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Writ of Error.

WRIT OF ERROR.

Filed February 13, 1926.

NEW JERSEY, ss:

The State of New Jersey to the
Chief Justice and other Justices of
(L. s.) our Supreme Court of Judicature: 10

GREETING:

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Herman Cohen, late of the City of Newark and County of Essex, for uttering worthless check and false pretenses of worthless check.

Pro ut the said indictment and the several counts therein, whereof before you, he has been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Herman Cohen, as it is said manifest error hath intervened to the great damage of the said Herman Cohen, as from his complaint we have received information. We being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Herman Cohen, command you, that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals in the last resort in all causes of law, to be holden on the second day of March, next, and the writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done. 20 30 40

Return.

WITNESS, EDWIN ROBERT WALKER, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 10th day of February, Nineteen Hundred and Twenty-six.

THOMAS F. MARTIN,
Clerk.

10 KRAEMER & SIEGLER,
Attorneys.

RETURN.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention
20 is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

30

40

Writ of Error.

WRIT OF ERROR.

NEW JERSEY, ss.

To: DALLAS FLANNAGAN, President
 Judge of the Court of Quarter Ses-
 (SEAL) sions of the County of Essex: Be- 10
 cause in the record and proceedings,
 and also in giving of judgment upon
 a certain indictment against HERMAN COHEN, late
 of the City of Newark, for uttering worthless
 check and false pretenses of worthless check.

Pro ut the said indictment and the several
 counts therein, whereof, before you, he hath
 been indicted, and is thereof convicted by a cer-
 tain jury of the county, taken between the
 State of New Jersey and the said Herman
 Cohen, as it is said, manifest error hath inter- 20
 vened to the great damage of the said defendant,
 Herman Cohen, as from his complaint we have
 received information, we being willing, in this
 behalf, to correct the error in due manner, if
 any there shall be, and that speedy justice be
 done to him, the said Herman Cohen, command
 you that if judgment be thereon given, then that
 you distinctly and openly send, under your seal,
 the record and proceedings aforesaid, with all 30
 things touching the same to our Justices of the
 Supreme Court of the State of New Jersey, on
 the 29th day of December, next, and this writ,
 that the record and proceedings aforesaid being
 inspected, we may further cause to be done there-
 upon for correcting that error, what of right
 and according to the law ought to be done.

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief
 Justice of our Supreme Court, at Trenton afore-

Return.

said, the ninth day of December, one thousand nine hundred twenty-four.

EDWARD J. KELLEHER,
Clerk.

10 KRAEMER & SIEGLER,
Attorneys.

Presented in open court this 9th day of December, 1924.

DALLAS FLANNAGAN,
Judge.

Bail \$1,000.

RETURN.

20

STATE OF NEW JERSEY, {
COUNTY OF ESSEX. } *ss.*

30 I, Dallas Flannagan, Judge of the Court of Quarter Sessions, in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the indictment, judgment record and proceedings and the entire record of the proceedings had at the trial and all things touching and concerning the same as by the within writ to me directed, I am commanded.

IN WITNESS WHEREOF, I have here-
unto set my hand and affixed my of-
(SEAL) fiscal seal at Newark, N. J., this 30th
day of January, A. D. 1924.

40 DALLAS FLANNAGAN,
Judge of the Court of Quarter Sessions,
Essex County, N. J.

Indictment.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the third Tuesday in September, in the year of our Lord, one thousand nine hundred and twenty-four, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Andrew C. Snyder, Chas. W. Smith, Ralph Zirpoli, Edward LeRoy Stewart, Hobart A. Walker, Henry Loeffler, J. Samuel Stage, W. Edson Huegel, I. N. Lewis, Arthur A. Carpenter, Atkins A. Wolf, Richard W. Erler, Neil J. Covery, Henry Buermann, Rutherford Stell, Edward Barone, Albin A. Lucius, Harry Wilder, I. Woodruff Faulks, Frederick Pleasants, Chas. W. Buvinger, Wm. Buerman and Edward Markowitz, good and lawful men of the said County of Essex, duly commissioned, and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Essex County, to wit: The grand jurors of the State of New Jersey, for the County of Essex, upon their oath present that Herman Cohen on the fifteenth day of October, in the year of our Lord one thousand nine hundred and twenty-three, at the City of Newark, in the County of Essex aforesaid with intent to defraud, did utter and deliver to Jack Ruderman a check drawn by Herman Cohen, upon a deposi-

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30

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Plea.

tary known as the Fidelity Union Trust Com-
 pany of Newark, New Jersey, for the payment
 of eighty-five dollars, to the order of Jack
 Ruderman, and dated the fifteenth day of Oc-
 tober, nineteen hundred and twenty-three; the
 side drawer, Herman, then not having, and the
 said Herman, then knowing that the said drawer
 10 had not then sufficient funds in or credit with
 said depository for the payment of said check
 in full upon its presentation, contrary to the
 form of the statute in such case made and
 provided, and against the peace of this State,
 the government and dignity of the same.

J. O. BIGELOW,
 Prosecutor of the Pleas.

20 On the seventh day of October, A. D. nineteen
 hundred and twenty-four, on which day the
 said indictment was presented by the Grand Jury
 aforesaid, to the said Court of Oyer and Ter-
 miner, and the said Justice did then and there
 order the said indictment to be handed down to
 the Court of Quarter Sessions, and to be de-
 livered to the Clerk of the Court of Quarter Ses-
 sions, in and for said County of Essex, and
 then and there the said indictment was duly
 30 delivered and duly filed by the Clerk of said
 Court and an entry of such order and delivery
 and filing was then and there made in the min-
 utes of said Court at the same time pursuant to
 the statute in such case made and provided.

And afterwards, that is to say, on the ninth
 day of October, A. D. nineteen hundred and
 twenty-four, at a Court of Quarter Sessions
 holden at Newark, in and for the County of
 Essex, before the Honorable Dallas Flannagan,
 40

Judgment Record.

presiding Judge of the Court of Common Pleas, Herman Cohen, in the custody of Harry B. O'Connell, Sheriff of the County of Essex aforesaid, and the said Herman Cohen being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment being specified and charged upon him, how he would acquit himself thereof, says that he is not guilty thereof, and therefore for good and evil he puts himself upon the country, etc., and John O. Bigelow, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like. 10

Therefore, let a jury thereupon come before the Court of Quarter Sessions to be holden at Newark, in and for the County of Essex, on the third day of November, A. D. nineteen hundred and twenty-four, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Herman Cohen to recognize upon their oath whether the said Herman Cohen is guilty of the premises in the said indictment specified or not guilty because the said John O. Bigelow, Esquire, Prosecutor, etc., as the said Herman Cohen puts himself upon the jury and the same time is given to the parties aforesaid at the same place. 20 30

And afterwards, that is to say, on the fifth day of November, A. D. nineteen hundred and twenty-four, at the same Court of Quarter Ses- 40

Judgment Record.

sions, holden before the Honorable Dallas Flanagan, Judge of the Court of Common Pleas, on motion of the defendant's attorney, Kraemer & Siegler, plea of not guilty was withdrawn and motion to quash said indictment was made, whereupon the Court denied said motion to quash said indictment and thereupon the plea of not guilty was re-entered.

And afterwards, that is to say, on the sixth day of November, A. D. nineteen hundred and twenty-four, at the same Court of Quarter Sessions, holden before the Honorable Dallas Flanagan, Judge of the Court of Common Pleas, comes the said John O. Bigelow, who prosecutes as aforesaid, and the said Herman Cohen, and the jury of whom mention is before made, and by Harry B. O'Connell, Sheriff of the County of Essex, for this purpose empanelled and returned after the following challenges, by the State one, by the defendant two, to wit: Harry E. Scott, Wm. T. Turner, Edward E. Wilcox, Allen E. Rosenkrans, William W. Rowley, William A. Freda, Albert Wm. Bilcher, Russell Tyron, Charles W. Boeger, Robert E. Savage, John R. Wood, John J. Noll being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath, "We find the defendant guilty in the manner and form as is set forth in the indictment and recommend him to the mercy of the Court, and so they say all."

Judgment Record.

Judgment signed
Dec. 8th, 1924.
Dallas Flannagan,
Judge.

Whereupon all and singular, the premises being seen and by the Court now here fully understood, on the eighth day of December, A. D. nineteen hundred and twenty-four, the Court, Hon. Dallas Flannagan, do order and adjudge that defendant be imprisoned in the penitentiary of this county for a term of three months at hard labor upon this conviction; that he pay the costs of this prosecution and that he stand committed until said costs be paid, which said costs are taxed by the Clerk at the sum of fifty-seven dollars and eleven cents, and the defendant be in mercy, etc.

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*Motion to Quash Indictment.*ESSEX COUNTY COURT OF QUARTER
SESSIONS.

Wednesday, November 5, 1924.

10

STATE,

vs.

HERMAN COHEN.

*Indictment
No. 167.**Uttering
Bad Checks.*

Before Hon. Dallas Flannagan, J., and a jury.

For the State appears Simon L. Fisch, Third
Assistant Prosecutor of the Pleas.

For the defense appears Michael Silver.

20

A jury is drawn.

30

Mr. Silver: May it please your Honor, I desire to move at this time to quash the indictment in the case of State *vs.* Herman Cohen on the following grounds: That the indictment says, "The said drawer Herman," not giving the surname; then it goes on again and says, "then not having and the said Herman," not giving any surname. I contend that inasmuch as the indictment does not set forth the surname in full, in substance, the indictment is defective and the motion to quash the indictment should be granted.

Mr. Fisch: The charging part of the indictment, if the Court please, has the full name.

The Court: Have you any authority for that, Mr. Silver?

40

Mr. Silver: It is my contention that the indictment is defective inasmuch as it has no surname. Assuredly it cannot be an indictment against a man whose first name is Herman—

Motion to Quash Indictment.

The Court: It is Herman Cohen in the first part of the indictment and then in the lower part it says, "the said Herman".

Mr. Silver: The crime is set forth in the subsequent paragraph and there is no name there. This is a criminal procedure and the entire name should be put in.

10

The Court: Have you any authorities on the subject?

Mr. Silver: I have no authorities on the point at this particular time.

The Court: Because, as I recall it, it is customary to draw them that way and I thought maybe you had found some new authority.

Mr. Silver: It is customary to draw them that way?

The Court: Is that your experience, Mr. Fisch?

20

Mr. Fisch: Yes, sir, we draw all our indictments that way.

The Court: The object of the indictment is to describe the person charged and it seems to me that in this indictment it is sufficiently clear to Herman Cohen that he is the man who is charged herein, and for that reason I will overrule the motion.

30

Mr. Silver prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

DALLAS FLANNAGAN.

Judge.

The Court: You probably wish it considered on the record that the defendant has withdrawn his plea of not guilty, because you cannot make

40

Jack Ruderman, direct.

