrested in New Rochelle, isn't that right? A No, sir; that was--- the lease was brought in December and my husband was arrested in September here.

Q The next September your husband was arrested? A Yes, sir.

CROSS EXAMINATION BY MR. EDWARDS:

Q What was the date when you saw this Mr. Nussbaum?

A I can't exactly know what date; I know it was some part of December.

Q What makes you so sure of that? A Well, I --

Q What makes you so sure of it? A Well, because that time we lived in Union avenue and when my husband was arrested we lived in North avenue.

Q When did you move from Union to the other avenue?

A Just before Christmas.

Q So that this Nathan Nussbaum came in before Christmas?

A Yes, sir.

Q Before Christmas? A Yes, sir; just before.

Q How long before Christmas? A Just before Christmas.

Q How long before Christmas did you move there? A We moved just a day or two before Christmas.

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M Y E R C O T T O N, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SPIELBERG:

Q Where do you live? A 230 Madison avenue.

Q What is your business? A I am pictures.

Q In the picture business? A yes, sir.

Q Where? A Right in New York.

Q Do you know the defendant, Philip Pravder? A Yes, sir;
I know him.

Q How long do you know him? A A couple of years.

Q Did you ever visit in his place of business in New Rochelle? A Yes, sir.

Q Were you in New Rochelle towards the end of 1911?

A Yes, sir.

Q What business did you have with Pravder? A I was trying to go partners with him.

Q Trying to become his partner? A Yes, sir.

Q In the piano business? A Yes, sir.

Q Were you there on a number of occasions? A Yes, sir.

Q Do you know a young man by the name of Nathan Nussbaum?

A Nathan Nussbaum -- I heard the name.

Q Were you present in the store when Nussbaum came in?

A Yes, sir; I was on a Sunday I was there.

Q Tell me just what happened? A Well, I was taking the stock with him and that gentleman came and brought a paper

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and so he said that piano he sold it--

MR. EDWARDS: I object to any conversation.

THE COURT: Don't tell us the conversation.

THE WITNESS: I could not explain any other way.

Q You saw the young man bring in a paper? A Yes, sir.

Q Turn it over to Pravder? A Yes, sir.

Q That was on a Sunday morning? A No, sir; it was in the afternoon after dinner.

Q Sunday, after dinner? A Yes, sir.

CROSS EXAMINATION BY MR. EDWARDS:

Q What date was this? A I could not tell you exactly; it was in December.

Q What makes you so sure it was December? A Because I know about what time I wanted to join him in partnership.

Q What part of December was it in? A Well, I guess it was about in the beginning of December.

Q The beginning of December? A Yes, sir.

Q How long before Christmas would you say it was?

A I could not tell you.

Q Do you know when Christmas comes? A Yes, sir; I do.

Q It was before Christmas, was it? A Yes, sir.

Q Sure of that? A Yes, sir.

Q What is that? A I guess so.

Q Are you sure of it, that is what I want to know?

A I couldn't say, I ain't positively sure, it was before Christmas.

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Q What impressed it upon your mind that you saw this piece of paper delivered by one man to Pravder? A On account of taking stock, and he was taking the piano in his account--

Q That is the only thing that impressed it upon your mind?

A Yes, sir.

Q That was what he had there, pianos in stock there?

A Certainly.

Question repeated. A Yes, sir.

Q Several of them, weren't there, more than one, was there not? A It was more than one.

Q A good many pianos he had there in his room? A Yes, sir.

Q Can you give me any other reason why it ^{was} impressed upon your mind that you saw a man bringing this in way back in December, 1911? A That was the only thing. I wanted to be in partnership with the piano too.

Q Why do you remember that you saw the man bring in a piece of paper that day? A Because I was taking stock on the same day, on a Sunday.

Q That is the only reason you remember? A Yes, sir.

Q It was on a Sunday? A Yes, sir.

Q Early in December? A Yes, sir.

Q What year was it in? A 1911.

Q 1911? A Yes, sir.

Q You know last December and two years ago last December?

A No, sir.

Q Which do you mean, a year ago last December or two years

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ago last December? A No, sir.

Q One year ago last December? A Yes, sir.

