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I N D E X

Witnesses.	D.	C.	ReD.	ReC.
Anna M. Fitzgerald	4	16	21	21
William A. Mac Donald	27	33	37	40
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COURT OF GENERAL SESSIONS OF THE PEACE
CITY AND COUNTY OF NEW YORK PART II.

-----X
THE PEOPLE : Before:
-against- : Hon. Charles C. Nott, Jr. J.
MARIAN L. LA TOUCHE : and a Jury.
-----X

New York, December 19th, 1917.

Indicted for Grand Larceny in the Second Degree.

Indictment filed August 2nd, 1917.

---o--- 2875

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

ASSISTANT DISTRICT ATTORNEY
JAMES M. DONOHUE, for the People.

ROBERT M. MOORE, ESQ., for the Defense.

---o---
Transcript of the Stenographer's Minutes.
---o---

Frank S. Beard,
Official Stenographer.

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MR. MOORE: If your Honor please, at this time I think that a certain matter should be corrected, if the District Attorney desires to.

I think I should preserve the rights of the defendant, although whether there is any virtue in the objection or not, I am uncertain, as to the amendment of the indictment.

THE COURT: Well, state the objection on the record?

MR. MOORE: I object to the amendment ---

THE COURT: None has been offered yet.

MR. MOORE: Then I ask the Court to hold that we are on trial only for petty larceny.

THE COURT: Well, state the grounds for the record.

MR. MOORE: The indictment itself constitutes --- it is regular in form and complies with the requirements of the Code of Criminal Procedure, in that it states, first, the charge, and then the act constituting the charge, but it simply states that it is grand larceny, without mentioning any degree, but it states only that the amount involved is two hundred dollars, which would indicate, perhaps, that it was grand larceny, in the second degree.

I ask now to have it determined whether we are on trial for petty larceny or grand larceny in the second degree.

MR. DONOHUE: It is merely a clerical error, if your Honor please, and I ask that the word "second" be inserted before the word "degree". We ask to have the first count amended by inserting the word "second", although we will rely, I think, on

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the second count, but I will not so announce, at this time.

THE COURT: Well, in this case, the charge in this indictment is that Marian L. LaTouche is guilty of grand larceny in the blank degree, submitted as follows; and the indictment then proceeds to set forth that, on the 8th day of July, 1916, she did steal, take and carry away feloniously \$200 in lawful money of the United States, and a written instrument, namely, a bank check, the property of Anna M. Fitzgerald.

In view of the fact that the omission is evidently a clerical error, and of the fact that the indictment sets forth the property stolen, from which it is evidenced that it must be grand larceny in the second degree, I will grant the amendment.

I do not think that the defendant can be surprised or prejudiced by an amendment at this time, and, therefore, I will grant the motion to amend, and the defendant may have an exception.

MR. MOORE: We except, sir.

MR. DONOHUE: Shall I proceed now, sir?

THE COURT: Yes.

(Mr. Donohue then opened the case for the People.)

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THE PEOPLE'S TESTIMONY.

A N N A M. F I T Z G E R A L D, of 78 Lafayette Avenue,
Brooklyn, a witness called on behalf of the People, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q What is your business, Miss Fitzgerald? A Bookkeeper and
stenographer.

Q And who are you employed by? A Richard Frank and Company.

Q And are you a salaried employee? A Yes, sir.

Q And how much is your salary a week? A Twenty dollars a
week.

Q And how old are you? A Twenty-nine.

Q Are you married? A No, sir.

Q Who do you live with? A My mother.

Q Do you support your mother? A I help.

MR. MOORE: We object to that, and move to strike out
the answer.

THE COURT: Yes. Motion granted.

Q Miss Fitzgerald, do you recall the first time that you
met the defendant, Mrs. LaFouche? A On July 8th, 1916.

Q You must raise your voice. The jury complain that they
cannot hear you. Now tell us the circumstances which led up to
your meeting her? A There was an advertisement in the Herald for
a lady partner, with a capital of two hundred dollars.

MR. MOORE: I object to that, as the advertisement is the
best evidence.

THE COURT: Objection sustained.

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BY MR. DONOHUE:

Q Have you that advertisement with you? A No, sir.

Q Well, anyway, what did you do after you read the advertisement? A I answered it under the initials it was advertised in, and received a letter on July 5th, asking me to call.

MR. DONOHUE: I ask to have this paper marked for identification, at this time, if your Honor please.

(Marked People's Exhibit 1 for identification.)

Q I show you People's Exhibit 1 for identification. Did you ever see that before? A Yes.

Q Did you have that in your possession the first time that you met the defendant? A Yes.

Q Where did you meet her, the first time? A In the office of 1947 Broadway.

Q In whose office? A The office of W. A. MacDonald.

Q And did you have any talk with her there? A I talked with her regarding partnership.

Q Now, talk slower and louder. No one can understand you.

A She told me she intended opening an office uptown in the brokerage business, and, as I had no experience in brokerage, I told her that I did not think I would consider it at the time. And then she brought up the subject of Colorado Fuel, and said that it would be a very good investment.

BY THE COURT:

Q Now, one moment before getting to that. What kind of an office was this? A A brokerage office.

Q Big or small? A Why, she said she was going into it,

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and said that she wanted a lady to go into it, in a small way.

BY MR. DONOHUE:

Q No. The Court asked you about the office that you met her in. What did she tell you about this office?

MR. MOORE: I think she should tell her story first.

THE COURT: No. Let her answer my question.

BY THE COURT:

Q Describe the office? A It was a regular office, and had a little private office besides, and she took me into the private office. There was a large office and a private office.

BY MR. DONOHUE:

Q What was in the large office? A I believe, a desk, and a table and a few chairs and a board, and the ticker.

Q Anything else? A Why, there was a man in there.

Q And what was on this board? A The Code -- the different kinds of stocks.

Q Well, there were some chalk marks? A Yes, sir.

Q And, as you went in, where did you see Mrs. LaTouche? A She was talking to a woman, about the middle of the floor. —

Q And did she have on a hat at that time? A I don't think she had, that day.

Q And, as you went in, did you notice what she was doing? A Yes, she was standing talking to another woman.

Q Where? A About the middle of the floor of the large room.

Q And what did you say to her, and what did she say to you, at that time? A I showed her the letter (indicating People's Exhibit 1 for identification,) dated July 5th, 1916.

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Q And what did she say with reference to the letter? A And she said she was considering opening an office, uptown.

Q Well, what did she say about this letter? (No answer)

BY THE COURT:

Q Did she say whether she had sent the letter or not? A I introduced myself ---

MR. MOORE: Let me see it. Perhaps we may admit it. Yes, it is admitted that that is in the handwriting of the defendant.

MR. DONOHUE: Then I offer it in evidence now, by consent, sir.

THE COURT: It is admitted that it is her handwriting?

MR. MOORE: Yes, your Honor.

(It is admitted and marked People's Exhibit 1 in evidence.)

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

Q You had People's Exhibit 1 when you went over to see Mrs. LaTouche? A Yes, sir.

Q And when you went in, you found her in this big room?

Yes, sir.

Q Now tell the Court and jury just what talk you had with her at that time? A After she dismissed the other women, she took me in the private office, and told me that, on or about September 1st --

MR. MOORE: I object to her characterizing it as a private office, if the Court please. She has described it as an office off the main room.

THE COURT: Well, I think that is a matter of description,

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not a conclusion of fact.

MR. MOORE: Then, as a matter of description, I don't object to it.

BY MR. DONOHUE:

Q Go on? A And she told me that, about the first of September, she intended to open an office, uptown, in the brokerage business, and wanted a woman that could invest some capital to go with her.

And she said that, at that time, Mr. MacDonald would give her private tickers --- that is, tickers without cost, -- would allow them to her without cost, because she had been working for him for nine years.

At that time she said that she didn't know me well enough, and I didn't know her well enough, to go into partnership with; and, until a further day, if I would invest in Colorado Fuel, she knew she could make me some money.

And I told her, if she thought it was a good buy, to go ahead and buy, through MacDonald, as she said she was working for him, and I would come in, later in the week, with the check, and pay for same.

Q Go ahead, Miss Fitzgerald? A She said that the summer season was a very bad season to go in business, in the brokerage business, and it was better for her to stay where she was, as she was under no expense, as she was working for Mr. MacDonald, until Fall.

And then I left her, with the understanding that she was to go ahead and buy the Colorado Fuel for me, on margin.

And then I got a letter on Friday --- I think it was the 7th ---

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stating that she had bought the Colorado Fuel.

MR. MOORE: I object to that. I object to her statement of the contents of the letter.

THE COURT: Sustained.

BY MR. DONOHUE:

Q Never mind that. You got a letter from her? A Yes, sir.

MR. MOORE: That is conceded to be in the handwriting of the defendant. I have already examined it.

MR. DONOHUE: Then I offer it in evidence, if your Honor please.

(It is marked People's Exhibit 3.)

Q Have you told us, Miss Fitzgerald, everything that she said to you the first day that you met her? A As far as I can remember.

Q Did you give her any money or check on the first day that you met her? A Not on the first day.

Q And when was the next time you saw her? A On Saturday, July 8th, 1916.

Q Where? A At the office of MacDonald, at 1947 Broadway.

Q In this same little office? A No, in the large office, that day.

Q And will you tell us what she said to you then, and what you said to her? A I went in with a check on the Chase National Bank, for two hundred dollars, and she said that she had bought it, as her letter to me stated, and I gave her the check, and endorsed it over to her, and she gave me a receipt for twenty shares of Colorado Fuel and Iron, on margin, for two hundred

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dollars.

Q Now, between your second visit and your first visit, did you receive People's Exhibit 2? A I did, yes.

MR. DONOHUE: May I read that to the jury now, sir?

THE COURT: Certainly.

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

Q So, when you went back to Mrs. LaTouche, you had this letter with you? A I think I did. I had the check with me, anyway.

Q And did you at that time show her that paper (indicating)?
A I gave her that.

Q You gave her that, did you? A Yes, sir.

MR. DONOHUE: I offer that in evidence, and it is consented to, if your Honor please.

THE COURT: Very well. Received.

(It is admitted and marked People's Exhibit 3.)

Q And did you give her People's Exhibit 3? A Yes, sir.

Q And was it then in the same condition that it is now?
The front part of it? A Why, I believe it was, as far as I remember.

Q And the back? A I endorsed that. The back was the same, without her endorsement. I endorsed it to her.

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

Q And did you, in her presence, sign this check, on the back? A Yes.

Q And did you put on it, "Pay to the order of M. L. LaTouche"?
A Yes, sir.

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Q And did you, under that writing, sign your name? A I did.

Q And did she give you this paper, at that time (indicating a paper)? A Yes, sir.

MR. DONOHUE: I offer that in evidence, if your Honor please by consent.

(It is received.)

(Marked People's Exhibit 4.)

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

Q At the time that she gave you this receipt, did you have any talks with her? A We went to Childs' to lunch, and came back to the office, and just talked about Colorado Fuel, she saying that she thought it would advance, probably going to sixty, and that, in some years, it had not been less than thirty-eight.

Q Did she tell you that she was going to buy Colorado Fuel and Iron for you? A She told me that she had already bought it for me, at that time.

Q Did you authorize her to buy any other stock, except Colorado Fuel and Iron? A Not at that time.

BY THE COURT:

Q Did she say through whom she bought it? A (No answer)

BY MR. DONOHUE:

Q Did she tell you through whom she bought it? A Through MacDonald.

Q Did she say so in so many words? A She said that she had been working with MacDonald, and did business through him, and was going to buy the Colorado Fuel through him.

Q And did she afterwards tell you that she had bought it

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through MacDonald & Company? A She didn't say that she had bought it through MacDonald, but wrote a letter that she did buy it.

Q Did you have any further talk with her on that day? A No.