10 this motion in the presence of your plea. So I suggest, if you want to make this a point of appeal, that you withdraw your plea formally of not guilty and then we will consider that your motion is made and then we will consider that the Court overrules the motion, you except, and then we will consider that you now interpose again your plea of not guilty.

Mr. Silver: Yes, sir.

The Court: And it is stipulated that this jury is satisfactory and we will go ahead at two o'clock.

Mr. Silver: Yes, sir.

The Court thereupon took a recess until two o'clock.

20

AFTER RECESS, 2 P M.

The jury is duly sworn.

Mr. Fisch opens in behalf of the State.

JACK RUDERMAN, sworn in behalf of the State.

Direct examination by Mr. Fisch.

30 Q Mr. Ruderman, where do you live? A 86 Hedden Terrace.

Q Do you know the defendant, Herman Cohen? A Yes, I do.

Q How long have you known him? A Oh, about four or five years.

Q On October 15, 1923, did you meet Cohen? A I did.

Q Where? A On Broad street.

40 Q In Newark? A Yes, sir.

Jack Ruderman, direct.

Q Did he say anything to you, did you have a conversation with him? A Yes, I walked around with him a while and he said he wanted to buy some clothing and he had no cash. It was after banking hours and he asked me whether I could not cash him a check, so I asked him how much, so he said about eighty-five dollars. So, I told him, "I haven't got eighty-five dollars, I only got about sixty-five, but I could walk down to my friend's store and get the twenty dollars," making it eighty-five, and cash a check for him, which I did. 10

Q Where did you go? A At the Hodgson Hat Store.

Q With whom? A With Herman Cohen.

Q You both went in together? A Yes, sir.

Q Who did you see there? A Mr. Hanson. 20

Q And was that the man you were referring to as your friend? A Yes, sir.

Q When you got into Mr. Hanson's store did you have a conversation with Mr. Hanson in the presence of the defendant? A Why, yes, I told him I wanted him to cash a check, that I did not have enough on hand and wouldn't he loan me twenty dollars so that I could cash him the check of eighty-five.

Q What did Mr. Hanson say? A He said he would let me have it. 30

Q Did he let you have it? A Yes, sir.

Q What did you do with the money? A I gave the money to Mr. Cohen.

Q The defendant? Yes, sir.

Q How much? A \$85.

Q And what did Cohen do? A Cohen wrote out a check and he gave it to me.

Q Where did he get the blank from? A Why, he had it in his pocket, I suppose. 40

Jack Ruderman, cross.

Q He got it out of his pocket? A Yes, sir.

Q I show you this check and ask you if this is the check which you received on that day? A That is the check; yes, sir.

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

10 Q That is his signature? A Well, he signed that check.

Mr. Fisch: I offer this in evidence.

The same is marked S. 1.

Q Now, after you got this check, Exhibit S. 1, what did you do with it? A Why, I deposited it in the bank.

Q What bank? A At the Fidelity-Union.

20 Q And then what is the next step you heard of it? A Why, it came back "no account" and I got in touch with the defendant and I saw him a few times and asked him about it and he never gave me a definite answer.

Q What did he say when you asked him about it? A He said he had no money, nothing but promising that he would pay it.

Q He did promise that he would pay it? A He did not promise that he would ever pay it.

30 Q Did he ever pay it? A No, sir.

Q And you never received the eighty-five dollars on this check? A No, sir.

Cross examination by Mr. Silver.

Q Mr. Ruderman, you know Herman Cohen quite a while? A Yes, quite a while.

Q Quite friendly with him? A Well, I wouldn't say quite friendly with him.

40 Q You were until this check was given? A Yes, I know him.

Jack Ruderman, cross.

Q Were you ever in business with him? A No, sir.

Q Never? A Never.

Q Now, this check was dated October 15, 1923, and you say that this check was written in a hat store? A Yes, sir.

Q In front of you? A In front of me. 10

Q What kind of a pen was it written with?

A What kind of a pen?

Q Yes. A I don't recall what kind of a pen it was.

Q A fountain pen? A Yes, it was a fountain pen.

Q Whose pen? A I don't know whose pen, his own pen.

Q Now, do you remember what day of the week October 15 was on? A No, I don't recall. 20

Q When did you deposit this check, how many months after October 15? A Why, I deposited it I think the following day or so, a bank day.

Q That day or so? A The following day.

Q Are you positive that you deposited the check that day? A A day or so after, I wouldn't say sure, deposited the check.

Q Are you sure about that? A Sure about that. 30

Q In what bank did you deposit it? A At the Fidelity-Union.

Q And who notified you that the check was N. G.? A The Fidelity-Union.

Q How did they notify you? A By mail, and I received that check back.

Q What did you receive back besides the check? A A notice of no account.

Q A notice of no account? A Yes, sir.

Q Anything else? A That's all. 40

Jack Ruderman, cross.

Q Now, when you deposit checks and they come back they are generally stamped on the back, aren't they, the date?

10 Mr. Fisch: I object to that, if the Court please. This is not cross examination and what may be done in other cases has nothing to do with this case.

The Court: It is not cross examination, is it?

Mr. Silver: I will withdraw the question.

Q Are you sure you deposited the check?

A I am.

20 Q What did you do with the slip of paper that you got back from the bank telling you there was no account? A When I made out my complaint I let the Court have it.

Mr. Silver: I desire to call upon the Prosecutor to produce it.

Mr. Fisch: We haven't got it.

Mr. Silver: I saw it within the last few days.

Mr. Fisch: Where did you see it?

30 Mr. Silver: I saw it in the hands of a plainsclothesman from headquarters and it was tacked onto the check, and here is where it was. This gentleman was talking to him at the time and they were both examining the check.

Mr. Fisch: Indicating Prosecutor's detective Mayer.

40 Mr. Silver: I don't see the man now, and I don't know his name, but I know him very well by sight.

Jack Ruderman, cross.

Mr. Fisch: I thought you just indicated Prosecutor's detective Mayer as the man you saw the slip with?

Mr. Silver: I did. I told you I saw a headquarters man with Prosecutor's detective Mayer handling this check with the slip attached in the front row of the court room. That is what I said. Now, may it please your Honor, I call for the production of that paper. 10

The Court: And the Prosecutor says he hasn't got it.

Mr. Fisch: I will say I haven't got it, if the Court please, and I never did have it.

Mr. Silver: Then at this time I desire to ask for an adjournment for the purpose of subpoenaing this headquarters man and this slip of paper which I saw him handling, personally, while I was waiting for this case to come on Monday. 20

The Court: No, I can't do that.

Mr. Silver: Of course, I am not laying any blame on the Prosecutor's office, but I assume when I saw this check with a paper attached to it on Monday, I would naturally assume they would produce the protest and the check, otherwise, I would have subpoenaed the headquarters man to produce it. 30

The Court: Have you ever seen this thing any further than you said you saw them looking at it?

Mr. Silver: I saw them looking at it, and I looked at it.

Jack Ruderman, cross.

The Court: There isn't anything before the Court to indicate that there is any benefit in it.

Mr. Silver: It is my contention that it was deposited months after, and this paper, the protest notice, will prove my contention.

10 Mr. Fisch: What difference would that make, if the Court please, if the check wasn't any good when he gave it?

Mr. Silver: If the Court please, if you want me to open my defense I can disclose my line of defense in answer to the Prosecutor, if you wish to hear it.

The Court: Is the defense that if the check isn't any good at the time it was given, even though it was held up for a month and it subsequently developed that it wasn't any good—

20

Mr. Silver: Our contention is that this check was never given to be deposited, but an account between the parties on a partnership.

The Court: That would not be shown by the slip.

Mr. Silver: It would show when the check was deposited.

30

The Court: That can be shown by the bank and by the officers of the bank and that is probably the best way to show it, but the slip is too indefinite.

Q Now, Mr. Ruderman, you say that Mr. Hanson was present when this check was made?

A Yes, sir.

Q And you say you gave him \$85 in cash?

A Yes, sir.

40

Morris Hanson, direct.

Q Did anybody see you give him \$85 in cash?

A Mr. Hanson.

Q How do you know he did? A Why, he was right there when I gave it to him.

Q How far away was he? A Right alongside of me.

Q And what denominations were the bills?

A I cannot recall. 10

Q Were there many transactions wherein eighty-five dollars were involved that you had with Mr. Cohen? A No, sir.

Q Then, is there any reason why you can't remember? A I see so many bills and count so many bills that I don't recall in what denomination they were. It might have been in tens, fives or twentys and fives.

20

MORRIS HANSON, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q Mr. Hanson, do you know Mr. Ruderman, the gentleman who just testified? A Yes, sir.

Q And do you know Mr. Cohen? A I do.

Q You are connected with the Hodgson Hat Company on Broad street, Newark? A I was at the time. 30

Q On October 16, 1923? A Yes, sir.

Q Did you see Mr. Cohen or Mr. Ruderman on that day? A Yes, sir.

Q What was the occasion of your seeing them? A Why, I was in the store. I was manager of the store, and Mr. Ruderman came in the store with Mr. Cohen and he said, "I want to cash a check, but I haven't got quite enough 40

Morris Hanson, cross.

money. Would you mind letting me have some money?" and I said, "Certainly," and I gave him twenty dollars and he thereby took the twenty dollars and what money he had and handed it to Mr. Cohen, and Mr. Cohen, as far as I can recollect, wrote out something which I
10 imagined to be a check.

Mr. Silver: I object to what he imagined.

The Court: Strike that out.

Q You saw him write out something? A I saw him write out something.

Q What did he do with the thing he wrote?

A He gave it to my friend Jack.

Q Gave it to Mr. Ruderman? A Yes.

Q Did Mr. Ruderman tell you who he wanted to cash the check for? A For Mr. Cohen.
20

Q And Mr. Cohen was there at the time? A As a matter of fact, I saw him hand him the money.

Cross examination by Mr. Silver.

Q Do you remember testifying in this case down in the First Precinct in Newark? A I do.

Q Do you remember testifying in this case before Judge Boettner when you were asked the question, "Did you see any check written?" A I do.
30

Q And your answer was no? A I do.

Q Did you testify that way? A I did.

Q And now you say, on your direct testimony, that that you saw him write out a check? A I did not.

Q What did you see him write out? A Well, I said I saw him write out something.
40

Charles Le Roy Whitman, direct.

Q Did you testify that way in the First Precinct that you saw him write out something?

A I said as far as I recollect, and the Judge at the time told me, "Well, I don't want you to say anything that you can't remember."

Q And you remember me asking you several times before Judge Boettner did you see any check written out at the time, and your answer was no? A I do remember that. 10

Q You did so testify before Judge Boettner?

A Yes, sir.

Q You don't know how much money your friend Jack Ruderman had in his hand when you gave him the \$20, as you say? A I do not.

Q So, you don't know how much he gave to Mr. Cohen? A No, sir.

By the Court.

20

Q I understood you to say that he did give him \$20 with some money of his own, am I right about that? A Yes, sir.