Q When did anybody first ask you about your memory of this transaction, this Sunday afternoon, after it happened? A If you wouldn't mind explaining it to me again.

Q When was it you first told anybody you remembered this thing that happened? A Well, because---

Q Now, when was it, I asked you, -- when did you first tell anybody you remembered this? A To whom I told?

Q Yes. A Right here.

Q Is this the first time you ever told anybody you remembered it? A Well, who asked me if I know; I said I remembered exactly.

Q When was it that he first asked you if you knew it?

A It was here around in the---

Q Just this week? A Yes, sir.

Q A year and three months after this happened? A Yes, sir; something like that.

Q You remembered that it was in December, a year ago last December? A Yes, sir; in December.

Q The way you know is that you were up there a man came up and gave him the paper? A Yes.

Q Had you ever seen that man before? A No, sir.

Q Never seen him before? A No, sir; I didn't see him even after.

Q Did you read the paper? A No, sir; I didn't, it ain't

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my business to read a strange paper.

Q Do you remember the date when Pravder was arrested?

A No, sir; I could not tell you exactly.

Q You were up there when he was arrested? A Yes, sir.

Q You saw the officer arrest him? A Yes, sir.

Q Officer _____ was the officer who placed him under arrest, wasn't he? A I seen him once, I couldn't remember him.

Q You could not remember him? A I seen him once.

Q That was last September? A It was, but I didn't take notice of him.

Q You don't know what time it was? A Well, I couldn't tell you exactly.

Q You don't know what day of the week it was?

A It was on a holiday, I know.

Q Do you know what day of the week it was? A It was a Jewish holiday.

Q Do you remember the day of the week? A Well, I don't remember the day of the week.

Q You had never seen Pravder arrested before? A No, sir.

Q Yet you can remember a certain Sunday a year ago last December seeing a man hand him a piece of paper, but you can't remember the day of the week that he was arrested? A No, sir; it was exactly in the holidays I know that way, and I went to New Rochelle and the officer came along.

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Q When the officer came there and asked for Pravder you had been talking with Pravder before he came there?

A No, sir.

Q Hadn't you seen him at all? A No, sir; he was not in town, and I was waiting for him.

Q You told the officer he wasn't in, didn't you?

A That is why I told him.

Q You saw the officer come in the house? A Yes, sir.

Q You saw the officer find Pravder in a closet at that time, didn't you? A I don't know; he went upstairs.

Q He found him in the house? A Yes, sir.

Q Although you told him he was out? A I didn't see all--

Q You told the officer he was out? A Yes, sir.

Q And then afterwards you saw the officer find him in the house? A Yes, sir; I seen him bringing him out of the house.

Q You saw him pull him out of a closet? A No, sir; I did not.

BY MR. SPIELBERG:

Q Did you know he was an officer? A Well, he told me so he is a policeman.

Q After he told he was a policeman you knew it? A I didn't know him before.

Q He lived in the back? A Yes, sir; in the back.

Q When this policeman came in it was on the Hebrew festival of Pentecost? A Yes, sir.

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Q Do you know what that means? A Sucoth.

Q Mr. Pravder just came back from the Synagogue?

A Yes, sir.

Q And went upstairs to change his clothes? A That is what his wife told me, he went to the Synagogue, and I was waiting for him, because I did not see him at the time.

Q His wife was there? A Yes, sir.

Q And he has three children living with him? A Yes, sir.

Q He had just gone upstairs, after coming back from the Synagogue? A Yes, sir.

BY MR. EDWARDS:

Q Did you see him go upstairs? A No, sir.

Q Why do you tell counsel he just went upstairs if you didn't see him go? A The wife told me.

MR. EDWARDS: I ask the Court to instruct the witness not to give hearsay evidence.

THE COURT: You are asked what you know personally.

You don't know anything about it?

(No answer).

Q That is why when you told the policeman he wasn't in,-- he really wasn't in the store? A I was in the store.

Q He was not? A No, sir; he was not in the store.

SAMUEL COHN, a witness for the defendant, being duly sworn, testified as follows:

(The witness states he lives at 98 Union Avenue, New Rochelle)

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Q What is your business? A I am a lawyer. I am engaged as confidential clerk for the Corporation Counsel for the City of New Rochelle.