Q Did you have any talk with her on other visits? A She invited me to go to Maywood to see her, on Sunday afternoon, but it was more of a social call.

Q When was that? What Sunday? A I think it was two weeks after.

Q And did you talk about Colorado Fuel at that time? A She spoke very little about it, saying that she knew it would advance, and she expected to invest money in Crucible Steel; and she wrote to me that Crucible Steel looked good.

Q And did she tell you to invest in Crucible Steel? A Well, she said that she thought she was going to make a good deal of money on Crucible Steel, and she wrote me a letter then -- I don't remember the date -- asking me if I wanted to go in on a pool in Crucible Steel.

Q Now, when was the next time after this Sunday that you saw this defendant? A I don't think I ever saw her after that Sunday.

Q And did you ever receive any moneys from her after that? A I never received any money at all.

Q Did you ever receive any commissions or premiums? A Nothing.

Q Any money whatsoever? A No, sir. No money of any kind.

Q And when was the next time that you saw her after that? A I don't think I ever saw her after that Sunday that I was out at Maywood.

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Q (Question repeated) A Oh, yes, in the Sheriff's Room, about six or eight weeks ago. It may not be as long as that. I don't remember exactly.

Q And when you say the Sheriff's room, do you mean the Sheriff's room in this building? A Yes, sir.

Q That was the next time you saw her after that Sunday? A Yes, sir.

Q And that Sunday was some time in the latter part of July, 1916? A Yes, sir.

Q And what efforts had you made to see her before that last time that you saw her in the Sheriff's room? A When I heard no further from her, I called up the office of MacDonald & Company, and was told that they could not locate her.

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

THE COURT: Objection sustained. Strike it out.

BY MR. DONOHUE:

Q Well, what did you do in the way of trying to find her?

A I called up the office of MacDonald, and was informed --

(Objected to. Sustained.)

Q How many times did you call them up? A Once, that time. And then I went to Maywood, in the afternoon of the same day.

Q And what was in Maywood? A At Maywood, I met Mr. Hair.

Q Who lived there? A Mrs. LaTouche had lived there. That was where I had visited her.

Q And did you locate her there? A No, she was not there.

Q And when was this, Miss Fitzgerald? A Some time in the latter part of July or the beginning of August, 1916.

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Q Now, what other efforts did you make to locate her? A I went to her home several times, but never found her there.

Q About how many times would you say you went to her home?
A Probably four times.

Q And what else did you do after that? A I went to MacDonald's office, and inquired if she had bought Colorado Fuel from me on that day, and I was told --

(Objected to. Sustained.)

Q Now, did you make a complaint to the Police Department?
A Yes, sir.

Q When? A I think it was some time in August, 1916.
BY THE COURT:

Q You say that you never got any money or dividends from the defendant? A Yes, sir.

Q Did you ever get any stock? A No, sir.

Q You never got any stock from MacDonald's office or from her? A No, sir.

BY MR. DONOHUE:

Q Did you authorize her to keep this two hundred dollars for herself? A No, by no means.

Q Now, what was your reason for giving her this two hundred dollars?

MR. MOORE: I object to that as already asked and answered. She has been all over that.

THE COURT: Yes. Objection sustained.

MR. DONOHUE: Very well. She is your witness.

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CROSS EXAMINATION BY MR. MOORE:

Q When you first saw this woman, she proposed to you a partnership to be formed in the Fall; did she not? A Around the first of September.

Q And after that discussion had been made --- or, first, you told her your business, did you not? A I showed her the letter.

Q Or, at least, you told her you were a stenographer and bookkeeper? A Yes, sir.

Q And then you were to go into partnership business with her in the brokerage business in September? A Yes, sir.

Q And after that plan was unfolded, you did not want to go into the partnership? A No. I said I would consider it.

Q Well, you said you would take it into consideration?
A Yes, sir.

Q And she told you, also, that she had been dealing in stock for a number of years; didn't she? A That she had been in the employ of MacDonald, for nine years.

Q Did she say that she had been in the employ of MacDonald?
A She said that she was working for him.

Q That she had been working for them for upwards of nine years? A Yes, sir.

Q And her work for them, she said, didn't she, was in the procuring of customers to deal in stocks? A I don't remember those exact words.

Q Well, that was the substance; wasn't it? A That she had been working for MacDonald, for nine years, she said.

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Q And that her work consisted in procuring clients? A I don't remember her saying that.

Q Do you remember her using the word "clients"? A I believe she used the word "clients " in one of my letters.

Q Well, don't you remember that she said that, at that time, she had been for nine years working for MacDonald, procuring customers or clients, to trade in the market? A I don't remember those exact words.

Q You wouldn't say that she didn't say it, however, would you, Miss Fitzgerald? A I wouldn't say that she did or didn't.

Q And she told you that, by reason of her experience, of nine years with MacDonald, she frequently got a good tip? A In one of her letters she said that; not that day.

Q Well, that day that you were there, there was talk between you and Mrs. MacDonald, was there not, about your investing in stocks? A I had no talk with Mrs. MacDonald.

Q I mean Mrs. LaTouche? A Yes; about investing in Colorado Fuel.

Q And the amount that you would invest was discussed that day, wasn't it? A Two or three hundred dollars, to go in as partners.

Q And the amount of shares that you were to buy was discussed, too; wasn't it? A Yes, twenty shares.

Q And you know that, when buying on margin, the stock isn't delivered, don't you? A I got a receipt for the two hundred dollars.

Q But you were not buying the stock outright? A No, I was buying on margin.

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Q You understood that? A Yes.

Q And, as you understood, that was a penpoint margin?

A Yes, sir.

Q This letter which she wrote you, and which you received shortly after that, advised you that she had purchased the stock, at 42 1/3? A Yes, and sold it at 44, she said in the letter, later.

Q No, at first, she advised you that she had bought it at 42 1/3? A Yes.

Q And you know something about the stock quotations? You saw them in the newspaper, did you not? A Yes.

Q And did you look at the paper to see whether that stock sold at 42 1/3 on that day? A On that day that she bought it, I believe it did. I believe I saw it in the paper, that night.

Q Then you went back there on the 7th, which was Saturday? A The 8th was Saturday. The 7th was Friday.

Q Yes. You went back there on the 8th. The date of the check? A Yes, sir.

Q And at that time you received Exhibit 4, being a receipt; did you not? A Yes.

Q Was it in the same shape then as it is now? A I think so.

Q Did you notice where that came from? A 1947 Broadway.

Q Well, but did you notice where the piece of paper came from? A Out of one of the desks.

Q She got it from a desk? A Yes.

Q And didn't she cut off the letterhead of MacDonald, in your

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presence? A She might have cut it off, but not all of it.

Q Now, look at it and see if you don't recall that she cut off that letterhead?

MR. DONOHUE: I object to the question, unless it was done in her presence.

BY THE COURT:

Q Did you see her cut anything off the top of the paper?

A She tore part of it off; I saw her take a sheet out of a drawer, and tear some of the paper off.

BY MR. MOORE:

Q But there was something detached from this piece of paper, in your presence? A She tore a piece of paper there, and then wrote on that one.

Q This office that you were in, is not the main office of MacDonald & Company; was it? A She told me the main office was at 81 New Street.

Q Well, you learned that that was so; didn't you? A She told me so.

Q And didn't you know that this was a branch office of 1947 Broadway? A Yes, a branch office.

Q Now, you say that you never saw the defendant after that date? A Not after the Sunday, about two weeks later than the date of the receipt.

Q Did you ever go to MacDonald's branch office again after that? A Yes.

Q When? A I think it was some time in August.

Q Only once? A Only once.

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Q And you never sent to this branch office after August, 1916?

A I can't say that. I don't remember the exact dates.

Q Well, you caused the arrest of this defendant, did you not?

A She was arrested, and then I had to go before the jury.

Q That was some months ago; was it not? A some time in July of this year, I believe.

Q And you went before the jury then, and told your story?

A Yes, sir.

Q You knew that she was in jail at that time; didn't you?

A Yes.

BY THE COURT:

Q Do you mean the Grand Jury? A Yes, sir, I think it was.

BY MR. MOORE:

Q Now, when you gave her the two hundred dollars, was there not a little more said than the investment of it in Colorado Fuel and Iron? A Not a thing. I was to watch the newspaper for Colorado Iron and Fuel.

Q And didn't she say that she was buying it for a number of clients that she was doing business for? A She said she was buying through MacDonald.

Q Well, did she say that she was buying for clients, and made money for them? A She said she could make me some money.

Q Yes, by using her judgment in investments? A She was only to invest in Colorado Fuel.

Q No. Did she say this, that, if you traded upon her judgment, and let her use her judgment in buying, that she would make

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some money for you? A I told her if Colorado Fuel --

Q No. Did she say that? A I don't remember those words.

Q Of course, you had never traded in the market before that time? A No, sir.

Q You didn't know whether Colorado Fuel was worth forty-two dollars and a half or not? A By referring to the newspapers, I did.

Q But you didn't know whether it was a real or fictitious value? You knew nothing? In other words, you knew nothing about the real value of the stock? A I didn't know the value, only through the papers.

Q And so Mrs. LaTouche told you it was a good investment, did she not? A Yes.

Q And you relied upon her judgment for that particular investment; didn't you? A Yes.

Q And didn't she also tell you that a number of people were giving her money to trade, and were relying upon her judgment as to how the money should be invested? A Not at that time. She said that, in past years, she had been doing business for clients, and had made money for people.

Q Yes, by their giving her money, and let her invest it according to her judgment? A No; the way they wanted it invested.

Q Well, your judgment was pretty poor, as to investing, wasn't it? A Not by the papers, because it was advancing, according to the papers.

Q Well, didn't she at that time tell you that she had, while working for MacDonald & Company, procured clients, who traded

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through her judgment? A I don't remember those words, "trading through her judgment".

Q Well, you wouldn't say that she didn't say that? A I wouldn't say that she did or didn't.

Q Now, when was the first time that you went to this place in Jersey, to see her? A Oh, as late as 1917.

Q And you knew then that she didn't live there? A The man who was living there said --

Q I didn't ask you about that. You knew that she wasn't living there, didn't you? A I didn't know. I supposed it was her home.

Q Now, you supposed it was her home? A Yes, sir.

Q But you didn't find her there? A No, sir.

Q And you didn't see her again until after she was arrested?

A No.

REDIRECT EXAMINATION BY MR. DONOHUE:

Q Had you been to her home at any time before that, before the first visit you made there, after you could not find her?

A I had been there, one Sunday afternoon, to visit her, and spend a few hours there.

Q And did she tell you it was her home? A Yes, sir; and that the lot next to it belonged to her.

Q And you had been at her table, did you not? A Tea.

Q Well, had you ever invested in anything in Wall Street prior to this time? A Never.

Q You had no knowledge at all about Wall Street? A No.

RECROSS EXAMINATION BY MR. MOORE:

Q Just a moment. When was this Sunday that you visited

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there at her home in Jersey? A I think it was some time prior to the 28th of July; I think so, but I am not sure.

Q Do you think it was around the 28th of July? A Yes.

Q And then when, in August, was it that you visited MacDonald's place? A I think it was in the early part of August, but I am not sure.

Q Well, then, it was shortly after the 28th? A Probably two or three weeks after.

Q Did you receive any other letter from her? A I received a letter from her, telling me that she had received another hundred dollars that I had sent her, and had put it in a pool in Crucible Steel, I think the stock was.

Q When was that? A That was some time around the 28th of July.

Q So that you did, after this first transaction, and in the latter part of July join in a pool for the purchase of Crucible Steel? A I mailed her one hundred dollars. I didn't see her.

Q What? A I mailed her one hundred dollars. I didn't see her.

Q Well, that was joining in a pool to deal in Crucible Steel, wasn't it? A The letter there states what it was (indicating).