Q And was that money besides the \$20 that you gave him? A I handed Mr. Ruderman \$20 and he took out some money and he put it together and handed it to Mr. Cohen.

Q But you don't know how much? A No, sir. 30

CHARLES LE ROY WHITMAN, sworn in behalf of the State.

Direct examination by Mr. Fisch.

Q Mr. Whitman, you were employed at the Fidelity Union Trust Company? A Yes, sir.

Q In what capacity? A Chief clerk. 40

Charles Le Roy Whitman, direct.

Q And were you chief clerk on the 15th of October, 1923? A I was.

Q I show you Exhibit S. 1 and ask you if you ever seen that before? A Oh, I naturally could not say, I handle so many.

10 Q Do you know, as chief clerk in your bank, whether Mr. Herman Cohen ever had an account in the Fidelity Union Trust Company on the 15th of October, 1923?

Mr. Silver: I object to it on the ground that there has been no foundation laid for it yet.

The Court: Well, he says he is the chief clerk.

20 Mr. Silver: Well, he has not laid the foundation yet to show if he supervises the books or whether he is chief clerk for Department A or B or C.

The Court: You better go ahead and qualify him, then, Mr. Prosecutor.

Q You say you are the chief clerk of the Fidelity Union Trust Company? A Yes, sir.

30 Q And as chief clerk do you know who has or has not accounts in the bank? A I cannot remember them all, but I can look them up and when occasion arises do look them up.

Q And you have access to the books to do that, to look them up? A Yes, sir.

Q Do you know whether Herman Cohen had an account in the bank on the 15th of October, 1923? A Well, it is a no account.

Q Since October 15, 1923? A Yes, sir.

40

Charles Le Roy Whitman, cross.

Cross examination by Mr. Silver.

Q How do you know that Herman Cohen did not have an account in October 15, 1923? A Because I looked up to see.

Q When? A Well, since I have been subpoenaed.

Q Did you look under the letter "C"? A Yes, sir. 10

Q For the entire year of 1923? A We have a complete record of all accounts that have been in the bank at least some time before this time.

Q Will you just tell me, Mr. Whitman, from what date to what date you examined the bank's books to ascertain whether he had or did not have an account? A I examined the books on that day.

Q To what date? A The date that the check was presented. 20

Q Do you want me to understand that you remember at this time, on October 15th, that this check was presented to you to make a report on and on October 15th you looked at your bank's books? A No, I didn't look at that and see that, I was subpoenaed to see if we had an account like that at that time, and it was looked up in the regular course of business and I went over it since I have been subpoenaed to find it, whether we ever had such an account. 30

Q And did you have one on October 15, 1923? A No, sir; we never had one.

Q From what time to what time did you examine your books to make sure Herman Cohen did not have an account there? A To make it plain, we have a record of accounts and I looked it up, but there was no particular date.

Q (By the Court.) What period did that cover? A Oh, a year or two I should say. 40

George L. Mayer, direct.

Q Those records do not go back to the beginning of the bank? A No, they do not.

Q How far back do they go? A To 1921.

By Mr. Silver.

10 Q You say you looked at it, then, from the period of 1921 to date? A Yes, sir.

Q You haven't got your books here, have you? A No.

GEORGE L. MAYER, sworn in behalf of the State.

Direct examination by Mr. Fisch.

20 Q You are a prosecutor's detective, connected with the prosecutor's office of Essex County? A Yes, sir.

Q And you have been engaged in working up this case for the prosecutor? A Yes.

Q I show you Exhibit S. 1 and ask you if you ever had attached to Exhibit S. 1 any paper from the bank which you exhibited to counsel for the defendant in this case or anyone else?

30 A Never did.

Q Where did you get Exhibit S. 1 from? A I took this check from the complainant, it was attached to the complaint at the time.

Q And you produced a paper, what is that paper which you produced? A That is the complaint against the defendant in this case.

Q And you took the complaint from the complainant? A Yes, sir.

40 Q And the complaint came from where? A From the prosecutor's files.

Charles Le Roy Whitman, further cross.

Q Where did come to the prosecutor's file from? A From the First Criminal Court.

Mr. Fisch: I offer the complaint in evidence.

The same is marked S. 2.

Cross examination by Mr. Silver.

10

Q Mr. Mayer, do you remember talking to me and to a plainclothesman from headquarters on Monday of this week about this case? A No, sir; I did not. There may have been a few plainclothesmen here, but I never seen them.

Q Do you remember talking to a plainclothesman who was seated in the front row here? A No, sir.

Q Do you remember talking to a plainclothesman on Monday? A I may have, there were a great many plainclothesmen here.

20

Q And do you remember when you were seated over here with that man, he was seated to your left, and I was standing where I am now? A No, sir.

Q And you don't remember my saying at the time, "Do you mind my seeing that, please?"

A No, I don't remember that.

30

CHARLES LE ROY WHITMAN, recalled for

Further cross examination by Mr. Silver.

Q Mr. Whitman, looking at Exhibit S. 1, can you tell when that check was presented to the bank or whether it was ever deposited in the bank?

40

Charles Le Roy Whitman, further cross.

Mr. Fisch: I object to that as not cross examination.

The Court: It does not seem to be cross examination, but, of course, you may make him your own witness.

(Argument.)

10

Q Is there anything on that check to indicate that it was presented to the bank?

Mr. Fisch: I object to that, if the Court please.

20

The Court: The objection is only to the cross examination. In other words, it is not to the competency, but the objection simply is that it is not cross examination. Now, this witness was called to show that this man had no account and he said he searched the records and he found none. Now, if there is anything outside of that he must become your own witness.

Q Mr. Whitman, is there anything on that check which can tell us as to whether or not the maker of that check had an account? A The maker had an account?

30

Q Yes. A No; I said he had no account. Well, there was a slip on it returned by us, but I don't know where it went.

THE STATE RESTS.

40

Herman Cohen, direct.

Mr. Silver opens in behalf of the defense.

HERMAN COHEN, the defendant, sworn in his own behalf.

Direct examination by Mr. Silver.

Q Mr. Cohen, you are the defendant? A 10
Yes, sir.

Q You know Jack Ruderman? A Yes, sir.

Q How long have you known him? A Quite
a number of years.

Q When was the first time you met him? A
I met him, I knew him before the war. I knew
him slightly before the war, but I again resumed
my acquaintance with him Armistice Day of
1919.

Q On or about October 15, 1923, were you 20
in business with Mr. Ruderman? A Yes, sir.

Q In what line of business? A General
construction, alterations and so forth.

Q And for how long a period had you been
in business with him? A I had been with him
about four months.

Q About four months prior to October 15,
1923? A Yes, sir.

Q And you say you were in the construction
business? A Yes, sir. 30

Q Where does Mr. Ruderman live? A 86
Hedden Terrace.

Q Newark? A Yes, sir.

Q Has he a telephone at that address? A
Yes, sir.

Q Now, when you went into business with
him, did you have any business name to con-
duct your business under? A Not in the be-
ginning we did not, but finally we selected a
name and went into business of that name. 40

Herman Cohen, direct.

Q And what was the name you went into business under? A The Rudeco Construction Company.

Q And how did you come to arrive at the name Rudco? A We took part of his name and part of my name, Ruderman represented by
10 Rud and Cohen by co.

Q You mean you took the Rud of Ruderman and the Co of Cohen, and called it the Rudeco Construction Company? A Yes, sir.

Q And where was Mr. Ruderman's address? A 86 Hedden Terrace.

Q I show you a letterhead and ask you whether you ever saw this before? A Yes, sir.

Q And what does it say on there?
20

Mr. Fisch: I object to that, if the Court please.

The Court: The paper itself is the best evidence, isn't it?

Q Do you know Mr. Ruderman's telephone number? A Yes, sir.

Q What is it? A Waverly 4410.

Q Did you supervise the making up of these
30 billheads? A Yes, sir.

Q And were they used by you and Ruderman in your partnership business?

Mr. Fisch: I object: I don't think that these billheads are competent as testimony in the case and if they cannot go into evidence the witness cannot testify from them.

The Court: He does not offer it in evidence, he only asked the contents of it.

40

Herman Cohen, direct.

Mr. Fisch: Then, if the Court please. I most strenuously object to it.

The Court: I have ruled in your favor that he cannot state the contents of it by oral testimony. Now, it has not even been offered, the bill itself has not been offered in evidence and it is not before me to rule on. 10

(Last question read.)

Mr. Fisch: I object to it, if the Court please.

The Court: Why isn't that proper?

Mr. Fisch: Because he is testifying concerning something that the jury, from present indications, is not going to have an opportunity to observe. 20

The Court: You mean it is a conclusion using that?

Mr. Fisch: Yes, if the Court please, and he is testifying from something, some paper that is not in evidence.

The Court: Oh, no; he is not testifying from the paper, he is just asking if these papers were used by the two men in business. 30

Mr. Fisch: And now he is going further than that, if the Court please. He asked if he supervised the making of it.

The Court: Yes, but he does not incorporate what the contents of the paper were. In regard to this last question, you asked him if he used them. You better ask him what was done so as not to call for a conclusion. 40

Herman Cohen, direct.

Q What was done with these so-called letter-heads?

The Court: Mark that for identification and then you can refer to that.

10 The letterhead in question was marked D. 1 for identification.

Q Mr. Cohen, what was Exhibit D. 1 for identification used for by you and Mr. Ruderman in your firm?

Mr. Fisch: I don't think that is proper and I must object.

The Court: Not by him, but by Mr. Ruderman.

20 Q By Mr. Ruderman?

The Court: If he knows.

Q If you know? A They were used to solicit trade, sending them out to the different people who had work to be done.

The Court: And did you see Mr. Ruderman do that?

30 The Witness: Yes.

The Court: Not you, unless Mr. Ruderman told you to do it—you say Mr. Ruderman himself did use them to send them out?

The Witness: Well, your Honor—

The Court: Just answer the question. It is a plain question. I am asking you if Mr. Ruderman sent them out.

40 The Witness: Both Mr. Ruderman and myself sent them.

Herman Cohen, direct.

By Mr. Silver.

Q Did you and Mr. Ruderman give any estimates using these billheads? A Yes, sir.

The Court: I don't care what you did. Strike that out.

Q Well, did Mr. Ruderman authorize you to use these letterheads giving estimates? A Yes, sir. 10

Q Let me have the name of one man to whom you gave an estimate, by direction of Mr. Ruderman, and in Mr. Ruderman's presence, where this billhead was used? A Backer's Toggery Shop at 195 Market street, Newark.

Mr. Fisch: Now, if the Court please, I am expecting that the defendant will offer this in evidence. I do intend to object to the offer, but in view of the fact that this testimony is going in I insist that the defendant offers the letterhead in evidence. 20

Mr. Silver: Gladly, sir. I offer it in evidence.