Q The office of the Corporation Counsel of New Rochelle?

A Yes, sir.

Q Do you know Philip Pravder? A Yes, sir.

Q Do you know him from living in New Rochelle? A Yes, sir.

Q In business out there? A Yes, sir.

Q In his own name? A Yes, sir.

Q Do you know where his store is located? A I think I know since he has moved, I believe I know on what street it is, but I have not been in his new store.

Q Have you been in his old store? A Yes, msir.

Q Did you go and see Mr. Jacob, the complaining witness, in this case in behalf of Mr. Pravder? A I did.

Q Do you remember when it is? A Why, I think it was in the fall of this past year, but I don't remember on what day.

Q Before he was arrested? A Yes, sir.

Q Before Pravder was locked up? A I think so, I don't recollect the exact date, but I think it was.

Q Did you have a conversation with Mr. Jacobs? A I did.

Q What did you tell him?

Objected to.

Q What did Mr. Jacobs say to you in reference to Pravder?
MR. EDWARDS:

Objected to. May we have the time fixed?

BY MR. SPIELBERG:

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Q Can you recall the month -- you say it was in the fall of 1911? A Yes, sir; it may have been in September, I don't know, it was before the cold weather, I know, it may have been in September.

Q 1912? A Yes, sir; 1912.

Q September, 1912? A Yes, sir.

Q Did you go there to see Mr. Jacobs about the transaction of the Nussbaum piano? A Well, in regard to part of the transaction -- I went there to help Pravder to straighten out the account with Jacob Brothers.

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

Q In reference to their mutual obligations to each other? A Yes, sir.

Q About money owing from Pravder to Jacobs and from Jacobs to Pravder? A Yes, sir.

Q Did you tell Mr. Jacobs that you came--

Objected to. Objection sustained.

Q After you had spoken to Mr. Jacobs and drawn his attention ---

MR. EDWARDS: I object to this.

Q Did Jacobs say anything to you about his, Jacobs, indebtedness to Pravder? A I don't know what he means-- Jacob Brothers?

Q Whether he owed or did not owe him money? A Yes, sir; I can tell you in two words what my object in going to

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Jacob Brothers was.

Q But that was before Pravder was arrested? A I believe it was.

Q You came there to straighten the matter out?

A Yes, sir.

Q Between the two gentlemen? A Yes, sir.

Q Pravder at that time was in New Rochelle? A Yes, sir.

Q Have you known Pravder during the last two years?

A yes, sir.

Q Do you know people in New Rochelle who know him?

A Yes, sir.

Q Do you know what his reputation for honesty is?

A Good, like any ordinary citizen.

Q Any other ordinary business man? A Yes, sir.

Q A good reputation? A Yes, sir.

CROSS EXAMINATION BY MR. EDWARDS:

Q How long have you known him? A Well, I believe this June will be two years.

Q Known him in a social or business way? A Both.

Q See very much of him, ever do business with him?

A Yes, sir.

Q Bought pianos from him? A No, sir.

Q Never bought a piano from him? A No, sir.

Q Never have any of your friends buy pianos from him?

A I believe so, I can't recall any-- I have always sent people to him.

Q Your business with him has been in other lines than in the piano business? A Yes, sir.

A B R A H A M C O H E N, a witness for the people, sworn,
testified for the defendant as follows:

BY MR. SPIELBERG:

Q What is your business? A Clothier.

Q How long have you been in New Rochelle? A 29 years.

Q Do you know this defendant Prawder? A Yes, sir, he
was one of my tenants.

Q You owned the property in which he lived? A Yes, sir.

Q Do you know other people who know him in New Rochelle,
do you know a lot of people who know him in New Rochelle?

A Quite a few, I think so.

Q What is his reputation for honesty? A Well, as far as
I had dealings with him he always paid me the rent, he didn't
used to be prompt but always tried to pay.

Q What is his reputation, what do people say about him,
speak of him as an honest man? A seems to be pretty honest, as
far as I know of him, or heard of him, always trusted him in
what he said.