Q No, I want your understanding of it? A I understood that she was buying some Crucible steel.

Q Well, now you used the word "pool". Was it invested in a pool? A The letter shows what it was.

Q Now, the hundred dollars that you gave her, in the latter part of July was for a pool, a pool in Crucible Steel, wasn't it?

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A It was given on margin for Crucible Steel that she was to buy.

Q Well, wasn't it a pool, young lady. You used that term just now? A I don't know what it was, only what her letter states. I think her letter states that.

Q And you don't know whether that Crucible Steel was purchased or not? A I don't know anything about that hundred dollars, only she received a check, and acknowledged the receipt of it.

Q Now, did you get a letter of any kind, telling you that the Colorado Fuel and Iron had been sold? A Yes.

MR. MOORE: Will this be marked?

MR. DONOHUE: Yes, I will offer it in evidence, if you want it.

MR. MOORE: I do want it.

THE COURT: Then it may go in by consent.

(It is marked People's Exhibit 5.)

MR. MOORE: It is conceded to be in the handwriting of the defendant, if your Honor please.

Q Is People's Exhibit 5 the letter that you refer to, in which she reported the sale of the Crucible Steel? A No, of the Colorado Fuel.

Q I mean the Colorado Fuel? A That she had sold it at 44 1/4, I think -- it is all there -- and bought it back at 43.

Q That was July 13th, wasn't it? A Yes, sir, July 13th, 1916.

Q Did you make any reply to that letter? A I don't remember.

Q Well, this letter states that she had closed out your transaction at 44 1/3, in Colorado Fuel, and had gone into the

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market again, at 42; doesn't it? A Yes.

Q Well, had you given her permission to do that? A I told her, the day I gave her the check, if it went lower, she should sell it, and, if it went higher, she should dispose of it to my advantage. She understood that, the day I gave her the check.

Q In other words, you gave her a check for two hundred dollars? A Yes, sir.

Q And was leaving it to her -- A Only in Colorado Fuel, though.

Q You say only on Colorado Fuel? A Yes.

Q At least, you were leaving it to her judgment to speculate in Colorado Fuel? A I didn't want to lose on it, and I made her understand so.

Q Well, but were you leaving it to her judgment to speculate in that one stock? A Yes.

Q Now, as a matter of fact, weren't you leave it to her judgment to speculate in other stocks? A No, sir.

Q Did you answer the letter of July 13th? A I don't remember whether I did or not. I wrote her a few letters, but I don't just remember the dates.

Q You wrote her several letters; did you? A I wrote her about three.

MR. MOORE: Suppose we read the whole letter?

MR. DONOHUE: Yes, you may read it.

THE COURT: It is in evidence, and you may read it, of course.

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(Mr. Moore reads the letter to the jury.)

BY MR. MOORE:

Q Now, after that purchase of 42, did you get any further letters from her? A I think there is one there, dated on July 28th, written in lead pencil.

Q Did you answer the letter of July 13th? A I called her up, I believe.

Q And did you tell her to use her judgment in investing? A In nothing but Colorado Fuel.

Q Are you certain about that? A Positive.

Q Well, you had already invested two hundred dollars, at 42 in that stock? A Well, she was only to deal in Colorado Fuel.

Q Did you know anything more about that, than you did in Distellers? A Well, she gave me to understand that it was going to advance, and that is the one that she spoke of.

Q And she said, also, that Distellers is going to advance, didn't she? A Well, I believe I wrote to her, and I said I had no more money then to invest.

Q Do you know, Miss Fitzgerald, that the distinction and the difference between you and this woman is that you claim she was to deal only in Colorado Fuel, and she claims that she was, generally, to exercise her judgment in investing for you?

(Objected to. Objection sustained.)

Q You say -- did you write any reply to her letter of July 13th? A I don't remember whether I did or not.

Q Well, did you write her a letter at the time that you sent

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her a check for one hundred dollars? A I don't remember that. If I wrote her a letter, or whether I just sent her a check.

Q Did you send her a check, or deliver it personally? A It was mailed to her.

Q Well, that was to buy something besides Colorado Fuel; wasn't it? A Crucible Steel.

Q Well, at the time that this letter was written, on the 13th of July, did you observe whether the market for Colorado Fuel had reached 43, that day? A I believe it had.

Q Or lower? A I don't think it went any lower. It may have gone to 41, but I don't think so.

Q And on the 28th you sent her another check for one hundred dollars, or on the 27th? A Prior to the 28th, I sent her a check for one hundred dollars.

Q And on the 28th you received an acknowledgment of the receipt of the one hundred dollars? A Yes, sir.

Q And you didn't say anything to her about selling out the Colorado Fuel, and investing in the other stock? A Positively not.

MR. MOORE: That is all, I think.

MR. DONOHUE: That is all, Miss Fitzgerald.

(The Court then admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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AFTER RECESS.

W I L L I A M A . M A C D O N A L D , of 81 New Street,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. MacDonald, what is your business? A I am a stockbroker.

Q Where is your place of business? A My main office is at
81 New Street.

Q And what is your firm name? A W. A. MacDonald & Company.

Q And how many offices have you in the City of New York?

A I have two now. I did have three.

Q In July of 1916, how many offices did you have? A I had
three.

Q Where were they situated, please? A There was a main of-
fice, and one at 33rd Street and Fifth Avenue, and the other one
at Broadway, between 65th and 66th Street.

Q And what was the number on Broadway, of your uptown of-
fice? A I think it was 1947.

Q And how long did you have an office at 1947 Broadway prior
to that? A For about a year, possibly a year and a half.

Q How long have you been in the business of a stockbroker?
A Eighteen years.

Q Do you know the defendant, Marien L. LaTouche? A Yes.

Q Did you know her in July of 1916? A Yes, sir.

Q Was she at any time in the employ of your company?

A No, sir.

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Q In any capacity whatsoever? A Not now, no.

Q I mean, was she ever in your employ? A No.

Q Will you give us, Mr. MacDonald, a brief description of your office, at 1947 Broadway; that is, how many rooms you had, and what the situation of them was? A I was only in the office twice, but there was a large office and an inside office.

Q And had you a ticker and board up there? A Yes.

Q And the usual furniture for a broker's office? A Yes.

Q And the small office is used for what purpose, or was used for what purpose? A To give orders; usually used by the manager to get orders.

Q Do you know whether or not Mrs. LaTouche had an account in your firm on or about July 10th, 1916? A Yes.

Q Do you know whether or not she deposited any money or bought any stock, on the day of July 10th, 1916? A Yes. Having examined the records, I see that that is the fact, that she did.

Q Did you examine the records of your office for that particular time? A Yes.

Q And did you have a transcript made, under your direction? A Yes, sir.

Q I show you a paper, and ask you whether or not that is the transcript that you had made. Yes or no. A Yes.

MR. DONOHUE: I ask to have it marked for identification at this time, sir.

(It is marked People's Exhibit 6 for identification.)

Q Now, Mr. MacDonald, did you examine your records, at my re-

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quest, to determine whether or not Mrs. LaTouche bought any stock from your firm on or about July 8th, 1916? Yes or no? A She bought what there is there on that record.

Q Was that record made under your supervision? A Yes, sir.

Q I show you this paper, and ask you whether that refreshes your recollection on that subject?

MR. MOORE: I don't understand that the transactions were with this man at all, and I don't see how he can refresh his recollection, your Honor. He says he wasn't in the office more than twice in its existence.

THE COURT: Well, I suppose I must sustain the objection. He could not have any personal recollection to be refreshed.

BY MR. DONOHUE:

Q Well, did you examine the books of W. A. MacDonald & Company?

A Yes, sir.

Q And what do those books contain?

MR. MOORE: I object to that, on the same grounds.

THE COURT: I sustain the objection. You can't prove the contents of the books in that way.

BY MR. DONOHUE:

Q Who was the person who made this transcript, if you know, Mr. MacDonald? A Mr. Humphreys.

BY THE COURT:

Q Was he the manager of that branch office? A No, sir, he is manager of my downtown office, and the books are kept downtown.

Q Well, whom would she deal with if she bought or sold stock

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there? A Mr. Caphan.

Q Was he the manager there? A Yes, sir.

Q Is he now in your employ? A No, sir.

Q Do you know where he is now? A No, sir, I don't know where he is just now. He was with Papall & Co.

BY MR. DONOHUE:

Q Were the books kept in your main office in New Street?

A Yes, sir.

Q Are any books whatever kept in the branch office? A No, sir.

Q All transactions that occur in the branch office are entered in the books at the main office; are they?

MR. MOORE: I object to that.

THE COURT: I will allow him to say whether that is the ordinary course of business. I will allow it.

MR. MOORE: Exception.

A Yes.

BY THE COURT:

Q In other words, you do not keep any set of books at the branch office, but all transactions of the Branch office are supposed to go through your books at your main office? A Yes, sir.

BY MR. DONOHUE:

Q And who keeps the books at your main office? A Mr. Humphreys and Mr. Fahey.

Q And was it with Mr. Humphreys that you went over the books in your main office? A Yes.

Q And what Mr. Humphreys who made up this transcript?

A Yes. Oh, excuse me. Let me look at that one moment.

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That looks like Mr. Fahey's handwriting. I think he did it, under my supervision, with Mr. Humphreys.

Q I show you People's Exhibit 3, and ask you to look on the back of it, and tell me whether or not the endorsement on there is made by your stamp? A Yes.

MR. MOORE: I object to that. We will concede that that check was received by us, and deposited in the ordinary course of business, and that we received the two hundred dollars.

THE COURT: Well, but they want to show who it was deposited with.

MR. DONOHUE: Yes, sir, that is my object.

A Our stamp shows that it was deposited with us.

MR. MOORE: Exception.

BY THE COURT:

Q Well, could you tell from that stamp whether you cashed it for her, or deposited it in her account? A Well, in all possibilities, it was deposited to her account; in the regular course of business, it would go that way. That statement will show that.

BY MR. DONOHUE:

Q And can you state, after examination of the books, what was done with the two hundred dollars? A It was deposited to our account in the Chatham and Phoenix Bank, and credited to this M. E. LaTouche account.

Q And was there an account opened with this check? A Yes, sir.

Q And this whole check was deposited to M. La Touch's account? A Yes, sir.

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Q And, from an examination of the books, Mr. MacDonald, could you say whether or not this Mrs. LaTouche ever drew on that account?

MR. MOORE: I object to that, if your Honor please, as improper, an examination of the books.

THE COURT: Yes, I think, if the strict proof is insisted upon, you must have the cashier or someone here to prove what drafts were made on the account.

BY MR. DONOHUE:

Q Do you know of your own knowledge, Mr. MacDonald, whether or not any drafts were made on this account? A I don't know whether or not that account would show it, and what my bookkeeper might state.

Q You do know, however, that Mrs. LaTouche was never connected with your firm? A No, sir, she was simply a customer.

BY THE COURT:

Q When you say you deposited to her account, you are private bankers, also? A No, sir. We simply deposit when we ---

Q Well, would she draw checks on you, against that account? A No, sir. If she wanted a check, we would give it to her, but it would be our check on some bank.

Q But you would not honor her check on you? A No, sir.

BY MR. DONOHUE:

Q What bank was that check deposited in? A The Chatham and Phoenix National Bank. The stamp shows that.

Q And that is the bank where you keep your deposits? A One

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of the banks where we keep our deposits.

CROSS EXAMINATION BY MR. MOORE:

Q Now, Mr. MacDonald, this woman had been trading with you for a good many years, hadn't she? A Yes.

Q About how many? A Well, she traded with me about nine years ago, and then she discontinued trading, and came back to me again, about three years ago, I think.

Q And so that she had been doing business with you, with this lapse that you have spoken of, for about nine years? A Yes, sir, as a customer.