D. 1 for identification was marked Exhibit D. 1 in evidence.

Q I also show you a card with the name Rudco Construction Company and ask you whether you ever saw that before? A Yes, sir. 30

Mr. Silver: Any objection to this going in, Mr. Fisch?

Mr. Fisch: No.

Mr. Silver: I offer this card in evidence.

The same is marked D. 2. 40

Herman Cohen, direct.

Q Now, Mr. Cohen, you have heard a lot of talk about this Exhibit S. 1, a check of \$85, dated October 15, 1923. Did you ever write that check? A Yes, sir.

Q Where? A At 86 Hedden terrace.

Q Who lives at 86 Hedden terrace? A Mr. Ruderman.

10 Q And at the time this check was written out was there a conversation had between you and Mr. Ruderman? A Yes, sir.

Q And at that time were you still in partnership with Mr. Ruderman? A Yes, sir.

Q Now, tell us what that conversation was. A He had given me money from time to time on the job that we were both doing and I had been going out with him every night in the week. In fact, he was my closest friend, and I
20 went to his house that evening around six o'clock, I guess, and in the course of conversation he asked me, "Herman, I have given you money from time to time and I have no record of it. You might forget it and I might forget it and I want something to keep tab of it." I said, "What do you want me to give you, I will give you anything, a note or anything at all," and he pulled out a check stub and said, "You write
30 out this check," I said, "Jack, I have no account," and he said, "I ain't going to use it for anything but to hold, to show that I have given you eighty-five dollars." He was my friend and I trusted him.

Q Now, at that time was there anyone else present besides you and Mr. Ruderman? A No, just Mr. Ruderman and myself.

Q Now, Mr. Ruderman knew your family?

40 The Court: At the time you drew this check you had no account with the bank?

Herman Cohen, direct.

The Witness: Never had no account.

The Court: And you had no arrangement that they would pay the check if it was presented?

The Witness: It was not written for that purpose, it was written for him to hold for me.

10

Q Did you ever get any notice that this check had been presented to the bank for payment?

Mr. Fisch: I object to that, it does not make any difference under the circumstances. He never had an account.

The Court: Well, it might make some difference in regard to the presumption. When did you first find out that this check had not been paid?

20

The Witness: When I was informed that I had passed a false check, I was under indictment, or words to that effect.

The Court: How did you get that word?

The Witness: Through my brother-in-law, he had got a letter and he told me that I had to appear in court.

Q Did Ruderman ever notify you about this check? A Never.

30

Q Did he ever ask you for the money? A No, sir; I did ask him a number of times to make an accounting on a certain job.

Q Did he ever make it? A Never, we were out the night previous to the day I was notified that I was supposed to go to the Court House. We were out together.

Q Now, had there been a little dispute between Ruderman's family and your family?

40

Herman Cohen, direct.

Mr. Fisch: I object to that, if the Court please.

Q Is there any litigation pending between the Ruderman family and your family?

10 Mr. Fisch: I object to that.

The Court: That is too general.

Q Wasn't there a suit pending between your brother-in-law, Mr. Levine, and Ruderman's family?

Mr. Fisch: I object to that, if the Court please. It does not seem to me that it can make any difference, as affecting the interest of any witness in this proceeding.

20 Mr. Silver: I want to show, may it please your Honor, that prior to this litigation between the brother-in-law of this defendant and Jack Ruderman's father, there was no presentation of this check and it was never thought of as a check, but nothing more than a memorandum, as he testified, for the \$85.

30 The Court: I think you may show that considerable time elapsed between the giving of the check and its presentation. Then, you may argue from it that it sustains your claim, or your client's version, but the litigation does not seem to have any connection with it.

Mr. Silver: But, if your Honor please, I would like to follow it up and show that it has had some connection.

40 The Court: Well, if you can show me where it has I will let it in, but I don't

Herman Cohen, direct.

want to get in a lot of testimony that will cumber the record and consume our time.

Mr. Silver: I want to show that Ruderman's father and the defendant's sister had some litigation, and as a result of that litigation this check was brought up. I submit that is the line of testimony to show that it was never intended as a check, but merely as an evidence of debt. That is all, that is my purpose. 10

The Court: I will exclude it for the present, but maybe some time later in the trial if you connect it up in some way I will admit it.

Q Did Jack Ruderman, together with you, ever visit your sister's house? A Together with me; no, sir. 20

Q Well, was he at your sister's house for dinner? A Not to my knowledge.

Q Was he ever there with you at dinner? A No, sir.

Q Now, did Jack Ruderman at any time you say he was a partner of yours go out and solicit business with you? A Yes, sir.

Q Let me have the name of a few more people that both he and you visited to solicit business while you were in this partnership? A Backer's Toggery Shop. 30

Q Will you give me another one? A A drug store on High and Warren streets, I believe it is.

Q What is the name? A A drug store, I don't know the name of the party.

The Court: On what street?

The Witness: High and Warren streets, I think it is. 40

Herman Cohen, direct.

Q Who else? A A store on the corner of 15th avenue and Hayes street.

Q Do you know the name of the man? A No, I don't know the name of the man. I went after him so long and I never could get him in.

10 Q After you formed the partnership, just what did you and Mr. Ruderman do? A The line of work we did?

Q Yes. A We made alterations to store fronts, cabinet work, and we did work on electric lights and general interiors for stores.

Q Where was your office? A We had no office except his home, 86 Hedden terrace.

Q And that is the address on the billhead? A Yes sir.

20 Q And Waverly 4410 is the telephone number? A Yes, that is his home telephone.

Q Did you have a job up on Prince street with him? A Mr. Ruderman got that job before I came in contact with him. Mr. Ruderman got that job from Feldman Brothers, and before he got that job—

Mr. Fisch: I object. He can answer that question yes or no.

30 The Court: Answer the question yes or no.

The Witness: Yes, sir.

Q What did you do after the partnership was formed? A We gave out the material contracts, we gave out sub-contracts, both he and I and personally supervised the work.

40 Q On the Prince street job did you have any particular kind of work that you sub-contracted for? A Yes, sir.

Herman Cohen, cross.

Q What was the name of the sub-contractor?

A I gave it to a parquet floor man.

Q What is his name? A Allen Parquet Flooring, they did the parquet floor contract.

Q Did Mr. Ruderman visit Mr. Backer with you when he solicited the job? A Very much so.

10

Q How many times? A Well, I went after him two dozen times at least. In fact, we knew Mr. Backer personally, each one of us, before we went after that work.

Q And did you make up any estimate for Mr. Backer's shop? A Yes, sir.

Q Did you ever do that work? A We were going to get the job but the terms were not satisfactory to Mr. Ruderman and myself on one job and then we went after him for another.

20

Cross examination by Mr. Fisch.

Q Who ordered these letterheads and cards to be printed? A I did, sir.

Q Ruderman did not have anything to do with that, did he? A I ordered the letterheads and cards.

Q Ruderman did not have anything to do with the printing, did he? A He did in the general construction—

30

Q Ruderman did not have anything to do with having these letterheads and cards printed? A I gave the order for the letterheads and cards.

Q When? A About fifteen months ago, sixteen months ago.

Q What day? A I don't remember, sir.

Q Warm weather or cold weather? A Just about right now.

40

Herman Cohen, cross.

Q Well, this is rather unusual weather for now. Can you tell us what month it was? A I don't remember, sir.

Q Whom did you order them from? A I ordered them from a man by the name of Cannold, Mr. Cannold.

10 Q Did you get a bill from him? A No, Mr. Ruderman—he did not send the bills to Mr. Ruderman for months, Mr. Ruderman was to pay for that.

Q How do you know that? A That is the arrangement Mr. Ruderman and I made.

Q When? A When we started in business together.

Q But you told us just a few moments ago that Ruderman had nothing to do with the printing of these letterheads and cards. A I did the
20 ordering for Mr. Ruderman and myself.

Q But you never got a bill? A No, sir, Mr. Ruderman got the bills.

Q And you never paid for them? A No, sir.

Q What is your business now? A Builder.

Q In business for yourself? A With others, yes, sir.

Q With whom? A Aaron Levine, Herman
30 Schiffman and myself.

Q You three are partners? A In different enterprises.

Q You are partners in different enterprises? A Yes, sir.

Q And do you trade under a firm name now? A Yes, sir.

Q What is the firm name you trade under now? A Highland Building Company.

Q And this partnership consists of you and the three other gentlemen? A Of me an
40 other gentleman.

Herman Cohen, cross.

Q Didn't you give me three names? A
With whom I am in another enterprise?

Q What is that other gentleman's name? A
Aaron Levine.

Q And you say it is the Highland Construction Company? A The Highland Building Company.

Q And I suppose you filed a certificate of trade name with the county clerk as required by law. 10

Mr. Silver: I object, what has that got to do with this case?

The Court: What has that to do with it, Mr. Prosecutor?

Mr. Fisch: I will connect it up.

The Court: If the prosecutor does not connect it up it will be stricken out. 20

Mr. Silver: I object to it and desire a ruling at this time.

The Court: Very well, I told you if it is not connected up it will be stricken out.

Q I suppose you filed a certificate of trade name with the county clerk in compliance with the law?

Mr. Silver: I object, it calls for a conclusion. 30

(Question withdrawn.)

Q Did you file a certificate with the county clerk that you are doing business under the Highland Construction Company?

The Court: I don't see really how that can have anything to do with this case. I don't see how you can connect it up.

(Question withdrawn.)

Herman Cohen, cross.

Q When you formed this partnership with Ruderman, the Rudco Construction Company, as you say, did you file a certificate with the county clerk? A No, sir.

Q Why not? A We had no time to do that.

Q You had not time? A No, sir.

10 Q Why not.

The Court: Now, really what difference would it make? There is nothing wrong about it. It only affects his liability, doesn't it?

Mr. Fisch: If the Court please, it makes all the difference in the world. The complaining witness says he never was in partnership with this gentleman and this man produces a letterhead and a card in which he says he was. I have to lay a foundation, and I want to find out if this man filed a certificate with the county clerk. It certainly goes to test the veracity of this witness.

20

(Argument.)

The Court: The only question is whether it tends to sustain the prosecutor's contention. The prosecutor says there was no such partnership. Now, the fact that they filed a paper may have some bearing on it, and I will allow it for that purpose.

30

Mr. Silver prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Herman Cohen, cross.

Q I understand you to say that you did not file a certificate because you had no time. A We probably did not think it worth while. Different things came up that stopped Jack Ruderman and myself from doing much business together. We got hold of a job on Roseville avenue and I started a building on Spruce street— 10

Q Now, then, what is the reason, or what are the reasons that you did not file a certificate of trade name?

Mr. Silver: I object to that.

The Court: I will let him answer that.

A Well, the conditions, your Honor, the conditions were so that in a few months later we started to build on Roseville avenue, an apartment house, and I started working on Spruce street and we practically drifted apart from working together. 20

Q So, the reason you give is that you did not have time, is that so? A I don't understand.