CROSS EXAMINATION BY MR. EDWARDS:

Q I would like to ask this gentleman how long this de-
fendant was a tenant of his? A He was about -- I couldn't
exactly say -- about the time --

Q About what time? A Six or seven months.

Q Did you know his landlord before he became a tenant of
yours? A yes, sir.

Q Nathan Levin? A Yes, sir.

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Q That was his landlord, wasn't it? A Yes, sir.

Q Did he ever pay rent to you by giving you a piano?

A No, sir; never.

N U S S B A U M, recalled, in rebuttal, testified
as follows:

BY MR. EDWARDS:

Q Mr. Nussbaum, you had a son named Nathan, had you not?

A Yes, sir.

Q He has since died? A Yes, sir.

Q He died when, can you tell us? A August.

Q This last August? A Yes, sir.

Q 1912? A Yes, sir.

Q Now, did you send your son Nathan with this contract
People's Exhibit No. 3, to New Rochelle, to give to the defend-
ant Pravder? A No, sir.

MR. SPIELBERG: I object to that. There is no claim
made that this man sent it.

THE COURT: He may answer the question.

Q Did you at any time give this contract, People's Ex-
hibit 3, to your son Nathan to take to the defendant? A No,
sir.

Q How old a man was your son? A The son was about 19
or 20.

BY MR. SPIELBERG:

Q At the time when you bought the piano, Mr. Nussbaum,
you were sick? A Yes, sir.

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Q When the piano was delivered at your home, were you home or not? A No, sir.

Q You were not? A No, sir.

Q You had left for the country? A Yes, sir.

Q Was there some conversation about the \$400 originally?

A Before this?

Q When you first were going to buy the piano from Mr. Pravder, the price was \$400? A Yes, sir.

Q On the instalment plan? A Yes, sir.

Q Subsequently it was changed to \$350? A yes, sir, for cash.

Q Before the piano was delivered to you, Mr. Nussbaum, you had called at the office of Jacob Brothers, had you not?

A I don't remember.

Q Don't you remember you went to the warehouse in New York City to pick out your piano? A Yes, sir.

Q That is right, didn't you? A Yes, sir.

Q While you were there in the warehouse ^{the} conversation was still about \$400, wasn't it, Mr. Nussbaum, with Mr. Stephens in the department of Jacob Brothers? A Yes, sir.

Q Mr. Stephens, you remember the gentleman? A Yes, sir.

Q He showed you about? A Yes, sir.

Q At that time the talk was \$400? A Yes, sir.

Q Do you remember whether Mr. Stephens in his own handwriting made out this lease? A That I did not see.

Q You don't remember that? A No, sir.

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Q The conversation about \$400, Mr. Nussbaum? A Yes, sir.

Q It was also talked about between yourself and Mr. prav-
down
der that you were to pay \$15/and eight dollars a month? A Yes.

Q Can you tell me what month this was in, Mr. Nussbaum?

A I can't tell you, I got enough in my head, I can't remember.

Q Try the best you can? A I can't remember it.

Q When did you go to the country that year, do you re-
member? A I was there all summer in the country but I made
some visits.

Q You came home to visit? A yes sir.

Q When you left again? A Yes, sir.

Q You don't remember what month this was in that you were
there? A It was August or September.

Q Around September? A yes, sir.

Q Do you remember when the piano was delivered to you?
A I was not here.

Q When did you pay the money, before or after the piano
was delivered to you? A After.

Q You don't know how many days after? A No, sir.

Q Do you remember when you changed your contract from
\$400 on the instalment plan to \$350 all cash? A I did not make
any contract; it was spoken about at the first conversation
for me to pay \$400 or in cash \$350.

Q Do you remember when you made up your mind to pay \$350?
A When I came back.

Q You don't remember what month this was in? A I can't re-
member.

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Q After you had paid \$350 over to pravder you were not bothered any more? A No, sir.

Q No collector came or anything else? A No, sir, I don't like to have any collectors, never bought anything -- not a penny's worth --

Q After you gave Pravder \$350 you were not bothered any more? A No, sir.

Q No collectors came? A No, sir.

Q You didnot see anybody? A No, sir.

Q Did you know Pravder? A yes, sir.