Q And when she was doing business with you, she opened an account with you, didn't she? A She had several accounts.

Q And those accounts were what were known as trading accounts, were they not? A Why, yes. You might call them that.

Q And she had an account with you in the month of June, 1916, didn't she? A Yes, I think so. She had several accounts.

Q And for a year prior to July 10th, 1916, she had several accounts, did she not? A Yes.

Q And she traded against that account, didn't she? A Yes.

Q And do you know when her account with you was finally closed? A I think that was the last account that she had with us, although I couldn't swear to it.

Q And during that time she was quite an active trader, wasn't she? A Well, fairly so, yes.

Q And during the time she traded with you, did she bring other traders to you? A Well, my understanding was that she traded for other people, mostly.

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Q Well, that is, what she called clients? A Yes, I guess you might call it that.

Q And she was pretty generally a loser; wasn't she?

(Objected to. Allowed.)

A In that connection, I don't quite understand you.

Q Well, I will put it that way? A I know what a loser is, but in this connection, I don't quite understand the question.

Q Well, I want to know whether her trades --

BY THE COURT:

Q Resulted in profit or loss?

MR. MOORE: Yes. That is my question.

A Why, some resulted in profit and some in losses.

Q But the general closing up was a loss, wasn't it? A Yes, decidedly, like most others.

Q Now, this man that you speak of as being in the office -- I notice that she was operating with you prior to July 10th, 1916; wasn't she?

THE COURT: He says she was trading with him for three years, the last time.

BY MR. MOORE:

Q Well, she was almost a daily visitor at your office, wasn't she?

MR. DONOHUE: Well, he is talking about, and referring to that exhibit, if your Honor please, and it is only marked for identification, and I think it had better go in evidence.

MR. MOORE: I don't offer it now.

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BY MR. MOORE:

Q She traded, prior to the 10th of July, 1916; didn't she?

A Yes.

Q In other words, she was what we know as a room-trader, wasn't she? A Well, you might call it that. She was there pretty nearly every day, when she traded.

Q Well, I don't know whether it is so or not, but I want to know whether she received at any time any commissions for any of these clients that she brought in? A Well, no, no. We have to have a regular commission. I don't know what arrangement she made with some of her own customers.

Q During the period of time that she traded with you, this last time, are you able to say about how much money she lost, in the sum total of the trading? A No, sir. Well, you mean on this statement?

Q No. You said she began trading with you -- or traded in the last time, about three years before, and she was quite an active trader? A Yes.

Q And during that time she had several different accounts? A Yes.

Q And some of those were her own accounts, and some were for clients? A Well, she had --- she seemed to direct the accounts, and they were accounts in which she put up the money or the collateral.

Q And would you be able to say, during that period of time, that she traded with you, about what was the net result, in profit or loss, of her trading? A I couldn't say. I had two hundred ac-

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counts, and I couldn't tell you, and I hadn't looked up that particular phase of the matter.

Q Well, you are able to say that it resulted in a substantial loss? A Oh, yes, yes.

Q She did, during that time, form pools, did she not, to trade in stock? A I couldn't say.

Q Now, this man that was in charge of your office at that time, was Mr. Capham? A Yes, sir.

Q And shortly after this, did you discharge him? A Why, no, I didn't discharge him. He got a position with C. C. Perpall & Co. They are brokers.

Q Did you have some trouble with him before he left?

MR. DONOHUE: I object to that.

THE COURT: I do not see how that is material, and I sustain the objection.

MR. MOORE: I am leading to something with it. Exception.

Q These small transactions, less than hundred share lots, of course, unbeknown to you, that representative of yours there might hold those accounts, and not report them to you?

MR. DONOHUE: I object to that.

THE COURT: Sustained.

MR. MOORE: Of course, there is nothing proved yet to justify that question, because there is no proof as to that matter, except that they were all forwarded, as claimed, to his main office.

Q Did you know or learn of this manager holding out trades?

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A Why, no, I didn't know of any such thing.

Q Don't you recall, Mr. MacDonald, Mrs. LaTouche reporting to you two or three transactions with this office up there, where she claimed that they had not carried out the trade? A I understood from the manager that she had made some kind of a complaint about certain things, where she claimed that stocks had not been bought and sold, at the price that she had claimed, or something like that, but we get kicks like that every once in a while.

Q Her heaviest trading was during the first three years that she was with you; wasn't it? A Yes.

Q Eh? A Yes.

Q Would you be able to say whether or not from July 1st, 1915, until August, 1916, that she lost in trading with you, \$5900, or thereabouts? A Oh, she might have very easily lost that, -- more or less -- I couldn't say.

Q I believe you said that the two hundred dollar check was actually deposited to her account on your books? A Yes, our books show that it went into that account, as I recall in looking them over.

REDIRECT EXAMINATION BY MR. DONOHUE:

Q And did she have any authority to use your stationery?

A No authority, any more than any customer might use our stationery in their ordinary business.

Q I show you People's Exhibit 4, and ask you whether or not you recognize that as your stationery? A Why, that was really the stationery of Charles N. Minzesheimer & Company, who owned

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that office before, and were a correspondent of ours.

Q Was Mrs. LaTouche a correspondent of your firm? A No, sir.

MR. MOORE: I object to that. There is no claim here that she was.

THE COURT: Well, I will allow it, in view of the heading on the receipt that she gave.

MR. MOORE: Well, but there is no representation that she was a correspondent. She cut off the heading.

THE COURT: But she left the word "correspondent" on it. I will allow it on the question as to what Miss Fitzgerald may have understood by it.

MR. MOORE: Exception.

BY THE COURT:

Q Now, Miss Fitzgerald has testified that this defendant referred to the office there at 1947 Broadway, as her office. Did she ever have any interest in that office? A No, sir.

Q She has also testified that the defendant told her that you were going to assist her in opening a brokerage office of her own. Did you ever have any such agreement with the defendant? A No, I had no agreement to that effect. I think she may have said to me that, if she started in an office of her own, would I see that she got a ticker. She could only get it by having a broker
O. K? it.

Q Did you agree to do that? A I may have done so, but I don't recall it.

Q Did you have any agreement with her, outside of getting her

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a ticker, to assist her, if she went into business for herself?

A No, sir.

MR. MOORE: If your Honor please, I think this is immaterial because the claim here is that we invested this money in a stock transaction with her consent, and the question is whether we exceeded our authority with that two hundred dollars.

THE COURT: Well, but I will allow proof as to the truth or falsity of the representations that this woman made to the girl, if she did make them.

MR. MOORE: Exception.

BY MR. DONOHUE:

Q What did you mean when you said that you told her that you would O. K. her getting a ticker? A Well, when a new person starts in the brokerage business, they can't get a ticker unless a broker O. K.'s her or him.

Q Well, you were not going to pay for it? A Oh, no, sir.

Q Or any of the expenses of an office that she opened?

A No, sir.

Q You were not going to back her financially? A No, sir.

Q In your examination of your books, Mr. MacDonald, did you find an account in the name of Miss Anna Fitzgerald?

MR. MOORE: I object to that as entirely immaterial.

THE COURT: I will allow it.

MR. MOORE: Exception.

A No, I couldn't find any account in that name.

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RECROSS EXAMINATION BY MR. MOORE:

Q Mr. MacDonald, during the nine years that she traded with you, and done business with you, what do you say her reputation for truth and honesty has been?

MR. DONOHUE: I object to that, if your Honor please, unless a proper foundation is laid.

THE COURT: Yes, you must lay the foundation.

MR. MOORE: Well, he has already said that he has known her for nine years, and done business with her for fully six years.

THE COURT: Well, but that does not mean that he knows her reputation among others.

MR. MOORE: I think the Court of Appeals has said that a person can testify from personal transactions and dealings with another person.

THE COURT: I know of no such rule. He can testify what her general reputation is among others whom he knows, and whom she knows, and whether he has heard anything against her.

MR. MOORE: Very well.

Q During the nine years that you have known her, you have had many business transactions with her, have you not? A Yes.

Q And during that period of time, her financial transactions have been in a tolerably large volume? A Yes, you may say so. But, of course, everything is comparative.

Q Now, I ask you, as a result of your personal dealings with her, and business transactions with her, what you can say as to her reputation for honesty, truth and integrity?

MR. DONOHUE: Objected to as no proper foundation has been laid.

(Sustained. Exception.)

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Q Did you ever talk about her reputation with anybody?

THE COURT: Well, there is no evidence on the record as to that subject.

MR. DONOHUE: Very well, sir. I will withdraw the question.

R O B E R T J. H U M P H R E Y S, of 16 Lexington Avenue, Fort Richmond, Staten Island, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Humphreys, what is your business? A Cashier and manager.

Q For whom? A W. A. McDonald & Company.

Q And how long have you been a manager and cashier for them?

A Two years, last September.

Q And were you cashier during the months of July, 1916, for that firm? A I was.

Q And did you keep the books? A Yes, sir.

Q And will you tell us your system of keeping the books?

A Well, the orders are received over the phone, and put in an order book, and then they are transferred from the order book to the blotter, and then posted from the blotter to the ledger.

Q And how many books do you keep altogether? A Recording the trades, do you mean?

Q Yes. A Well, there is three.

Q Well, what are they? A Order book, blotter and ledger.

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Q And did you keep those same books in July, 1916? A I didn't keep the order book, but the telephone man kept that. I kept the ledger and blotter.

Q And those books were always kept in the main office, weren't they? A Yes.

Q And no books were kept in the Branch offices, were they? A No, sir.

Q Did you, at my request, make a transcript of those books in the main office? A Yes.

Q I show you People's Exhibit 6 for identification, and ask you whether or not that is a transcript which you made up for me at that time? A Yes, it is a duplicate.

Q Will you tell us how you made that up, please? A Why, it is copied from the ledger on to this statement.

Q And that ledger records what? A All transactions made.

Q With whom? A With Marian L. La Touche.

Q From when until when? A From July 10th, 1916.

MR. MOORE: I object to that and move to strike that out, because he cannot know whether they are all the transactions.

THE COURT: Well, the question can be amended.

BY MR. DONOHUE:

Q Is it intended to cover all those transactions? A Yes.

MR. DONOHUE: I offer it in evidence.

MR. MOORE: I object to it, as no foundation, no proper foundation, has been laid for it. It appears that it is

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not an original entry, but is copied from oral telephone communications over the wire, and has no value, one way or the other, in determining whether the transaction was had, or any transaction.

THE COURT: In the first place, the transcript would not have been admissible, if the objection had been made and the books had been called for; and, in addition to that, this ledger was not a book of original entry, but was posted from the blotter, and the blotter from the order book, and the order book from verbal orders over the phone. I will sustain the objection.

BY MR. DONOHUE:

Q Now, have you made an examination of the first book that this account was kept in? A Well, that was previous to my being employed by W. A. McDonald & Company.

Q No. I mean from July 10th on. A Yes.

Q And did you compare that with the entries made in the ledger and the blotter? A No, sir; I just copied this from the ledger, because all the trades appear --

MR. MOORE: I object to that.

Q Can you tell, Mr. Humphreys, whether or not, from the examination of the books that you made, Mrs. La Touche ever bought any Colorado Fuel and Iron in the month of July, 1916?

MR. MOORE: I object to that on the same grounds.

THE COURT: Objection sustained.

BY MR. DONOHUE:

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Q Are you the cashier for all the offices? A Yes.

Q For the three offices? A Yes.

Q And is it your duty to post the cash transactions that are made with your firm? A Cash transactions?

Q Yes. A Well, they are all over the phone, and they state whether they want to receive or deliver the stock. Otherwise it is on margin.

Q Can you state whether or not you made out a check for Mrs. La Touche, after July 10th, 1916?

MR. MOORE: I object to that, as entirely immaterial, if the Court please.

THE COURT: I will allow it.