Q You don't understand what I am saying to you, is that what you mean? A I don't quite follow you. 30

Q You said a few moments ago the reason that you did not file a trade name was because you did not have the time. Now, that is not true, is it? A That is true, and then again I thought perhaps it was not worth it.

Q You were in business with him for how long? A About four months; at the most five months.

Q And during all that time you did not have the time to come to the county clerk's 40

Herman Cohen, cross.

office and file a certificate of trade name? A Perhaps I was not wise enough to know it had to be done here.

Q I am not dealing in perhapses here, I am dealing in facts. A I did not think it was necessary for me to have the trade name filed, I
10 thought the Rudco Construction Company was all right the way it was.

Q So the reason you did not file a certificate of trade name is because you did not think it necessary, not because you did not have the time, is that right? A Yes, and also I did not have the time, sir.

Q Oh, that is an additional reason, so that you did have the time, but you thought it was not necessary, is that right? A Yes, sir.

20 Q Now, were you ever in the Hodgson hat store on Broad street with Mr. Ruderman? A Yes, sir.

Q And you saw Mr. Hanson there? A Mr. Hanson was the only man employed there.

Q You saw him there? A Yes, sir.

Q Did you see Mr. Ruderman get some money from Mr. Hanson and then turn the money over to you? A Yes.

30 Q And that was on the 15th of October, was it, the 15th of October, 1923? A About that time.

Q In October, 1923? A Yes, sir.

Q How much money was turned over to you? A \$35.

Q You are sure it was not \$85? A Positively.

Q How much money did Ruderman get from Mr. Hanson? A \$25.
40

Herman Cohen, cross.

Q He got \$25 from Mr. Hanson and he gave it to you with some additional money of his own? A Yes, sir.

Q And you gave him a check? A No, sir.

Q Where did you have a bank account? A I never had a bank account.

Q You had no bank account at all? A No, sir. 10

Q Why did you give him a check for \$85, was it merely to show that you owed him money? A Yes, because Ruderman gave me the check when I was at his own house, he said, "Herman I will not deposit it, it is just to show that you owe me the money."

The Court: Did you owe him some money at the time?

The Witness: No, the money he paid out for me, advanced for me until we got going on the job. 20

Q Now, you say it was an advance, was it a loan? A An advance, sir.

Q Why didn't you write out a receipt on the back of the check, or whatever it was? A Because he gave me that and he was my friend, and I told him when he gave it to me that I did not have any account. I told him when I gave him the check that I did not have any account, and he said, "Herman, I am only taking it to show that you owe me the money." He said he would hold it. 30

Q But you knew it was wrong, didn't you? A Yes, sir.

Q And you knew it was wrong to issue a check when you did not have money in the bank?

A Yes, but he told me he was going to hold it. 40

Herman Cohen, cross.

Q You had all that in mind? A Yes, sir.

Q You had in mind the fact that it was a check, and that you had signed it, and that it was an offense to issue a check when you did not have an account in the bank? A No, sir; I did not have that in mind. He gave me that
10 check to make out eighty-five dollars to show what money he had given me.

Q But you asked him whether it was a check, didn't you? A Yes, sir.

Q Then you knew it was an offense to issue a check when you knew you did not have money in the bank?

Mr. Silver: I object to that.

A I told him that.

20

Mr. Silver: I move that the answer be stricken out.

Motion denied.

Mr. Silver prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

DALLAS FLANNAGAN,

30

Judge.

Q You told Ruderman that it was an offense to issue a check when you did not have an account in the bank? A No, I told Ruderman why does he want a check, because I have not got an account there, I haven't any money in the bank there.

Q Didn't you answer me just a moment ago that you told Ruderman that, when I asked you if you knew it was an offense to issue a
40

Herman Cohen, cross.

check if you did not have an account in the bank? A I told him exactly what I just answered you, that is what I told him.

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

Q You did not discuss with him the question of whether it was an offense to issue this check?

A I told him it was to be issued as a note to hold it for me. 10

Q You know the difference between a note and a check? A Yes, sir.

Q Then, why didn't you give him a note? A Because he gave me the check to make out in his house.

Q Why didn't you date the check ahead and make a note out of it? A I did not think it was necessary. He was going to hold it.

Q How long have you been in the construction business? A Since I came out of service. 20

Q How long have you been in the construction business, there have been a lot of people in the service, we know that. A I didn't mean anything by that, sir—about four years.

Q And you and Ruderman were friends? A Yes, sir.

Q Ruderman used to go around with you and try to help you get some business, is that right?

A No, sir. 30

Q He did not? A No, sir.

Q He did not go around to help you solicit?

A No, sir; he went around to help himself and myself solicit.

Q Did the partnership have any bank account? A We intended to have.

Q Did you have a bank account? A No, sir.

Q Did you get any checks? A No, sir.

Q Did you issue any bills to anybody? A We had not reached that stage. 40

Herman Cohen, re-direct.

Q You did not do any business at all then?
A Yes, only one job, Mr. Ruderman and I worked on.

Q What job was that? A 195 Prince street.

Q What is the name? A Feldman Brothers.

10 *Re-direct examination by Mr. Silver.*

Q Mr. Cohen, did you give any other checks to Mr. Ruderman during your partnership?

Mr. Fisch: I object, if the Court please, it doesn't make any difference.

The Court: Well, it might, it might have been a custom to do this.

Q Did you? A Yes, sir.

20 Q About how many checks? A Two or three.

Q And you gave him those checks for what purpose? A Just to keep account of the money he had loaned me on account.

Q And have any of those checks been paid by you? A No, sir; he has not given me an accounting yet.

30 The Court: Were those checks, those other checks before or after the one that is before the Court now?

Q Was it before October 15th, 1923, or after?
A Before.

Q Before 1923? A No, before October 15.

Q And you never paid any of those checks?
A No, sir.

Q And that was while you were in partnership?
A Yes, sir.

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Herman Cohen, re-cross.

The Court: Are you sure it was before?

The Witness: I believe these was one before, I am sure of that, and one after.

Re-cross examination by Mr. Fisch.

Q You gave a check for \$35, didn't you? A 10
Yes, sir.

Q And that was not any good, was it? A
No, sir.

Q You did not have any account in the bank that time? A I never had any account in the bank.

Q What bank is that check drawn on? A I don't know, I don't remember.

Q Where did you get the blanks from? A Mr. Jack Ruderman gave it to me.

Q Where did you give him that check? A 20
Up in his home.

Q And you never paid it? A Never paid it; no, sir.

Q Did you ever have any discussion with him about giving him a check rather than a receipt or a note? A We had no discussion, but he gave me the money and I made out the check for the money he had advanced. I gave him that to hold for me until we straightened out our 30
affairs and then he was to destroy it.

Q And did you not tell him anything at that time? A I did.

Q What did you tell him it was for? A I told him I had no account, and he told me that he would not use it for any purpose than to hold as a receipt.

Q You talked about that same subject then, when you had given him the \$85 check? A
Yes, sir.

Herman Cohen, by the Court.

Re-direct examination by Mr. Silver.

Q After this check was given did you still go out with Ruderman? A Yes, sir.

Q And for quite a while you went out with him? A Yes, sir.

10 Q Did you ask him for an accounting of the partnership? A More than one time.

By the Court.

Q How old are you? A Twenty-nine years old, sir.

Q And what have you done in your lifetime in the way of business? A I have done lots of work.

Q Did you go to school? A Yes, sir.

20 Q How high did you get in school? A High school.

Q Did you go to work after you left high school? A Yes, sir.

Q In Newark? A Newark, until 1917 when I went to war.

Q And then, you went to work after you left high school? A Yes, sir; I went to work.

Q What did you work at? A I worked as a salesman.

30 Q Did you travel around the country? A No, sir.

Q Where did you sell? A Right here in Newark.

Q How long did you work in that occupation? A I worked at that a couple of years.

Q And then what did you work at? A Then I worked in L. Bamberger & Company.

Q As what? A As a salesman.

40 Q How long were you there? A After I left school—

Herman Cohen, by the Court.

Q You said you first went to work as a salesman and then you went to Bamberger's? A Yes, sir; I worked in Bamberger's in 1917.

Q Then, what did you do? A I enlisted in the army.

Q And you stayed in the army until when?

A July 4th, 1919.

Q And when you came out what did you do?

A For about three weeks I worked as a hat salesman.

Q And then what? A I went in the construction game.

Q What did you do in the construction business? A General alterations, interiors, and stores, laying out the work and all that sort of thing.

Q And were you employed by somebody or did you work for yourself? A I was employed by somebody.

Q How long were you at that employment, until when? A For about two and a half years. That was in New York.

Q Then what did you do? A I then came to Newark.

Q Then you came to work here? A Yes, in the same business.

Q You mean as a hat salesman? A No, in the construction business.

Q That is the time you started with Ruderman? A Yes, sir.

Q Now, you say you gave him this check of \$85, but you had previously given him a check of \$35? A To the best of my recollection.

Q And this check of \$35 was given under the same circumstances, you say, as the \$85 check? A Yes, sir.

Q And you say when you gave him this \$35 check you told Mr. Ruderman that it was not to

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Herman Cohen, by the Court.

be used, that it was merely a scheme between you, to show you that you had received that money? A Yes, sir.

Q In other words, you thought it was a receipt? A Yes, sir.

Q Now, when you came to give him the \$85, why did you make the same statement again?
10 A Because I did not want him to put it through as a check, because I did not have no account, and he knew that just as well as I did.

Q You have had quite a little bit of business experience, and as I understand you to say, this money was not really given to you, but it was an amount you arrived at by accounting?
A Yes, sir.

Q Then, why did you put it in this form of a check? A Because he wanted it that way.
20 Q But you had been in business a long time?

A I had no check account.

Q You had been in business a long time?
A Yes, sir.

Q Why did you give him a piece of paper in that form when you say you did not owe him that money? A He only wanted to hold it.

Q Why did you give it, I want you to give us an explanation the best way you can now, why it was that having had the business experience you did have, that when a man simply handed you certain moneys as a part of your business, you turn around and give him a check, which is an order on some bank to pay him the money?
30 A I have been going with him, your Honor, for years, and we were very intimate friends. I have been going with him up to his house, and have been with him almost every single night of the week, and when he made that request of me I informed him I did not have no account
40

Jack Ruderman, direct.

there and he said, "Herman, don't be afraid; I am only holding it for you; I am just holding it to show I gave you that much money; you need not be afraid," and I trusted him. I understood that he was not going to put it through, but that he is going to use it just as a note.

Q Did you understand that uttering a false check, a check that is no good, is a crime? A 10
That has never come to my attention before, but I understood it.

Q What did you understand when he said to you, "Now, don't be afraid"? A He meant that he is going to hold it to show that he has given me that money, until we have straightened out our affairs.

Q And weren't you afraid? A No, sir. We were too intimate friends together.