Q Before you bought the piano? A No, sir.

Q Your people are living out in New Rochelle? A I used to see him in New Rochelle because I used to come there.

Q Your boy Nathan wasalways there? A yes, sir, he was in business there at New Rochelle, my whole family is there.

BY MR. EDWARDS:

Q You never made any instalment contract? A I never did.

Q Do you remember how long it was after you had been to the warehouse to pick out the piano in September when you came and paid for it? A No, sir, I paid him afterwards, when I came back from the country.

What I mean is do you remember how long afterwards you came back from the country? A No, sir.

Came back for the winter? A I guess it was in December, I guess.

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Q December? A Yes, sir.

Q Before Christmas or after Christmas? A Before Christmas.

Q You didn't get back in November or October or September, did you, and pick out the piano? A After -- I picked out the piano before.

Q You say you picked it out in September? A Yes.

Q I wanted to get an idea how long after you picked it out you paid for it? A I could not tell you how long I was away.

Q You don't know whether a month or two months? A No, sir, about two months.

BY MR. SPIELBERG:

Q You think you picked out this piano around September?

A Yes, sir, in September, maybe, I think before but about that.

Q About September? A Yes, sir.

Q You paid for it about December? A Yes, sir.

Q Sure? A Yes, sir.

Q Two months later? A When I came back from the country I can't tell exactly.

Q A couple of months after the piano was picked out by you in New York? A Yes, sir.

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

Q Maybe three months? A I couldn't say.

Q As nearly as you can tell it may be two or three months

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after? A Yes, sir.

Q Because after you picked out the piano in New York you went away? A Yes, sir.

Q Stayed away a couple of months and you came back?

A Yes, sir.

Q Was it around New Years you paid the money to the defendant? A I can't tell.

Q It might be around New Years? A Yes, sir, I can't tell exactly.

BY MR. EDWARDS:

Q Can you tell whether it was before or after Christmas?

A I can't tell that, I don't remember. I can't answer. I should remember everything? I got enough in my head.

TESTIMONY CLOSED.

MR. SPIELBERG: I renew the motion now for direction of acquittal at the close of the case.

Motion denied; exception.

MR. SPIELBERG: I ask your Honor to dismiss the indictment and discharge the defendant upon the ground that the crimes alleged in the indictment, if proven by the People occurred either in Westchester County or in Kings County and not in New York County. The paper was signed in Westchester County. There was nothing at all done in New York County.

THE COURT: I understood the whole transaction took place here.

MR. EDWARDS: The delivery of the contract was made

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personally by the defendant in this County.

MR. SPIELBERG: I understood the testimony to be that it was mailed to Mr. Jacobs and he refused it by mail. If it was mailed in New Rochelle, this County would have no jurisdiction.

THE COURT: We ought to know whether the crime was committed here. My memory is fairly clear on the subject.

CHARLES JACOBS, a witness for the people, recalled, testified as follows:

BY MR. EDWARDS:

Q People's Exhibit No. 3 -- where did you receive that and from whom and at what time? A From Mr. Pravder at our office in 579 West 89th Street.

Q He brought it personally? A Yes sir.

Q That is what you testified to last Friday? A Yes, sir.

BY MR. SPIELBERG:

Q Didn't you testify you got it by mail? A No, sir.

Q Did you receive it in your office? A It was handed to me by Mr. Pravder at our office.

THE COURT: That is my memory of it.

Motion denied. Exception.

(Mr. Spielberg closes the case on behalf of the defendant).

(Mr. Edwards closed the case on behalf of the People).

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THE COURT'S CHARGE.

FOSTER, J., Gentlemen of the Jury: There are two counts in this indictment, both charging forgery in its second degree. The first count of the indictment charges the defendant with forgery, that is to say, with writing, with intent to defraud, the name of another, to an instrument whereby a pecuniary demand is created. The instrument is here and you will have an opportunity of seeing it. The question for you to determine, under the first count of the indictment is whether or not this defendant forged the name of the complaining witness, Nussbaum -- who may be said to be the complaining witness -- who was a witness for the complainant.