MR. MOORE: Exception.

BY MR. DONOHUE:

Q Did you? A I made out one on July 10th.

Q For how much? A \$50.

Q And to whose order was that made? A M. L. La Touche.

Q And whom did you give that check to? A Mrs. La Touche.

Q And can you state whether or not on July 10th you gave her any money? A Yes, sir; fifty dollars cash.

Q And do you know from where you got that money to give to her? Where did you get that money to give to her, that \$100?

A I took it out of the cash drawer of W. A. McDonald & Company.

Q Did you give it to her personally? A Yes.

Q And what was that charged against? A Charged against the M. L. La Touche account.

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Q And what was her account, what was the amount of her account, at the time you gave her this one hundred dollars?

A \$200 she had put up that day, July 10th.

Q And you gave her \$100? A Yes.

Q Did she say anything, at that time, to you about buying Colorado Fuel & Iron stock? A No, sir.

Q And when was the \$200 put up with your firm -- the hour, if you can remember? A Well, between four and five o'clock, after business had closed.

Q And is that the check that she gave you (indicating People's Exhibit 3)? A Yes.

Q And was it from the proceeds of this check that you gave her this money, this \$100?

(Objected to. Allowed. Exception.)

A Yes, sir.

Q And that left what balance? A \$100.

Q And did you receive any other moneys from Mrs. La Touche --

BY THE COURT:

Q Was that \$200 the only credit she had at that time?

A Yes, at that time.

BY MR. DONOHUE:

Q Did she have any stock that was being held as collateral, or any security of any kind, except this \$200 check? A I couldn't say. I didn't see her statement of account at that time.

Q But you know that you credited this \$100 that you gave her against this \$200 check that you received from her? A Yes.

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Q You do know that? A Yes.

CROSS EXAMINATION BY MR. MOORE:

Q Now, Mr. Humphreys, at the time, or, on the 10th day of July, 1916, this woman had with your company a number of trading accounts, did she not? A At that time?

Q Yes? A Well, I'll have to see the statement to make sure. I can't remember all those things.

Q Well, don't you remember whether or not -- A No, I couldn't say positively.

Q -- that she had several? A No, I couldn't say positively.

Q Well, you know that she had been trading with this company before the 10th of July, 1916? A Yes, sir.

Q And, if she traded, she had a trading account? A Why, yes; but she had closed it out.

Q Well, do you know whether she had closed it out or not? A Yes, she had closed it out.

Q Well, do you know whether or not there were several accounts that she was carrying, and trading on, at that time?

A No, sir; she wasn't.

Q And do you say that as a matter of knowledge? I don't care whether they were in her own name or in somebody else's name?

A No, sir; not at that time.

Q Well, when was the account closed, if you say it was closed? A Well, I couldn't say positively. At that time I remember of no account being opened of Mrs. La Touche.

Q You remember of no account being opened? A No, sir.

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Q And do you remember of any account being closed? A Well, I think that she had an M. L. Dow account which was closed.

Q She traded under that name, didn't she? A Yes.

Q And under what other names? A C. Higgs.

Q Do you know whether the Dow account was closed at that time? A Yes.

Q And whether the Higgs account was closed or not? A Yes. And she had at one time an M. L. Dow account, No. 2.

Q And was also closed? A Yes, sir.

Q Now, are you able to say, after looking at this paper, whether she had any stock transactions with your company on the 10th of July? A On that day, she sold short ten Mexican Petroleum.

Q I am not asking you about that day. I am asking you if you are able to say whether she had any accounts that were not closed, or any trades that were not closed? A No, sir.

Q Well, from any source are you able to say whether or not she paid your concern \$1200 on the 1st day of July, 1915? A No, sir; I couldn't say.

Q And whether on July 7th, 1915, she bought \$400 more? A I wasn't there at that time.

Q Well, if you had the books that you are talking about here, could you tell? A Well, I didn't go back that far in the books.

MR. DONOHUE: I object to this, if your Honor please, as entirely immaterial.

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THE COURT: Yes. He says that on July 10th she had no outstanding accounts.

BY MR. MOORE:

Q Well, are you able to say that on July 7th, 1916, she deposited with your firm \$200? A I haven't said positively on that.

Q Are you able to say whether on July 9th she gave you \$100?

A No, sir.

BY MR. DONOHUE:

Q What do you mean by that, "No, sir"? A I mean I didn't go looking up that account, to see what she deposited.

BY THE COURT:

Q What account are you speaking of? A This is the transcript of the M. L. La Touche account, from July 10th to August 1st.

BY MR. MOORE:

Q Did you ever, before July 10th, 1916, have an M. L. Dow-- or rather, an M. L. La Touche account? A No, sir.

Q And yet she was trading with you for nearly three years? A They are different accounts.

Q Well, she was the one who was conducting the accounts; wasn't she? A Yes, sir.

Q Are you able to say whether on June 32nd she paid you -- 1916 -- she paid you \$200 on account?

MR. DONOHUE: I object to that. How is that material to the transaction we are trying here now?

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THE COURT: Well, if she had balances in other accounts, it would be material, I suppose. Objection overruled.

BY MR. MOORE:

Q Are you able to say? A No, sir.

Q Now, when she drew out this \$50 in cash and the \$50 check, she didn't instruct you as to any particular account to charge it to, did she? A Yes, she did.

Q Are you sure about that? A Yes.

Q Why are you sure about it? A Because she said she didn't want it in the C. Higgs account, but in the M. L. La Touche account.

Q Then she did have some other accounts? A Well, this was really the opening of this account. One was transferred to the other.

Q Then on July 10th she transferred the Higgs account to the La Touche account, did she? A Yes.

Q And then she deposited \$200 and drew out \$100? A Yes.

Q And how long had she been running the Higgs account before the 10th of July? A Well, previous to that, that account had been closed out, and, in making these trades, and depositing \$200, she came down in the afternoon and said that it should have been in the M. L. La Touche account.

Q Well, you said you transferred the Higgs account to M. L. La Touche? A These trades --

Q I am not talking about these trades. Did you transfer the Higgs account to M. L. La Touche? A I did.

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BY THE COURT:

Q Now, let me see if I understand this. As I understand you this \$200 check was deposited first in the Higgs account?

A Yes, sir.

Q And then it was deposited in the M. L. La Touche account?

A Yes. She stated that she didn't wanted it charged to the Higgs account, but to the M. L. La Touche account.

Q And that left no money at all in the Higgs account?

A yes, sir.

Q And all the money that was transferred to the La Touche account was this \$200? A Yes, sir.

BY THE FOREMAN:

Q I would like to know whether there was such a party existing as Higgs, or whether she was acting in the name of Higgs, and also in the name of Dow. A Well, that I couldn't state.

Q You never saw either party? A No, sir.

BY THE SECOND JUROR:

Q How did you get this -- did you get this \$200 check personally? A Yes.

Q Who did you get it from? A Mrs. La Touche.

Q She handed it to you? A Yes.

Q Where? A In the office.

Q Which one? A 81 New Street.

Q You didn't get this check from the uptown office then?

A No, sir.

Q What did she tell you when she gave you the check?

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A Well, she said that the account was opened of C. Higgs, and she wanted it transferred to the M. L. La Touche account.

Q When she handed you the check what instruction did she give you? A Why, she said she wanted a hundred dollars, a \$50 check and \$50 cash, which I gave her.

BY THE COURT:

Q Well, did she tell you to what account to deposit it, the check? A Yes, she said, "Take it from the Higgs account."

Q Well, the juror wants to know how it got into the Higgs account. A Well, there must have been an order from the uptown office, evidently.

Q But you say you got the check? A Yes, but she had given the order at Mr. Kephan's uptown office.

BY MR. DONOHUE:

Q But she actually had the check when she came downtown?

A Yes, sir.

BY THE SECOND JUROR:

Q Now, an order was placed before Mrs. La Touche came to your main office? A Yes.

Q And that order was placed, and whatever that order was, was to go to the Higgs account? A Yes.

Q And then she came down and told you to do what? A She said that she it should have been applied to the M. L. La Touche account and to give her credit in the M. L. La Touche account.

Q Well, then where did the Higgs account come in? A She said to take it out of the Higgs account, the \$300.

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Q Now, tell us, in bookkeeping language. You had the Higgs account and charged it with this order? A Yes.

Q With the order that was placed over the telephone? A Yes.

Q And then there was a payment to be made against that order? A Yes.

Q And was that check paid against the order of the morning? A Yes.

Q You don't know why the change was made from the Higgs account to the La Touche account; do you? A On demand from Mrs. La Touche.

Q That is all you know about it? A Yes.

Q Now, if you had an order for this stock, what was the amount to be put up on that order? A Well, we generally required ten per cent.

Q And did you have anything to cover that margin? A Yes, only \$100, after I gave her the \$100.

BY MR. MOORE:

Q Now, she also gave you her check, did she not, or a check, on July 26th for this amount? A Yes.

Q And that made good, then the original \$200, didn't it? A Well, yes, if you want to put it that way.

BY MR. DONOHUE:

Q Let me understand you. You say that you received some order or communication from the uptown office in reference to the Higgs account? A Yes.

Q Now, tell us what you received. A The telephone man

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received that, the order clerk.

Q Well, what did you receive?

MR. MOORE: I object to it.

THE COURT: Objection sustained. He cannot tell what the telephone man got.

BY MR. DONOHUE:

Q At the time she deposited the \$200 in the M. L. La Touche account, did she have any credit whatever with your firm? A No, sir

Q And that \$200 having been credited to that account, and \$100 taken by her, that left only \$100 to the credit of that account? A Yes, sir.

BY THE SECOND JUROR:

Q And that last \$100 that was deposited by her, did that apply -- was that to be applied as additional margin on account of the reduction in price, or was it to cover an additional order?

A It was opening her account of M. L. La Touche again, that she had closed on the 22nd of July.

BY THE COURT:

Q She closed the account, and that \$100 opened a new account? A Yes, sir.

Q And was that \$100 in the check of Miss Fitzgerald? A Well, I don't know. That was deposited in the Colonial Bank.

BY THE SECOND JUROR:

Q Well, the answer to my questions is that the \$100 of July 26th was to open a new account? A Yes, sir.

Q Now, on June 22nd, you say the account was closed?

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A Yes, sir.

Q How was it closed? A She got cash for \$24.45, that was the balance due on the original account of M. L. La Touche.

Q She had been sold out, and that was the balance to her credit? A Yes.

BY MR. MOORE:

Q Then she deposited this other hundred dollars? A Yes.

Q To that account? A Yes.

Q Bringing it back, of course, to the original two hundred dollars? A No, sir.

BY MR. DONOHUE:

Q Explain that to us? A Regarding the two hundred dollars?

Q No, regarding what this one hundred dollars that was deposited was for.

THE COURT: He said for reopening the account. That is perfectly clear.

MR. DONOHUE: The People rest, if your Honor please.

MR. MOORE: Now, if your Honor please, I move for the direction of a verdict, on the ground that the People have failed to establish a cause of action against the defendant. There is no proof here that the trade was not carried out according to the agreement with the complaining witness.

Oh, there is just one more question that I want to ask of the last witness.

BY MR. MOORE:

Q When stocks are bought on margin, they are not delivered to the purchaser; are they? A No, sir.

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Q A memorandum receipt is given them, showing the purchase; that is all? A Yes.

MR. MOORE: And I submit again, that the People have failed to establish a case here.

THE COURT: I would like to ask Mr. Humphreys another question.

BY THE COURT: (Addressing the witness Humphreys)

Q In your position, do you know whether a memorandum of purchase is given to customers of the office, as to stocks?

A A memorandum is delivered every day, for everything that is bought and sold.

Q Well, but have you personal knowledge of that? For instance, if a memorandum had been issued to her, showing the purchase of twenty shares of Colorado Fuel, on margin, would you know that?