Q Would there be any other explanation you 20
would want to make to the jury as to why you gave him this check under these circumstances?
A Because he requested me to do it.

JACK RUDERMAN, recalled in behalf of defendant.

Direct examination by Mr. Silver. 30

Q Mr. Ruderman, you know the defendant, Herman Cohen, quite a while? A Yes, sir.

Q You palled around with him? A I wouldn't say I palled around with him.

Q You went out with him? A Yes, sir.

Q He has been up to your house? A Once or twice.

Q Since the entire time that you know him?
A That's about all. 40

Jack Ruderman, direct.

Q Did he ever have dinner at your house?

A No, sir.

Q Did you ever have dinner at his sister's house? A About six years ago.

Q Did you see his sister last year?

10 Mr. Fisch: I object to that.

The Court: He can show the intimate relationship if it existed.

A No, sir.

Q You did not visit his sister's house last year? A No, sir.

Q You know his sister? A Yes.

Q And you know his brother-in-law? A Yes, I do business with his brother-in-law.

20 Q Now, the night before the police department of the City of Newark came to see Herman Cohen on your complaint, didn't you go to the Elks' Club with him to a dance?

Mr. Fisch: I object to that. That does not fix any time and how does this young man know that the police department saw Cohen.

30 The Court: After you made a complaint did you go to a dance with Cohen, to a dance at the Elks' Club?

Q In Elizabeth? A No, sir.

Q You were never in the Elks' Club in Elizabeth? A In Elizabeth; yes, sir.

Q Well, that is what I am talking about.

The Court: Were you ever at the Elks' Club in Elizabeth with Cohen to a dance?

40 The Witness: Yes, sir.

Jack Ruderman, direct.

Q And that was a couple of nights after you made the complaint in the police court, wasn't it? A I don't recall when.

The Court: You say you don't recall when?

The Witness: No, I don't recall when. 10

The Court: Now, what he asked you was, whether you did that after you made this complaint against this defendant.

The Witness: No, sir.

The Court: Were you with him to a dance to the Elks' Club in Elizabeth after you made the complaint against him?

The Witness: No, sir; before I made the complaint.

The Court: Then, why do you say you don't remember? 20

The Witness: Well, not the date.

The Court: He did not ask you for the date, he asked you if you did this after you made the complaint against him.

The Witness: I went there before I made the complaint.

The Court: You are sure of that?

The Witness: Yes, sir. 30

The Court: The question is it was not after you made the complaint.

The Witness: No, sir.

Q When did you go to the Elks' Club in Elizabeth? A I don't recall what date.

Q Well, what month was it, what year?

Mr. Fisch: I must object to counsel attempting to impeach his own witness. 40

Jack Ruderman, direct.

The Court: What relevancy would this have?

10 Mr. Silver: He said he did not remember, and after a few questions by the Court he said he did remember. I want to show the character of the witness and what his evidence is really worth.

The Court: You called him as your own witness?

Mr. Silver: Yes, sir: I called him, and if he is hostile I have a right—

The Court: To impeach him?

Mr. Silver: Yes, if he is hostile.

20 Mr. Fisch: If the Court please, he certainly has no right to impeach his own witness.

The Court: This is not relevant, this is a collateral matter and if he answers it you will be bound by it. It has nothing to do with the issue, as to his being at the Elks' Club on any particular day. I cannot say what the purpose of that is except to show that he was at some Elks' Club on some day and I don't think that has anything to do with it at all.

30 Mr. Silver: I will prove it by following it up—

The Court: The man has said definitely he never was at the Elks' Club after he made the complaint and never having been there after making the complaint I don't see what his going there before the complaint has to do with this case.

40 Q Was it before or after June 14th, 1924, that you went to the Elks' Club?

Jack Ruderman, direct.

Mr. Fisch: I object to that.

The Court: He may answer it.

Q Was it before or after June 14th, 1924? A
Before that date.

Q Are you positive of that? A Yes, sir.

Q Sure? A Yes, sir. 10

Q What makes you so positive, now?

Mr. Fisch: I object to that if the Court
please.

The Court: Overruled.

A Because I did not see him for a month or so
after I made that complaint.

Q You did not see him for a month after you
made the complaint? A No, sir. 20

Q You did not go to the Cadillac Restaurant
with him after June 14th, 1924?

Mr. Fisch: I object to that, if the Court
please.

(Question withdrawn.)

Q Did you go to any restaurant with him
after June 14th, 1924? A No, sir.

Q Did you go to any picture show with him? 30
A No, sir.

Q Did you play cards with him? A No,
sir.

Q Did you pal around with him between Oc-
tober 15th and June 14th? A I did not pal
around with him.

Q But you did go out with him? A Yes, I
went out with him.

Q Did you go out with him to buy clothes at
one time? A No, sir. 40

Jack Ruderman, direct.

The Court: When is this, after making the complaint?

Mr. Silver: After the issuance of the check. I set the period from October 15th, 1923, to June 14th, 1924.

10 The Court: Of what moment would that be unless he found out the check was there?

Mr. Fisch: Even if he found the check was there, of what moment would that be so long as the complaint had been made? Suppose he found the check was there and suppose he went to this man and was expecting to get payment, and after a considerable time he found he was not going to be paid and then he made a complaint. I say
20 if he palled around with him after the complaint was made it might have some bearing on the case.

Q Did you receive any other checks from Mr. Cohen prior to this \$85 check? A Yes, sir.

Q You received a \$65 check, did you not? A No, sir.

Q You received a \$35 check? A Yes, sir.

30 Q That was never paid you? A No, sir.

Q Did you receive any other check? A No, sir.

Q Who made out this \$35 check? A I don't recall.

Q What bank was it made out on? A I think on the Vailsburg.

Q Did you keep an account in the Vailsburg Trust Company? A Yes, sir.

40 Q And have you an account in the Fidelity Trust Company? A Yes, sir.

Jack Ruderman, direct.

Q Now, you say the \$35 check was made out on the Vailsburg account? A Yes, sir.

Q Cohen never had an account in the Vailsburg Bank? A I did not know until I presented that check.

Q Well, weren't you chummy with him? A Yes, sir. 10

Q Quite chummy? A I would not say quite chummy.

Q But you went out like any boys do? A Yes, sir.

Q Dances and so forth? A Yes, sir.

Q You knew that Cohen did not have any money and was not financially well off? A I didn't know that.

Q You didn't know that? A No, sir.

Q Do you remember calling upon a Mr. Backer on Market street with Cohen to make up an estimate to do some fixture work? A I do. 20

Q And Cohen was with you? A Yes, sir.

Q You went there on more than one occasion? A Yes, sir.

Q Several times? A Yes, sir.

Q And do you remember seeing a billhead or an estimate by you and Cohen given to Mr. Backer with the prices of the work you were going to perform for him, and so forth, on a billhead like this? A No, sir. 30

Q Marked D. 1? A No, sir.

The Court: Did you ever see a letterhead like that before?

The Witness: Did I see it?

The Court: Yes.

The Witness: No, sir. 40

Jack Ruderman, direct.

Q You never saw one like it? A No, sir.

Q This is the first one you ever saw? A I saw a few bills in court the other day.

Q Did you ever see a billhead like that in Backer's store? A No, sir.

10 Q Did you ever see a plan with the name Rudco on it in Backer's store? A Yes, sir.

Q You did see it? A Yes, sir.

Q How did you come to see that plan? A Mr. Cohen showed it to me and asked my advice on it.

Q He just showed it to you and asked your advice on it? A Yes, sir.

Q Tell me, how many times did you visit Backer's store? A I am in there almost every week.

20 Q How much time did you spend there soliciting his work of putting in new fixtures and so forth for him? A I cannot say how much time.

Q Well, five times, ten times? A Oh, about three or four times.

Q And how did it come about that you went to Mr. Backer about the job? A I was helping out Mr. Cohen.

30 Q Now, you say this plan—I show you a blue print and ask you if that is the plan you referred to that you saw in Mr. Backer's place? A Yes, sir.

Q What does it say on that plan? A I cannot read a plan outright.

Q You know that is nothing to read except the names? A Rudco Construction Company.

Q What address? A 86 Hedden Terrace.

Q Newark? A Newark—it doesn't say where.

40 Q Who lives at 86 Hedden Terrace? A I live at 86 Hedden Terrace.

Jack Ruderman, direct.

Q Cohen never lived there? A No, sir.

Q You live there with your parents? A I do.

Q And you have for a number of years? A Yes, sir.

Q Now, when you saw this plan, didn't you ask anything or say anything to Mr. Cohen or to Mr. Backer about the address on there, 86 Hedden Terrace? A I never noticed that address on there, I was just looking at the plan. 10

Q Well, there is nothing else to read on this plan, is there, outside of Rudco Construction Company and the address, and the words, "Scale one-quarter inch equals one foot, and then the measurements and so forth"? A That is the least on any plan.

Q But the words Rudco Construction Company and 86 Hedden Terrace and the other words on the plan, they are there, isn't it so? 20

A I don't know, I think the show case is there.

Q When you saw this man did you have any talk about the work? A No, sir.

Q Didn't you have any conversation with Mr. Backer as to how much the job would cost, and the work, the schedule of how much a month he would pay, and how many notes he would give you for the job? A No, sir. 30

Q You never talked to Mr. Backer about it?

A No, sir; I just talked about the plan, about the work that is to be done.

Q You never spoke to Mr. Backer about the charge or the cost of the work? A About the cost, yes, sir.

Q Did you also speak to him about the number of notes he was to pay and how much down? A No terms.

Q No terms were mentioned? A No, sir. 40

Jack Ruderman, direct.

Q What was there said about terms? A I did not speak anything about terms.

Q You did not say anything about the terms?

A No, sir.

Q Didn't you just mention a few moments ago that you spoke terms to Mr. Backer? A About the price.

10 Q What did you have to do with the price?

A I was talking over the price.

Q What did you talk about it for? A He just asked me what the cost would be.

Q He asked you what the amount was going to be? A I did not ask what the amount was going to be—

Q You just said only three seconds ago he asked what the amount was going to be. Who asked you? A Mr. Backer asked Mr. Cohen, asked what the amount was going to be.

20

Q And did you answer? A We both answered.

Q What was the answer? A I don't recall the amount now.

Q You don't know what amount it was that you wanted, weren't you interested in the job with Mr. Cohen? A I was helping him on that job.

30 Q You were helping him? A Helping him get the job.

Q Why? A Because I considered him a friend of mine.

Q That is why you helped him with the job? A Yes, sir.

Q How many times did you go there, as a friend, to help him? A About three or four times.

40 Q How many hours did you spend each time that you went there? A I cannot say how

Jack Ruderman, direct.

many hours, about a half an hour, three-quarters of an hour or an hour or so.

Q And you were there three or four times?

A Yes, sir.

Q How did you figure up those prices, how did you figure up the figures? A I think I did it myself for him.

10

Q You didn't do it for yourself? A No, sir.