If the defendant, with intent to defraud wrote Nussbaum's name you may convict him, if you find that this is an instrument whereby a pecuniary demand was created. I think there is no dispute about that, that it is such an instrument.

The second count of the indictment likewise charges forgery in its second degree, which is practically the same crime but differs in this: Whereas in the first count it is charged that the defendant wrote that name, not his own, with intent to defraud, in the second count it is conceded that somebody wrote it -- it does not matter whom -- but the defendant, well knowing that the name was forged, that

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the instrument was a fictitious and false instrument, ~~with intent to demand~~ put it off and passed it as genuine. It is just as much an offense to utter a forged instrument as it is to forge an instrument and it is precisely the same crime in the law. So that, if the defendant forged the instrument, or, knowing that it was forged, put it off as genuine, he is guilty under the law of forgery in its second degree. Whether he is so guilty is the sole and only question that you gentlemen are called upon to determine. The question seems plain and it seems unnecessary for me to charge more at length. You have heard the testimony of the complaining witness, Mr. Jacobs, who had a conversation with the defendant and who said that he received from the defendant himself, in this county, this instrument, which it is claimed is forged. You have the testimony of Mr. Nussbaum himself that he never signed it. Now, take this instrument and inspect it -- there is no objection to their having it?

MR. SPIELBERG: No, sir.

THE COURT: Take it by consent, inspect it, examine it, and say whether or not in your judgment, this defendant forged it and he did forge it if he wrote Nussbaum's name with intent to cheat Mr. Jacobs and the instrument creates a pecuniary demand. If he did not forge it did he put it off as genuine? Take all the facts and all the circumstances into consideration.

You are not here to show mercy; you are not here even

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to do justice. Remember that. Jurors sometimes get into their minds that they are here, as the phrase is, to do justice. The greatest justice is done when each of us performs, in a right manner the humble part in the machinery for the administration of justice assigned to us. If any individual sets himself up as doing that which is just, doing justice broadly, he usurps, sometimes, the function of another and the machinery for the time is thrown out of adjustment. You are not here to determine whether this man should be punished nor how much punishment should be meted out to him. That duty devolves upon me. I am not here to determine whether he is guilty. That duty devolves upon you. So that you will answer that question and that question alone: Did the defendant forge the instrument or did he put off as genuine a forged instrument. If he did, you will convict him; if he did not you will acquit him. You are to determine this question with no regard whatever to the consequences of your verdict. Remember that you, and each of you have taken an oath a true verdict to find in accordance with the evidence. Always remember that, gentlemen. You may retire to determine the case.

MR. SPIELBERG: I ask your Honor to charge the jury that if they have any doubt that this defendant intended to defraud the complainant, they must return a verdict of not

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guilty.

THE COURT: Oh, yes, if the defendant had no criminal intent, if he did not intend to defraud, acquit him. What was his intention is the question you gentlemen must answer from all the facts of the case. If he did it, why did he do it?

MR. SPIELBERG: I ask your Honor to charge the jury that the question of intent applies both to the forgery and to the uttering of the forged instrument.

THE COURT: Yes.

MR. SPIELBERG: If he intended to divert this cash temporarily --

THE COURT: When he intended to defraud, didn't he?

If he intended temporarily to divert it, if he intended to gain any advantage, no matter what the advantage was, any advantage which was not honorable and not his right you may convict him.

MR. SPIELBERG: I ask your Honor to charge the jury that if his intention was absolutely honest, to return every dollar, there was no intention to defraud.

THE COURT: I cannot charge that. That is the question for you, to determine.

MR. SPIELBERG: I ask that they take all the exhibits.

MR. EDWARDS: No objection.

THE COURT: If there is no objection the jury may have

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them.

(The jury retired at 12:48 P. M.)

(The jury returned to court at 4.10 P. M.)

THE COURT: Mr. Foreman, I have your communication reading as follows: If the defendant temporarily diverted the money paid, for a time, is he guilty?