A No, sir. Another man makes those out.

MR. MOORE: I renew my motion, if your Honor please.

THE COURT: I will hear the District Attorney. What proof is there that you did not use the two hundred dollars as margin, on a marginal account?

MR. DONOHUE: If your Honor please, this very check that was given to her by the complaining witness, two hundred dollars, was turned over to the office, and she immediately drew one hundred dollars for her own purposes.

THE COURT: Well, but we don't know for what purpose?

MR. DONOHUE: Well, she drew out one hundred dollars, leaving only one hundred dollars there, and, according to her own letter

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THE COURT: Well, that would have been ten percent; wouldn't it?

MR. DONOHUE: No, sir. She was to buy twenty shares, at 42 1/2.

THE SECOND JUROR: Your Honor, could I ask Mr. Humphreys a question?

THE COURT: Yes.

THE WITNESS: HUMPHREYS: Recalled:

BY THE SECOND JUROR:

Q Mr. Humphreys, from your examination of your records, in connection with the LaTouche account, the Dow account and Higgs account, and any other account that Mrs. LaTouche traded under, were there any transactions --- was there a transaction in Colorado Fuel and Iron, twenty shares, on or about July 8th, 9th or 10th? According to your records, did she place an order for, or buy, twenty shares of Colorado Fuel and Iron? A Well, she might have. I don't know. Not according to the transcript, she didn't.

MR. MOORE: I object to that, because the transcript begins on the 10th of July.

THE COURT: Objection sustained.

BY THE JUROR:

Q Well, is there any record on this transcript, on this record, as to the purchase of twenty shares of Colorado Fuel and Iron? A No, sir.

BY MR. DONOHUE:

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Q Did she say anything about wanting any stocks at that time? A No, sir.

Q What did she tell you to do with the check? A As I said before, that it was in the Higgs account, and should be in the La Touche account.

BY MR. MOORE:

Q She traded with the uptown office, didn't she? A Yes.

Q So, whether she bought Colorado Fuel or not, you would not know anything about it, would you? A Yes, I would.

Q Except as it was reported to you on the books? A Well, it had to be recorded, and go through the Clearing House.

Q Well, the order was never placed with you from the uptown office? A No, sir.

BY THE FOREMAN:

Q Did she give you any reason, when she left the one hundred dollars, what she left it for; that it was to be used as margin, or what? A Well, she had ten Mexican Petroleum, and that was what she left it for.

BY MR. DONOHUE:

Q And that one hundred dollars just covered that? A Yes, sir, ten percent.

BY THE COURT:

Q Do you mean ten percent of the par value? A No, sir; irrespective of the par value, it was ten dollars on each share, and that required one hundred dollars.

Q Well, I mean, considering the par value of each share as

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one hundred dollars, you must put up ten percent of margin on that? A Yes, sir.

Q So that twenty shares, you reckon that at two thousand dollars, and two hundred dollars, would be ten percent of that?

A Yes, sir.

BY THE SECOND JUROR:

Q I don't know if I made myself clear before. Are you able to say definitely whether there was any order placed by Mrs. La Touche for twenty shares of Colorado Fuel and Iron, between the 8th -- either on the 8th or after the 8th of July, 1916, whether it is on this account, or not? A No, sir, I had nothing to do with that.

BY MR. DONOHUE:

Q But would the examination of your books show that an account had been opened upon that order?

MR. MOORE: I object to that as already asked and answered.

MR. DONOHUE: The juror asked that question, and it was not objected to.

THE COURT: He may answer yes or no.

A Yes.

BY MR. DONOHUE:

Q Would you know whether or not they deposited an order in the uptown office for the purchase of twenty shares of Colorado Fuel and Iron?

MR. MOORE: I object to that.

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THE COURT: Yes, that would only be hearsay.

BY MR. DONOHUE:

Q Now, between the 8th and 10th of July, did she have any other open accounts there? A No, sir.

Q What about this Higgs account? A That had been closed.

Q And that was reopened by this two hundred dollars? A Yes.

Q And what about this Dow account? A That had been closed some time previous to that.

Q So that, on the 8th, she had no accounts outstanding?

A No, sir.

Q And then the only account that was open was the Higgs account, by the deposit of the two hundred dollars? A Yes, sir.

BY MR. MOORE:

Q And you say that you don't know whether she put two hundred dollars in on the 7th of July, 1916? A No, sir.

Q And can you state then, whether she had an open account or not? A No, sir.

Q Or whether she purchased anything on that day or not? A No, sir.

Q Of course she was not making your company a present of two hundred dollars; was she?

MR. DONOHUE: Oh, I object to that question as frivolous.

THE COURT: Objection ~~sustained~~.

BY THE FOREMAN:

Q In reference to the Higgs and Dow accounts, did Mrs. LaTouche have any power of attorney to sign those names? Did she sign them?

A She signed Higgs, per herself, --- C. Higgs, by M. L. LaTouche.

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And did the same thing with the Dow account.

Q And you never met either Higgs or Dow? A No, sir.

BY MR. MOORE:

Q Now, I want to make this clear. And you are uncertain whether she paid you one hundred dollars on the 9th of July, 1916; are you not, also? A Yes, I am uncertain.

MR. MOORE: Now I renew my motion, if your Honor please.

MR. DONOHUE: Will your Honor hear me now?

THE COURT: No. I will deny the motion.

It appears now, by the testimony of this witness, that there was no outstanding account until this check was deposited, and this check would be just enough for ten percent margin; and it appears, also, that one hundred dollars of it was at once drawn out by the defendant; and; therefore, I will leave it to the jury on this state of the evidence, to say whether or not the check was applied in accordance with agreement with Miss Fitzgerald.

MR. MOORE: But he is unable to say whether she deposited the two hundred dollars on the 7th.

THE COURT: I do not care if she deposited two million on that day, because, if she had no outstanding account, that would show that she drew it out.

MR. MOORE: But he says all that he would know would be by the report from the uptown office, and that it doesn't appear on the books, and that isn't proof that it wasn't given, the

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order, at the uptown office.

THE COURT: Well, in regard to this check, as to the check, he has personal knowledge, he claims.

MR. MOORE: Well, if I happen to have two hundred dollars in my pocket, and someone gives me a check for two hundred dollars, and, instead of using the check for two hundred dollars that someone has given me, for the specific purpose for which it was given to me, if I spend the proceeds of the check, and deposit the two hundred dollars that I have in my pocket at the time, that doesn't constitute any criminal offense.

Now, I think that the fair and logical inference is that, at the time of the purchase, she doing business with them regularly, she makes the margin good, which she did do by depositing the two hundred dollars on the 7th, and one hundred dollars on the 9th.

MR. DONOHUE: Well, he said that he has ^{no} knowledge of those deposits.

MR. MOORE: But they don't prove anything, if your Honor please. She might have made this trade with the uptown office, and carried it there.

All she has shown here is that the books, as finally submitted to him, show that it may have come, first, over the phone, and then it was put in a sales book, and then a blotter, and then the ledger, and I don't think that he can tell whether this purchase was made or not, there

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is no knowledge on his part.

THE COURT: It does appear, as I say, that, at the time this check was deposited, she had ^{other} no/outstanding account, and that she at once impaired that account, so that it could not have been used as margin. Now, your contention is that, between the 8th and 10th, the purchase was effected?

MR. MOORE: Yes, sir. The evidence shows it, the letter.

THE COURT: Well, what became of the margin? They would not carry it without the margin.

MR. MOORE: I think the fair inference is that the margin came from the two hundred dollars deposited on the 7th, and the one hundred dollars on the 9th.

THE COURT: But those accounts were closed on the 10th. What became of them?

MR. MOORE: Well, then, if they were closed, I should think we can show the money was there, and I think the Higge account was running.

He said, at one time, it was transferred. Clearly she had bought this before the check was received.

THE COURT: Well, in a case like this, both sides, supposedly, want the truth, and I will adjourn this case in order that the District Attorney may secure the man Kaphan, if he can be secured, as to whether any order was actually given; and the District Attorney can also have Mr. Humphrey here again on the question of those accounts of the 7th and 8th.

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MR. DONOHUE: I will say this, if your Honor pleases, that we have hunted high and low for this man Kaphan.

THE COURT: Well, if you cannot produce him, you cannot; but, at least, it can be made clear what those other accounts were.

MR. DONOHUE: Can't we go on with the defendant's side, your Honor.

THE COURT: No, I do not think that I will ask him to go on, until the People's proof is completed.

(The Court then admonished the Jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Thursday Morning, December 20th, 1917, at ten thirty o'clock.)

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TRIAL RESUMED.

New York, December 20th, 1917.

ROBERT J. HUMPHREYS, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Now, Mr. Humphreys, on the day that Mrs. La Touche came to your office, with this two hundred dollar check, do you know what the condition of the Higgs account was? A She didn't have any at the time.

Q And right immediately before she came in, what is the condition of her account, if she had any? A Well, the \$200, was placed in the Higgs account, during the day.

Q Well, how was it placed in the Higgs account during the day?

A Over the telephone. To give her credit for two hundred dollars.

Q And so when she came in, what did she say to you? A She said, she wished to have this transferred; that it shouldn't have been been in the Higgs account, but in the M.L. La Touche account.

Q In other words, she opened up a new account, in the name of M.L. La Touche? A Yes, sir.

Q And you deposited that check to her credit? A Yes, sir.

THE COURT: He testified to all that, yesterday.

MR. DONOHUE: If your Honor will just bear with me for a second, I think we can clear this up.

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Q And then, as you testified before, did you have one hundred dollars -- fifty dollars in cash, and fifty dollars in a check? A Yes, sir.

Q And that left her one hundred dollars? A Yes, sir.

Q And what was that used for at the time? A For margin for ten shares of Mexican Petroleum.

Q And what was her financial status with your firm at that time? A She had one hundred dollars credit, and was short ten Mexican Petroleum.

Q And did that leave any further credit with your firm than the one hundred dollar margin? A No, sir.

Q And she had to put up that one hundred dollars for a purchase, that she had made that day? A For a sale, she made that day.

Q Do you know whether or not on the 26th of July, she deposited any money to that account? A She did, one hundred dollars.

Q And do you know how that was deposited? A Yes.

Q How?

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

THE COURT: I will allow it.

MR. MOORE: Exception.

Q How was it deposited? A It was deposited in the Colonial Bank.

Q Was it a check? A Yes.

Q And do you know who the check was made payable to? A No,

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sir, I didn't see the check.

Q The check came to your office how? A It came to the Bank office, at 66th Street.

Q And how did she get credit for it? A It was deposited in the Colonial Bank, and we gave her credit for one hundred dollars.

Q On the 26th of July? A Yes, sir.

Q Do you know when the M.L. Dow, account was closed out, account number one?

MR. MOORE: Now, if your Honor please, I take it, that he is speaking entirely from books, and I object to it, upon the ground that the witness is not competent or qualified, and it is not binding upon the defendant.

THE COURT: I understood that he was to be recalled^{ed} to prove what happened between the 8th and 10th, if he could.

MR. MOORE: But he is asked when certain accounts were closed out.

THE COURT: He can testify to when they were closed on the books of the firm.

BY MR. DONOHUE:

Q Can you tell us when the M.L. Dow, number one account, was closed on the books of your firm?

MR. MOORE: I object to that. The books speak for themselves, and are the best evidence.

Q Now, then, take this book.

MR. MOORE: I object to his testifying from the books, on

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the ground that the books are not themselves, shown to be competent.

THE COURT: Well, you just objected because he did not testify from the books.

MR. MOORE: But all that he can testify to is what the books show, and that is not competent here under the proof that has been offered.

THE COURT: Do you mean that it is not proof that this is the book?