Q You just did it for him because you were his friend? A Absolutely.

Q How did you figure out how much lumber was to be used? A I suppose we used the bill in figuring.

Q And how much time? A Yes, sir.

Q And then you gave a figure to Mr. Backer, is that right? A Mr. Cohen was the one who gave him that figure.

20

Q While you were there did you see Mr. Cohen, in your presence, hand this estimate to Mr. Backer? A I did not.

Q Did you have anything to do with the writing on the back of this Rudco Construction Company card? A No, sir.

Q That is not your handwriting? A No, sir.

Q Do you remember, during the course of conversation between you and Mr. Cohen and Mr. Backer, that the amount of \$800 was mentioned upon delivery, and that \$700 was payable after completion, \$200 a month after completion, \$200 two months after, \$200 three months after, and \$200 four months after completion? A I don't recall that.

30

Q Do you remember the total amount of the job, what it amounted to? A I do not.

40

Jack Ruderman, direct.

Q Would it refresh your memory if I mentioned the sum of, say, \$2,300? A I don't recall that.

Mr. Silver: I ask to have these papers marked for identification.

10 The plan was marked D. 3 for identification.

The card was marked D. 4 for identification.

The contract was marked D. 5 for identification.

Q When you took up this job it took you quite a little time, didn't it? A I don't know how much time.

20 Q How much time did you spend, about? A I don't recall how much time. To get up a plan like that ought to take a few hours.

Q And after you got through figuring, a few hours, you got the total sum of the price of the job? A Yes, sir.

Q And after you worked a few hours you want me to understand what that total sum was? A I don't recall.

30 Q You think it was around a couple of thousand dollars? A It should have been around that amount.

Q Do you remember seeing a man by the name of Allen, a parquet flooring man, at a job up at 94 Prince street, Newark? A Not at 94.

Q At 95? A Yes, and I gave him the work there.

40 Q Do you remember visiting a man who conducted a drug store in Newark, somewhere around Warren and Bank street, by the name of Nathan Kerger? A What was that name?

Jack Ruderman, direct.

Q (Question read.) A I do.

Q And for what purpose did you go to see Mr. Kerger? A I was called there by Mr. Gross to take a look at some work there.

Q Who else was there besides you and Mr. Gross? A I am not sure whether Mr. Cohen was along with us or not.

10

Q And about what time of the year was this and when, I mean, was it after October 15, 1923?

A That was away before that, I guess.

Q And Mr. Gross took you up there? A Yes.

Q And was Mr. Cohen with you? A I don't quite recall whether he was or not.

Q Did you get the job? A No, sir, we never made a job of it.

Q What did you go up there for? A Oh, we just wanted to see what could be done about his windows there, his show windows.

20

Q You mean you gave him an estimate? A He had no plans, he was just figuring on it, sort of thinking about doing some alteration.

Q These plans that were made for Backer, you did not make them, did you? A No, sir.

Q Mr. Cohen drew them up, didn't he? A I don't know who made those plans.

30

Q Now, this job on Prince street, didn't you and Herman Cohen have this job? A No, sir.

Q Didn't Herman Cohen superintend this job because you got it in your name, and you told him that you did not want to change it, in as much as it was a general contract and you did not want to change it? A No, sir.

Q Was Herman Cohen on that job? A No, sir.

Q He wasn't on the job? A No, sir.

40

Jack Ruderman, direct.

Q Was Mr. Allen on this job? A Yes, I gave him the contract for the parquet flooring.

Q Were you on this job? A Yes, sir.

Q And you say Mr. Cohen was not on this job? A He was never up there.

Q How do you know he never was up there?

10 A At the time I was up there he wasn't.

Q How long were you there? A I was there all day long during the course of construction.

Q How long did it take to construct the Feldman job? A Approximately a week and a half.

Q And you were there every day of that time? A Yes, sir.

Q From what time of the morning until what time at night? A From seven o'clock in the morning and sometimes all night.

Q Did you sleep there? A I did not; it was work that had to be done at night.

Q And how long was Allen on the job there putting in the parquet flooring? A Why, about half a day or so.

Q How many men did he have?

30 Mr. Fisch: If the Court please, how is that material?

Mr. Silver: I intend to follow it up. I do not intend to endeavor to prove anything that I cannot follow up properly.

The Court: I don't see that it makes any difference.

By the Court.

40 Q You say that Mr. Cohen gave you a \$35 check? A Yes, sir.

Jack Ruderman, cross.

Q How long was that before he gave you this check dated October 15? A Oh, it might have been a week or two before that.

Q What did you do with that check? A I passed it along to my father to cash it for me.

Q Did you try to cash it right away? A Yes, sir. 10

Q The same day you got it, or when? A It might have been the same day or the next day.

Q Was it paid? A No, sir.

Q Did you know it had not been paid when you took this check dated October 15? A No, I did not.

Q Then, how could that be, you say you passed it along right away to your father? A Yes, I gave it to my father, at that time he went away, he was not at home and I supposed he deposited it. 20

Q And so, when you took this check of October 15, S. 1, you did not hear that the other check of \$35 had not been paid? A No, I did not hear about that check.

Cross examination by Mr. Fisch.

Q Did you hear afterwards that the check for \$35 was not paid? A I did hear. 30

Q Then, what did you do with the \$35 check? A I asked him for a payment of that check.

Q And when payment was not made on the \$35 check and the payment was not made on the \$85 check, S. 1, what did you do? A I made a complaint.

Q And did you take the \$35 check to the Police Court, too? A Yes, I took the eighty-five dollar and the thirty-five dollar check. 40

Jack Ruderman, cross.

Q And what were you informed down there?

A Only one was necessary.

Mr. Silver: I object to that and I ask it be stricken from the record.

The Court: Strike it out.

10 Q And did the defendant Cohen say to you, when he gave you the \$35 check, that he did not have any money in the bank, and that you were not to use the check? A He did not say anything of the sort.

Q And that he was just going to give it to you as a receipt? A No, sir.

Q Did you ever ask him for it as a receipt? A No, sir.

20 Q Do you remember furnishing him with the blank on which S. 1 was written, this check for \$85? A No, sir, at that time I was not doing any business with the Fidelity.

Q Did you ever authorize the defendant to have letterheads and cards printed with the name "Rudco Construction Company" on it? A No, sir.

30 Q Did you and the defendant ever do any work together? A No, sir; I helped him out at times, because I know him so well, but I never did any work with him, no.

Q What is your business? A Mason contracting and building.

Q How long have you been in that business? A Six or seven years.

Q And you have more experience in the business than Cohen did? A Yes, sir.

Q And he was your friend? A Yes.

40 Q And you were helping him? A Yes, sir.

Jack Ruderman, cross.

Q And that was the reason that you went down to Backer's with him to help him with his figures? A Yes, sir.

Q You said that you gave a contract to a man by the name of Allen for the parquet flooring on this 10th street job? A Yes, sir.

Q You gave that contract individually, you individually? A Why, yes, I bargained with him for that contract. 10

Q What I mean is this, did you make the contract for yourself with Allen, or did you make the contract for yourself and Cohen? A For myself. I got him myself and I spoke to him myself about the contract.

Q Did Cohen have anything to do with that at all? A I don't think he had anything to do with it; he may have recommended it. 20

The Court: He means did he have anything, any interest in it.

The Witness: No, sir.

Q I call your attention to this plan which was shown to you with the words "Rudeco Construction Company" on it. Was that called to your attention at the time this plan was shown to you in Backer's? A No, sir. 30

Q Did you notice it at that time? A I don't recall noticing it at the time.

Q I don't recall whether I asked you or not whether you authorized the defendant to have these cards and letterheads printed. A No, sir, I never did.

Q Did you ever go to some place on 15th avenue and Hayes street to do any work with the defendant there? A No, sir. 40

Jack Ruderman, re-direct.

Q Did you ever do any work, contracting work, with the defendant as your partner? A No, sir.

Q And you have been engaged in this business all the time for the past six or seven years? A Yes, sir.

10 Q Under what name? A My own name, the A. and H. Construction Company and Kruvant and Ruderman Construction Company.

Q Who is the A. and H. Construction Company? A Adrock and Ruderman; it is a corporation.

Q Did you ever solicit trade for Cohen? A No, sir.

Q Did he come to you and ask you to help him out? A He did on numerous occasions.

20 Q And you were his friend and went around with him and did help him out? A Well, he was not acquainted in the city at the time and I happened to know quite a number of people and went around with him.

Re-direct examination by Mr. Silver.

30 Q These two checks that you received, both of the blanks that you gave to Cohen, you got them from your check book, didn't you? A The blanks?

Q Yes, the blank checks. A I never offered him any blanks.

Q This blank of the Fidelity Union Trust Company, didn't you give him that blank? A No, sir.

Q Didn't you give him a blank on the Vailsburg Trust Company? A No, sir.

40 Q Where did he get them? A I can't tell you where he got them.

Jack Ruderman, re-direct.

Q He did not take them out of the air, did he? A He took them out of his book.

Q The Vailsburg check and the Fidelity Union check? A Yes, sir.

Q Did you have a deposit in the Fidelity Union Trust Company? A Yes, sir, I got a deposit there now, but it is inactive.

Q Did you have one in October, 1923? A I had an account there for the past seven years.

Q Was it inactive that month? A What month?

Q October, 1923. A It was inactive.

Q Didn't you use it at all that month? A No, sir.

Q You didn't use it at all that month? A No, sir.

Q Did you use it the month after?

Mr. Fisch: In what way, drawing checks on the account or depositing?

The Court: He understands what he means by "using."

The Witness: The only time I used it during that month was making that deposit, that is the only business I did that month.

Q Have you the deposit pass book which would show the entry of this check in October, 1923? A Yes, sir.

Q You have? A Yes, sir.

Mr. Silver: May I ask that the Court direct the witness Ruderman to produce that pass book tomorrow?

Mr. Fisch: He is your witness.

Mr. Silver: I can serve a subpoena on him.

Jack Ruderman, re-direct.

The Court: You produce the book that you speak of here on the stand tomorrow morning.

The Court thereupon took an adjournment until tomorrow, Thursday, November 6, 1924, at ten o'clock A. M.

10

SECOND DAY.

Tuesday, November 6, 1924.

(Trial continued pursuant to adjournment.)

(Present, counsel as before stated.)

20

Mr. Fisch: If the Court please, at the conclusion of the day yesterday I believe your Honor directed that Mr. Ruderman produce his bank book.

The Court: Yes, sir.

Mr. Fisch: I think it would be well if you would put him on the stand at this time, inasmuch as I would like to ask him one or two further questions.

30

Mr. Silver: That is satisfactory.

JACK RUDERMAN resumes the stand.

Re-direct examination (continued) by Mr. Silver.

Q Mr. Ruderman, you said on your direct examination yesterday that you deposited this check a day or two after you got it? A Yes, sir.

40

Jack Ruderman, re-direct.