I see I have not made plain to you the issue you are called upon to determine. The question is not whether this defendant stole the money, or whether he temporarily diverted it. That has nothing to do with it. Did he forge this instrument? Did he sign the name of another man to that paper for the purpose of deceiving Mr. Jacobs or with the intention to defraud Mr. Jacobs, no matter whether he got the money or not? Did he forge the instrument is the first question and the second question is did he put off as genuine an instrument which was forged and which he knew was forged. That is the question submitted to you. Is that plain? If any of you have any further question to ask I should be glad to answer it.

A JUROR: If he issued the instrument but did not intend to defraud?

THE COURT: It is not a question of whether he intended to steal this money. If he intended to defraud, to deceive in any respect, Mr. Jacobs, if he intended to postpone the day for payment, or to gain any other improper or

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undue advantage that was the felonious intent necessary to constitute the crime.

MR. SPIELBERG: The juror asked the question if he did not intend to defraud it seems to me.

THE COURT: If he did not intend to defraud then he is not guilty, of course. What is an intention to defraud? An intention to deceive, an intention to cheat, to reserve to himself some undue advantage which he was not entitled to. You must weigh all the facts and circumstances surrounding this case, gentlemen. The question is one of forgery and not of larceny. You may retire.

~~The jury returned a verdict of guilty.~~

(The jury then retired.)

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(The Jury return to the Court room, at 4:28 P. M.)

THE CLERK OF THE COURT: Gentlemen of the Jury, have you agreed upon a verdict ?

THE FOREMAN OF THE JURY: Yes, sir.

THE CLERK OF THE COURT: How say you, do you find the defendant guilty, or not guilty ?

THE FOREMAN OF THE JURY: Guilty, with an extraordinarily strong recommendation to mercy.

THE CLERK OF THE COURT: Hearken unto your verdict as it stands recorded! You say you find the defendant guilty, with a recommendation to the mercy of the Court, and so say you all.

MR. SPIELBERG: I want to find out on which count the Jury found the defendant guilty.

THE COURT: Do you find him guilty of having forged the name of the defendant, or uttering a forged instrument?

THE FOREMAN OF THE JURY: I couldn't really answer that question.

THE COURT: You pass along, and ascertain which.

THE FOREMAN OF THE JURY: Your Honor, one of the jurymen seems to feel both counts, and the rest of the jury agree on the second count.

THE COURT: It is necessary for you to agree. You must have a unanimous verdict. If the defendant both forged and uttered the instrument, the ends of

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justice do not require that you should find him guilty under both counts. It will be sufficient, if he is guilty under both counts, to declare him guilty only under one count. If you believe the defendant forged the instrument, convict him under the first count. If you are in doubt of that, but are of the opinion that he uttered it, that is, knowing it to be forged, he put it off as genuine, then convict him under the second count of the indictment.

THE FOREMAN OF THE JURY: (After consulting the other eleven Jurors) The second count is now made unanimous.

THE COURT: You find the defendant guilty, with an extraordinarily strong recommendation to mercy, as charged in the second count of the indictment. Is that your verdict, Mr. Foreman?

THE FOREMAN OF THE JURY: Yes, sir.

MR. SPIELBERG: I now ask that the verdict be set aside, as against the evidence, and against the weight of evidence, and on all the grounds mentioned in Section 999 of the Code of Civil Procedure.

THE COURT: Motion denied.

MR. SPIELBERG: I respectfully except.

(The defendant is duly sworn and his pedigree taken)

THE COURT: What is your motion?

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MR. SPIELBERG: I have no further motion now. I am ready for sentence.

THE COURT: Well, I shall put this matter over until Friday morning, for investigation. Let Mr. Kimball investigate, and report to me on Friday morning, and we will adjourn this continued term until Friday morning for that purpose.

CASE # 1675

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

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

against

PHILIP PRAVDER
----- X

: BEFORE:

: HON. WARREN W. FOSTER,
: J.

New York, March 7th, 1913.

INDICTED FOR FORGERY IN THE SECOND DEGREE:

INDICTMENT FILED OCTOBER 11, 1912.

A P P E A R A N C E S:

ASSISTANT DISTRICT ATTORNEY

HAROLD SPIELBERG, ESQ., For the defendant.