MR. MOORE: No. But I say, even if it is the book, there is no proof that it is competently kept, as regards to the defendant. I am not objecting to that there book, being their ledger, but I do object to anything of the contents, being read or offered in evidence.

THE COURT: But you objected, a moment ago, because it was the best evidence.

MR. MOORE: But the ledger itself, would not be competent, and, therefore, he can't indirectly prove, what he could not prove directly.

THE COURT: You say that the only way, that the account can be shown to have been closed out, is by the ledger, and now you object to the ledger as incompetent?

MR. MOORE: Yes, sir. In the first place, the witness has no personal knowledge, of her transaction.

THE COURT: The objection is overruled.

MR. MOORE: Exception.

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BY MR. DONOHUE:

Q Will you tell us that, please? A January 31st, 1916, M.L. Dow, account, closed with debit balance of seventy-nine dollars and seventy-six cents.

Q Now, can you tell us, when the M.L. Dow, number two account was closed? A Yes.

Q When? A May 17th, 1916.

Q And when was the C. Higgs account closed? A June 19th, 1916.

Q Now, when was the M.L. LaTouche account opened? A July 10.

Q And when was that closed? A She closed the account on August 1st.

Q What was the condition of the account at that time? A Well, there were two accounts. She closed one account on July 23rd, and then she reopened it with that one hundred dollar deposit on July 26th.

Q Now, were there any cash deposits made by Mrs. La Touche, between July 10th, and July 26th, except the one for the one hundred dollars, you have already mentioned? A No, sir.

MR MOORE: One moment. I object to that on the ground, that the witness cannot know. It appears that the transaction was had at the 67th Street, office, and all that he knows, was what was reported to him, and, therefore, it is incompetent.

THE COURT: Well, the testimony is that all transactions went to the books of the main office. I will allow it.

MR. MOORE: Exception.

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BY MR. DONOHUE:

Q What was your answer? A No, sir.

Q Did she, between July 8th, and 10th, or any time in the month of July, deposit anything, but the sums you have already mentioned? A No, sir.

Q Now, did she have any credits with your company, during that time?

MR. MOORE: I object to that, if the Court please, on the ground that the witness is incompetent, to testify to that. If there are any credits, I submit, the books are the best evidence, as to that, and the books should be proven. He can't know anything, but what the books show.

THE COURT: Well, then I will let him prove it by the books, if that is your objection.

MR. MOORE: But I object to the books. It must be proven by the books, as their best evidence, and then the books are not evidence, unless they are proved to be kept correct-full.

THE COURT: Well, I will allow them to prove the books. I understood you, a minute ago, to say that you did not object on the ground that there was no proof those are the books.

MR. MOORE: Those are the books of that company, but transactions are made in the branch office, and then telephoned in, and then transferred to several other books, before they reach this book, and, therefore, this book, is not competent, is not a book of original entry; and he is testifying from a book that is not competent, and I object to what

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the books show, first, and then I object to the books being produced in evidence.

THE COURT: Very well, I will sustain the objection, until the books are proven properly.

CROSS EXAMINATION BY MR. MOORE:

Q Now, Mrs. La Touche, had other accounts than the ones you have named, with your company? A Not that I know of, no, sir.

Q Outside of your books at all -- you came into the firm when? A 1915, August 1st.

Q And when you came into the firm on August 1st, do you know whether, under any name whatever, Mrs. La Touche, had a credit with your company? A No, sir; I didn't take charge of the books until September 1st.

Q Do you know, without reference to your books? Do you know now, from business relations that were had with Mrs. La Touche, whether she did not have a credit with your company, when you were there in August, 1915? A That I couldn't state.

Q And do you know whether or not -- you don't know how many accounts that Mrs. La Touche had, do you, with your concern? A Four, that I know of.

BY THE COURT:

Q Well, in addition to keeping the books, you saw Mrs. La Touche, from time to time? A Yes, sir.

Q And how often did you use to see her? A Well, when I first came there, she ran the Dow account, and I used to see her every day.

Q And in 1916, how often? Very seldom, because she went

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uptown then.

Q And you never heard her mention any other account, than the four you have testified to? A No, sir.

Q And you are the bookkeeper? A Yes, sir.

Q And to your knowledger, there was no other account of her's there? A No, sir.

BY MR. MOORE:

Q Just a moment, Mr. Humphrey. Do you know when this branch uptown, was opened? A Why, I couldn't specify the exact date; no, sir.

Q But it was opened, since you began working for this company? A Yes.

Q Now, after the branch office was opened uptown, Mrs. La Touche didn't come to the downtown office, did she? A Very seldom.

Q Did she come there more than once or twice, during that whole period of time?

MR. DONOHUE: What period?

MR. MOORE: That the uptown office was opened.

A From the time we opened the branck, until we closed it?

Q Yes. A No, I don't think she did.

Q And what ever business she did, she did with the uptown office? A Exactly.

M O R T I M E R K A P H A N, of 128 West 66th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Kaphan, what is your business? A Stock broker.

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Q What is that? Please speak louder. A Manager for a stockbroker's firm.

Q And who are you employed by? A Crossman, Sherman & Company.

Q Now, on July 10th, 1916, and sometime prior thereto, were you employed by W.A. Mc Donald & Company? A Yes, sir.

Q In What capacity? A Manager of the Bank's office, at 1947 Broadway.

Q And from when to when, were you up there? A I should judge about a year, or a year and a few months, with Mr. Mc Donald.

Q Beginning when, about? A Well, say, roughly, about March.

Q In what year? A Year ago.

Q 1916? A Yes, sir.

Q Until when? A Until a few months ago.

Q During that time, did you meet the defendant, Mrs. M.L. La Touche? A Yes, sir.

Q And was she employed by you? A No, sir; she was up there as a trader only.

Q Now, Mr. Kaphan, did you ever take any orders from here, for the buying or selling of stock? A Yes, sir.

Q Will you tell us the system of buying and selling stock at that office?

A Why, she would give me an order, and sign an order blank, and I would phone it, to our downtown office.

Q And would you make any written memorandum of this order?

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A No, sir; because the books were all kept downtown.

Q Now, tell us the system of bookkeeping up there, at the branch office? A I had none whatsoever. It was at once phoned down to the downtown office, and, if money was deposited, that was phoned down. If Mrs. La Touche paid in one hundred dollars on account, they would credit it to her account, downtown.

Q You are not testifying to a specific instance are you?

MR. MOORE: Well, he says he would phone down the amount.

BY MR. DONOHUE:

Q And, as she bought stock, you would phone the order down?

A Yes, just the same as the money.

Q You kept no books at the branch office? A No, sir.

Q Did you at any time, ever withhold any orders from the downtown office, which were given to you, by Mrs. M.L. La Touche?

A Withhold them? No, sir.
all

Q You forwarded/ of them, in the usual course of business, to the downtown office? A Yes, sir.

Q Do you know whether or not Mrs. M.L. La Touche had an account with your firm, on or about July 10th, 1917? A I couldn't recall that, because I have kept no bookkeeper. She had an account with us though.

Q Under what name, did you first meet Mrs. LA. Touche? A I think under the name of Mrs. Dow.

Q Mrs. Dow? A Yes.

Q And how long did you know her as Mrs. Dow, Mr. Kaphan? A Right along, until a few months afterwards, and then I learned her

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name was Mrs. La Touche.

Q And when was it you heard heard the name of Mrs. La Touche? A Well, in my office, when they addressed her as Mrs. La. Touche.

Q And how long after you knew her as Mrs. Dow, was that? A I should judge, a couple of months.

Q And did you know her also as Mrs. Higgs? A Yes.

Q And she had accounts, or she bought and sold stocks, under that name; didn't she? A Yes.

A Yes.

MR. DONOHE: May I have this paper marked for identification, at present, your Honor?

THE COURT: Yes.

(Marked people's exhibit 7, for identification.)

Q I show you People's exhibit 7, for identification, and ask you if you ever saw that before? Yes or no? A Yes.

Q Where did you see it? A It must have been given up at my office.

Q Do you know by whom? A By Mrs. La. Touche, yes.

Q And do you recognize the indorsement on the back? A Yes, I think that is her signature.

Q Do you think it is, or do you know that it is? A Yes, it is her signature.

Q It is her signature? A Yes.

Q And do you know why that was deposited, or how it came to be deposited, at your office? A She put it up as margin.

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Q Do you know on what particular stock? A No, sir; I do not.

MR. DONOHUE: I offer it in evidence.

THE COURT: What is that?

MR. DONOHUE: This is the hundred dollar check, on July 26th, that was credited to her account.

THE COURT: That she got from Miss Fitzgerald?

MR. DONOHUE: Yes, sir.

THE COURT: received.

(It is marked People's exhibit 7.)

BY MR. DONOHUE:

Q And now, Mr. Kaphan, can you say whether on July 16th, or any day after that, Mrs. La Touche bought any shares of stock in the Colorado Fuel & Iron Company? A She would deal in many stocks. I can't say any particular stocks.

BY THE COURT:

Q Well, any stock that she did deal in, you phoned the orders down to the main office? A Yes, sir.

CROSS EXAMINATION BY MR. MOORE:

Q Of course, when you said you knew her under the name of Dow, you all the time knew her under the name of La Touche, did you not? A No. When I first met her, she was trading under the name of Dow. She had been trading downtown, before I met her.

Q And you understood that to be her husband's name? A Yes.

Q And when she signed the name of Dow, was it "by Marian La Touche"? A Some of the orders, were just Dow.

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Q And some of the orders or checks she signed Dow, "per Marian La. Touche"? A No, sir. When she had an account in the name of Dow, she always signed the checks or orders Dow, and when she had the name of La. Touche, she signed the name of La Touche.

Q During the time that you were in charge of this branch office -- say up to July 1916 -- Mrs. La. Touch was almost a daily trader; wasn't she? A Yes.

Q And she was what was known as a room-trader; was she not? A Yes, sir.

Q And she would buy and sell on margin, wouldn't she? A Yes.

Q Now, when do you say that you began working in this uptown office, about? A Well, I would say about a year and a few months ago.

Q That is, you began it sometime in the summer? A Yes, I will say it was the summer.

Q Now, we will start with the 10th of July, 1916. On that day, how long had you been working in the uptown office, of Mc Donald & Company? A That I can't say, that I can't remember, unless they would know downtown.

Q Well, relatively then, it was three months? A Yes.

Q About three or four months? A Yes.

Q During the time you were working there, during those three or four months, Mrs. La. Touche was a daily customer, was she not? A Yes, sir.

Q And she traded with you almost daily? A Yes, sir.

Q And during that period of time, she made you payments of

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money, from time to time, did she not? A Yes.

Q Now, do you know under whose name that account was kept?

A If I recall rightly, Dow.

Q And also the Higgs Account? A Yes.

Q And any other account? A Well, if I may say something. She had accounts with the downtown office, and she traded in Dow & Higgs, in those accounts, before she came up to me.

Q In other words, she had several trading accounts, did she not? A Yes, sir.

Q And do you know whether or not, from time to time, during these tradings, she paid in money? A Yes, money or checks.

Q Are you able to say whether, on the 7th of July, she gave you two hundred dollars on account of trading? A No, sir; I am not

Q Or on the 9th of July, did she give you one hundred dollars? A No, sir.

Q But you do remember -- and she was quite a trader, quite an activetrader, in small lots, wasn't she? A Yes.

Q Now, after you left McDonald & Company -- when did you leave them? A I should say about September 3rd.

Q of this year or last? A of this year.

Q And do you know whether or not -- do you know how long she traded with McDonald & Company, after July 1916? A No. She left my office uptown. I don't know whether she traded in the office downtown after that.

Q That was about August 1916; wasn't it? A About, yes.

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Q Did you know what other concern she traded with after that? A No, sir.