---:o:---

The defendant being arraigned for sentence:

MR. SPIELBERG: May it please your Honor, I have here a request signed by every one of the jurymen who tried and convicted this man, repeating their request to your Honor, and asking your Honor to extend whatever clemency you may. I want to hand this up to you. In addition to this, I simply desire to state that this is the first

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time that this man has been convicted of any crime. He has a wife and three children the oldest of whom is only five years old, and they are absolutely dependent upon his earnings. They are now practically starving, and they have been in destitute circumstances for sometime. I am satisfied that this man did not really intend to commit a crime.

THE COURT: What did he intend doing when he gave the forged certificate?

MR. SPIELBERG: He intended to pay back \$225. at ten dollars a month.

THE COURT: Have you in your long experience, Mr. Spielberg, ever heard of a defaulter who did not intend paying back the money?

MR. SPIELBERG: But this man made an honest attempt to make it good by paying every month as long as he was allowed to do so. However, he is convicted. Under the peculiar circumstances of the relation between this defendant and the complainant, it is possible that he misconstrued the contract and believed that he had a right to do as he did.

THE COURT: Under the law he had no business to think so.

MR. SPIELBERG: I appreciate that. He has been convicted by the jury, and I ask your Honor to be as kind to

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him as you consistently can be. I have the wife here.

THE COURT: I don't think it would be of any use.

MR. SPIELBERG: The father and mother are in court.

THE COURT: I suppose you wish to tell me that this defendant has led a good life up to this time, and that this is his first conviction?

MR. SPIELBERG: That is about all that they can say.

THE COURT: Philip Pravder, you have been convicted after a fair trial of Forgery in its second degree. The law makes this crime punishable by ten years of imprisonment in state's prison. The facts briefly of the case are these. You were a dealer in pianos and not having capital to conduct your business you entered into an arrangement with Jacob Brothers, manufacturers, to sell their pianos on the installment plan. Afterwards they advertised your business and advanced the capital necessary for you to do business, and they allowed you to have their pianos and to sell them. You were to be paid for your services all that you received over and above the price of the piano. You collected the money for this piano and then lied to Jacobs Brothers, and to induce them to give further time you put off upon them as genuine a forged certificate. I haven't any doubt about that, and the jury has found that there was no doubt about that. An inspection of the instrument showed satisfactorily to me at

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least your guilt. Then when you were up for trial you tried to place the blame on the son of the person to whom you sold the piano, who was dead. You tried to say that he forged it. That was a lie and a perjured lie. Now the complaining witness writes that when they became suspicious of you and before the discovery of the facts against you, while checking up your accounts, four of their pianos disappeared from your salesroom. One was subsequently discovered in a music store, and three others they have never been able to find. So that not one piano but several did you steal. Continuing they say that, "The defendant knowing that he had committed the crime of larceny and forgery and that we must discover the same, to use the colloquial expression, decided that he might as well be hung for a sheep as a lamb, and put something away for a rainy day", and so you stole those other four pianos. Now, those were facts which were not known by the jury, and could not be brought to the jury's attention. They have recommended extreme mercy, and I am going to listen to that verdict. I am entirely disposed to listen to these recommendations by juries. If there is anything in the case that impresses twelve men who tried it as worthy of mercy, who am I that I should set myself up against their judgment. As they recommend mercy I will show mercy, but I cannot show that extreme mercy that perhaps

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some of the jurors would be pleased to have shown, because of these facts that they did not know and which no doubt would have changed their recommendation. It is exceedingly difficult to prove the guilt of one who commits the crime that you have committed. It is the duty of this court to protect honest merchants and to insist that those who violate the principles of fair dealings and honesty and transgress a penal law, shall be punished to the end that honest merchants might not suffer. The indeterminate sentence law applies to your case. You are too old for Elmira. The case is not a suitable one for the penitentiary, and so I must under the law send you to state's prison under an indeterminate sentence. I shall fix the minimum as low as it may be, thereby showing you the mercy which the jury has requested.

The sentence of the Court is that you be sentenced to State Prison under an indeterminate sentence for not less than two years and three months, and not more than five years and three months.

*I hereby certify that the foregoing is
a full and true transcript of the testimony
and proceedings had upon the trial of
aforesaid defendant*
Peter D. McLaughlin
Amos G. Russell, Official Stenographer.

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