Q And, of course, during that time that she was trading with you, you do know, do you not, that she was quite a trader in Colorado Fuel? A She has traded in many stocks. I can't say any particular stocks.

Q Do you know that she traded in that stock, to quite an extent? A She has traded in it. I can't say in what quantities.

Q Did you, also, while you were working there, occasionally buy and sell a little stocks for yourself?

(Objected to, sustained; exception)

Q Well, what I am getting at is this. These small lots, ten and twenty share lots, didn't you sometimes hold the trade yourself?

MR. DONOHUE: I object to that, unless he means this particular defendant's orders.

THE COURT: Held what trades?

MR. MOORE: The trades with the customer, the room trader, in small lots.

MR. DONOHUE: I object to that if your Honor please, unless it is shown to have been the defendant's trade.

THE COURT: I will allow it.

BY MR. MOORE:

Q (Repeated?) Instead of reporting it to the downtown office?
A No, sir; I didn't. And I don't see what good that would do.

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Unless I phoned the order, it is no order at all.

Q And then it would be what is called a bucket shop, if you kept it yourself? A Yes, of course.

Q And you know that to bucket deal is against the law, don't you? A Yes.

Q And that's the reason why you say you didn't withhold those trades?

MR. DONOHUE: I object to that as entirely improper, if your Honor.

(Sustained; exception.)

Q Do you know whether or not Mrs. La Touche, ever had any commissions?

MR. DONOHUE: From whom?

A I do not. From whom?

BY MR. MOORE:

Q Now, do you know whether she had any commissions, on these sales or purchases from the firm?

MR. DONOHUE: I object to that.

THE COURT: Why should his firm pay their own customer commissions?

MR. MOORE: Because the woman was procuring clients for them, as she called them; and she was getting, as we understand, from these various clients-- not only was making trades for them, but was getting a commission for bringing them in, from the firm.

BY THE COURT:

Q Did she ever bring in any clients? A No, sir; she didn't.

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There were people, who made complaint, that she had taken their money, but I regarded them always as their own trades.

BY THE COURT:

Q Well, you would not recognize any of her clients, unless they came in, and opened accounts? A No, sir.

MR. MOORE: But they were her clients, your Honor.

Q You knew that she was trading for other people, didn't you?

A Yes, sir.

BY THE COURT:

Q You would not pay commissions on that trading; would you?

A No, sir; and I had no right to. I was only the manager.

Q Did the main office do so? A No, sir; they didn't.

BY MR. MOORE:

Q And the law forbids such a practise, doesn't it, paying such commissions, doesn't it?

(Objected to. Allowed)

A Yes.

Q Now, do you know whether or not, on every ten share trade, she didn't get sixty-two cents commission, from your company?

A I wouldn't know that, because she was dealing with the company before she came up to my office.

BY MR. DONOHUE:

Q Did you ever pay her any commissions for bringing anybody there? A No, sir.

Q Did you ever know of her receiving commissions from the firm?

A No, sir.

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Q Now, you say, that people complained about her. What was that complaint?

(Objected to. Sustained.)

THE COURT: No, it was volunteered by him, and I will not allow you to go into that.

BY THE COURT:

Q Can you testify, that all deposits by her, either of cash or check, you forwarded to the main office, and all orders that she gave to you? A Yes, positively.

Q And so, that, for any deposits, either of cash or check, in the month of July -- A She got a receipt from me, and I phoned down to the main office, immediately, that she had paid me so much money.

BY MR. DONOHUE:

Q And you gave her a receipt always? A Yes.

BY MR. MOORE:

Q Now, I show you People's exhibit 3, and ask you if you ever saw that check before? A No, sir; I didn't -- not that I recall, no; in fact, I didn't see that check.

Q Do you recall whether or not this check was deposited at your downtown office?

(Objected to. Allowed.)

A Well, I will tell you this, if my name is on the back, it was deposited in my bank. And that check wasn't deposited in the Colonial Bank, for Mr. Mc Donald.

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Q And that is some money that she paid to them directly, and not to you? A Yes, sir.

Q And do she didn't always pay the money to you, in her trades? A No. In that case, evidently, it must have been paid downtown.

MR. DONOHUE: Now, if your Honor please, may I recall the bookkeeper?

THE COURT: Yes.

ROBERT J. HUMPHREYS, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Humphrey, will you turn to the M.L. La Touche account, in the ledger of W.A. Mc Donald & Company? A Yes, sir.

Q And will you read to me the entire account, beginning with the day it was opened; and ending when it was closed?

MR. MOORE: I object to that, upon the ground that it is immaterial, irrelevant and incompetent, and no proper foundation laid for it.

THE COURT: Yes, there is no proof that that is the ledger.

MR. DONOHUE: I thought I proved that, yesterday.

THE COURT: No, the book was no here, yesterday.

BY MR. DONOHUE:

Q What is your position with the firm of Mc Donald & Company?

A Cashier and Manager.

Q And have you charge of the books? A Yes, sir.

Q And what books do you keep there? A Personally?

Q Well, what books are kept there? A The order books, the

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blotter, the ledger, the loan book, the cash books.

Q Any other books? A No, sir.

Q Are those the books under your supervision? A Yes, sir.

Q Now, will you tell me your system of bookkeeping, when orders are received by your firm?

MR. MOORE: I object to that, that was gone over, yesterday.

THE COURT: Yes, I think he testified to that, yesterday.

BY MR. DONOHUE:

Q Now, have you produced, at my request, the ledger of Mc Donald & Company? A Yes, sir.

Q And have you it with you now? A Yes, sir.

Q And is that the only ledger kept by Mc Donald & Company?

A Yes, sir.

Q And was that ledger kept under your supervision, in the month of July, 1916? A Yes, sir.

Q Now, will you read the M.L. La Touche account?

MR. MOORE: I object to it, on the same grounds, if your Honor please. There is no proper foundation laid for the receipt of this evidence.

It appears in evidence now, that the order was placed uptown, and it was possibly, telephoned to the downtown office, and there transferred to a blotter, if the order was recorded properly, and from there transferred to a ledger, and I insist under those circumstances, it is not competent or proper, and it is not a book of original entry, because he

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simply records, what is handed to him by somebody, and it isn't any proof that the transaction was or was not made in the uptown office.

THE COURT: Yes, I will sustain the objection.

MR. DONOHUE: Does your Honor hold that I must prove it by the man who receives the telephone call?

THE COURT: Well, I do not see that it is necessary to call him.

MR. DONOHUE: Then we rest if your Honor please.

MR. MOORE: Now, if your Honor please, I renew my motion for the direction of a verdict of not guilty, on the ground that the People have failed to make out a case against the defendant, in that they have failed to make out, beyond a reasonable doubt, that the defendant is guilty of this charge.

THE COURT: Motion denied.

MR. MOORE: There is no proof that the trade was not made. But there is proof, that the money was lost, that she invested it and made trades, and was trading in Colorado Fuel & Iron every day, according to the proof.

THE COURT: There is proof here, I think, or at least the jury may find from the evidence, that there is proof, as to what was done with the two hundred dollars, and that it was not used for the purpose for which Miss Fitzgerald paid it over.

MR. MOORE: But, there is no proof here -- the proof is that the purchase of 20 shares of stock was made, prior to

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the opening of this account, on the 10th of July, and in the letter to Miss Fitzgerald, the statement is made that the stocks were purchased before the opening of the account, and on the 10th of July, we have it, this young lady gave her two hundred dollars.

THE COURT: No, the proof is that the two hundred dollars, is the only deposit she made in the month of July, and one hundred dollars later, I remember.

MR. MOORE: I beg your Honor's pardon, because I asked Mr. Humphreys, if she didn't deposit -- if he didn't deposit a hundred dollars on the 7th, and one hundred dollars also on the 9th.

THE COURT: I asked Mr. Humphreys especially, if she made any deposit in the month of July, except the two hundred dollars, and the one hundred dollars.

MR. MOORE: Yes, but that was in the M.L. La Touche account.

THE COURT: But he said the other accounts had been closed. Motion denied.

MR. MOORE: And, to offset that, Caplan says she was trading every day, and, if she was trading every day, the account could hardly be closed.

THE COURT: Motion denied.

MR. MOORE: Exception. The defendant rests, your Honor.

THE COURT: Very well, go to the jury.

MR. MOORE: How much time can I have?

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THE COURT: Any amount you want.

THE SECOND JUROR: Is it too late to ask one of the witnesses a few questions, Mr. Caphan?

THE COURT: Is there any objection?

MR. MOORE: Not any, your Honor.

MR. DONOHUE: None whatsoever, sir.

M O R T I M E R C A P H A N, being recalled for examination by the second juror, testified as follows:

BY THE SECOND JUROR:

Q Mr. Caphan, you testified that when you received and order, you got something in writing, you got instructions for it.

A She signed a little blank, yes.

Q A blank? A Yes.

Q And you kept that blank in your office? A I have quite a number, yes.

Q Were they numbered? A No.

Q You had no means of knowing if one of those blanks was lost? A Well, after they are given a statement by the month, or whatever it is, the blanks are not of any account any more/ because the statement gives her the balance.

Q But what system did you have in your office for keeping track of the orders that you received, what system, if any?

A I didn't have any sysytem at all, out side of their buying or selling anything. The order would be reported to the downtown office, and, if they wanted more margin at any time, they would telephone up to me to get it from the customer.

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Q But what record had you to prove that you had executed the orders according to instructions? A Why, the slip. And many orders came in over the telephone anyway. But, as a rule, I would require them to sign slips, if I could, as many as I could.

Q You didn't keep a book of the orders that you telephoned downtown, as you telephoned them? A Yes, I kept them daily.

Q As you telephoned them down, you made a record of them? A Yes, because I was getting a commission on my trades, and so of course I would like to know the total number of shares I did, every day.

Q In other words, you kept a consecutive record of the orders that you phoned downtown? A No, I kept a slip by the month, because I was paid only by the number of shares that I received, or were ordered.

Q But you kept no book of record in which each transaction would be entered in consecutive order? A No, sir.

BY THE COURT:

Q Well, how did you know the number of orders you telephoned downtown? A Well, the bookkeeper downtown had a record of every order I gave.

Q You had your own bookkeeper downtown? A No, sir; Mr. Humphreys I am referring to.

Q And did you have anything to show in the settlement of your commissions? A Well, if I had done fifty shares, I would

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look at the book when I went downtown at night, and would verify that entry.

BY MR. DONOHUE:

to every customer

Q But you gave a receipt/who gave you money or checks?

A Yes.

BY THE FOREMAN:

Q Is it customary, when these customers trade, to use different names? Is that a custom among brokers? A Well, I haven't got full knowledge, because I was formerly in the theatrical business.

Q But did that happen very often in your line? A Yes. Different customers didn't want their wives or others to know it. It was a custom, of course, but I don't know whether it was a habit or not.

THE COURT: That is all. Go to the jury.

(Mr. Moore summed up for the defense, and Mr. Donohue closed the case for the People.)

MR. MOORE: If your Honor please, I just noticed for the first time that the receipt was dated July 7th, and the evidence is that it was given on the 10th of July.

THE COURT: The evidence is that it was given on what day?

MR. MOORE: On July 10th, the same day that the young lady went over with the check.

THE COURT: Very well. The jury will recall.

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MR. DONOHUE: No. The evidence is that it was given on the 8th, Saturday, the 8th.

MR. MOORE: Let me see the check. Saturday afternoon, the 10th.

THE COURT: You say the check was given on the 10th?

MR. MOORE: My recollection is that she took it over on Saturday, the 10th.

THE COURT: The indictment charges the 8th.

MR. MOORE: Well, my recollection may be at fault, but I think it was given on the 8th, and the check was paid on the 10th.

MR. DONOHUE: Oh, yes; that is different. That may be so, that it was given to the defendant on the 8th, and paid on the 10th. It probably took several days to go through.

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