Q And you were directed to bring your pass book. Have you your pass book? A I have it (produces book).

Q Will you turn to the pass book and show me where you made that deposit? A I did not have my pass book at the time I made the deposit.

Q You did not have your pass book at the time? A No, sir.

Q You have your account balanced, don't you? A Yes, sir.

Q Wouldn't that show in the balance of your account? A Yes, here is the statement.

Q October 15, that is the day you deposited it, is that right? A Yes, sir.

Q When did you first know the check was N. G.? A When I received it back from the bank; I think it was the sixteenth or seventeenth.

Q A few days later? A Yes, sir.

Q Now, after you received this check back, did you continue to go around with Herman Cohen, the defendant? A Did I continue to go around with him?

Q Yes. A Yes, sir.

Q You did continue to go around with him?
A Yes, sir.

Mr. Fisch: If the Court please, we were all over that yesterday. This witness said he did continue to go around with him up until the time he made the complaint.

The Court: I think he did.

Q Now, if you knew on the 17th of October, 1923, that this check was N. G., why did you wait until June 14, 1924, before you made a complaint on this check? A Because—

Jack Ruderman, re-direct.

Mr. Fisch: If the Court please, that is not cross examination of this witness. I don't think that this is a proper question. This is his own witness.

10 The Court: That is true, this is his own witness now. Of course, he should have asked that question on cross examination, but at the same time I think it would be meeting the ends of justice to let the question be asked. Go ahead, answer it.

A From time to time he promised to pay it and held me off, and I figured I would wait until such time as he did pay it and finally he refused to pay.

20 Q When was the last time that he refused to pay the check? A I don't recall when the last time was.

Q You don't recall it at all? A I do not.

Q Well, was it a month after October, 1923?

A No, it was a short time before I made the complaint.

Q Before you made the complaint did you have any words with him? A How soon before do you mean?

30 Q Well, you said you spoke to him about the check before you made the complaint; now I ask you—

Mr. Fisch: If the Court please, this witness has been recalled just for one thing, for the production of the records of his bank, and at my request for further cross examination.

40 The Court: Finish the question.

Jack Ruderman, re-direct.

Q How long before you made the complaint did you speak to him?

Mr. Fisch: I object, if the Court please.

The Court: I rule that your objection is well taken, but just the same I think it would be better to go ahead and let him answer. 10

Mr. Fisch: Very well, if your Honor desires to give him a wide latitude I am satisfied.

The Court: Go ahead and answer it. He wants to know how long it was before you made the complaint that he refused to pay the check.

The Witness: He refused to pay it right along; I asked him a few times. 20

The Court: You said he kept promising to pay you and finally he refused?

The Witness: Well, he did not refuse; he said he hadn't any money, and as soon as he got money he will pay it, but the last time I spoke to him he refused to pay it.

The Court: What do you mean by refused? 30

The Witness: He said I refuse to pay it to you.

The Court: How long was it after he said that before you made a complaint? That is the question.

The Witness: Oh, a matter of about a few weeks or so.

The Court: How many would you think?

The Witness: Why, two or three. 40

Jack Ruderman, cross.

The Court: He said two or three weeks after.

Q For a few weeks, or a week, or three or four days before you made the complaint, did you speak to the defendant? A I did not.

10 Q Did you speak to his sister? A I did not.

Q You did not? A No, sir.

Cross examination by Mr. Fisch.

Q Now, Mr. Ruderman, you testified that you learned from the bank a few days after you deposited the check that the check was no good because the defendant didn't have any account there? A Yes, sir.

20 Q Did you get that notification in writing? A Yes, sir.

Q Have you got that with you? A Yes, sir.

Q Will you produce it, please? A (Produces paper.)

Q You show me a pink slip. Is this the slip that you received from the bank? A Yes, sir.

30 Mr. Fisch: I ask that it be marked for identification.

The same is marked S. 3 for identification.

Q And you received S. 3 for identification from the bank through the mail? A I received the check with it, that is the return check and this notice.

40 Q You received the return check, S. 1 in evidence, with this slip? A And another slip, I think, was attached to it, but I am not sure.

Jack Ruderman, re-direct.

Q Have you got that slip? A No, that was along with the check or something.

Q Now, you testified yesterday concerning your business. You said that you were a mason contractor, I believe, is that right? A Yes, sir.

Q Did you take jobs such as this Backer job, or a job for building show cases? A That Backer job was really a show case job, and I didn't know anything about it. I don't take such jobs. 10

Q What kind of jobs do you take? A Mostly apartment houses and large alterations.

Q Oh, you don't take small jobs, is that it? A No, sir.

Q What is the smallest job that you take? A Four or five thousand dollars. 20

Re-direct examination by Mr. Silver.

Q You say that the smallest job you take is four or five thousand dollars? A Yes, sir.

Q How much was this Prince street job? A It was close to four thousand dollars.

Q Was that a mason job? A That was an alteration.

Q It was a store front, wasn't it? A An alteration. 30

Q Was there any mason work there? A Yes, sir.

Q How much mason contract work? A Mason contract was close to about \$1,500.

Q And the balance of \$2,500 was a store front, wasn't it? Carpenter work, frame work and so forth? A That is alteration work.

Q Carpenter work, frame work and so forth? A That is all included in alteration work. 40

Jack Ruderman, re-cross.

Re-cross examination by Mr. Fisch.

Q You took the whole job, the Prince street job, and you sub-contracted the carpenter work and so forth? A Everything.

Q And the job was a four thousand dollar job? A Yes, sir.

By Juror No. 9.

Q May we ask who paid for the Rudco stationery?

The Court: Look at this exhibit here, D. 1, November 5, 1924, marked Rudco Construction Company at the top. Do you know who paid for this stationery?

The Witness: No, I do not.

Mr. Fisch: Did you pay for it?

The Witness: No, sir.

The Court: Is that what you wanted to ask him?

Juror No. 9: Yes, sir, and I would also like to know if the material for the Rudco Company was sent to his home address, and if his home telephone was used for the Rudco business.

The Witness: I never received a call for the Rudco at 86 Hedden Terrace.

By Mr. Silver.

Q Did you ever receive any bills from these printers for the payment of this stationery? A I received one bill that I saw.

Q You received one bill that you saw from the printer for this stationery, addressed to you?

Louis E. Backer, direct.

A Addressed to the Rudco and I turned it over to my sister, who looked after my books to look into it.

Q You got that by mail, didn't you? A Yes, I think I received that by mail.

Re-cross examination by Mr. Fisch.

10

Q And then you turned it over to your sister?

A Yes, sir.

Q Why did you turn it over to your sister?

A Because I didn't know anything about it.

Q Then what did your sister do with the bill? A I told her to see what it is, what it is all about.

Q But you never paid the bill? A No, sir.

Q Did you ever see the man who did that printing work? A Yes, sir, he was up to my house Sunday. 20

Q This past Sunday? A Yes, sir.

Q Is that the first time you had ever seen him? A Well, I saw him at the Central High School because he was a teacher there at the time I was there.

LOUIS E. BACKER, sworn in behalf of the defense. 30

Direct examination by Mr. Silver.

Q Mr. Backer, you are a merchant in the City of Newark? A Yes, sir.

Q And you have been for many years? A Seven years.

Q Where are you located in Newark? A You mean in one store or the general store? 40

Louis E. Backer, direct.

Q Oh, you have more than one store, have you? A Yes, sir.

Q Where are they located? A The main store is at 195 Market street, and the other one is at 184 Ferry street, and the third one is 830 Broad street.

10 Q Do you remember some time in October, or some time last year, in September, having any conversation with Herman Cohen and Jack Ruderman at your store about some work to be done there, a change in your store front and show cases and counters and so forth? A Yes, sir.

Q Will you tell us how it came about that you started to talk business to these men?

20 Mr. Fisch: I object, if the Court please; I don't think it is relevant.

The Court: How did it come about?

Mr. Silver: Yes, sir.

The Court: Get right down to it.

Q Who introduced them to you? A Mr. Magnus, my manager, introduced me to a gentleman by the name of Mr. Ruder or Ruderman.

30 Mr. Silver: Mr. Ruderman, stand up, please.

(Mr. Ruderman rises.)

Q Is that the gentleman you have reference to? (Indicating Mr. Ruderman.) A Yes, sir.

Q What happened? A Why, we were about to place a new store at 184 Ferry street and Mr. Ruderman approached me regarding to the job and I said if he can submit an offer, why, I said

40

Louis E. Backer, direct.

we would think it over and he brought Mr. Cohen in, a tall gentleman.

Q Is this the gentleman (indicating the defendant)? A Yes, sir, both of them were making measurements at 184 Ferry street. That was the first instance that we had, and that continued until about the month of October, negotiations were being done then, measurements were taken and so forth, and it happens that on account of terms we did not agree. 10

Q Now, was there any contracts, written contract given you by them as to the cost of the work? A Preliminary plans and a blue print with figures on it, and a little card.

Q Did they give you a regular typewritten estimate? A No, they did not.

Q To refresh your memory, I show you D. 5 and ask you whether you received that contract? A Yes, I remember getting this one. 20

Q Who gave you that contract? A Both of them.

Q Both of them were there at the time? A Yes, sir.

Q And you noticed that in that contract the word "Rudco" and the word "construction" and the word "company" appears. Did you have any conversation with them or they with you discussing the words "Rudco Construction Company," what it meant, or who it was? A At the time when these men came in— 30

The Court: Who are you referring to?

The Witness: I am referring to the people, both of them, to Mr. Ruderman and Mr. Cohen, the gentlemen right there, and then they brought me this slip of paper, a card. 40

Louis E. Backer, direct.

Q This here slip? A Yes, sir, they brought this card in.

Q Who brought that card? A Mr. Ruderman and Mr. Cohen.

The Court: Both together?

10 The Witness: Both together, your Honor.

Mr. Silver: That card is marked D. 4.

The Witness: Before they exhibited this, and before we proceeded with any further business, I said, "Whom am I doing business with?" and they said, "The Rudco Construction Company, Ruderman, me and my partner who is here, Mr. Cohen."

20 Q Ruderman said that? A Yes, I said, I thought I better ask them to see if they could do this job completely satisfactory.

Q Did you finally have them do the work? A I did not.

Q And why? A The terms were not satisfactory to them.

Q Now, at the time they were negotiating with you, and so forth, did they furnish you with these plans?

30 The Court: You say "they." Let us make sure.

Q Who furnished you with the plans, if any at all, at the time you were negotiating? A Well, there were various plans they furnished, but I haven't got the plans with me, but this one here I recall positively.

40 Q Who gave you them? A Both of them, Mr. Ruderman and Mr. Cohen.

Louis E. Backer, cross.

Q They were both there at the same time?
A Yes, sir.

Q And the blue prints? A That was given to me afterwards.

Q Who gave you that, sir? A Mr. Cohen.

Q There was quite a little period of time before all these negotiations were discussed, was there not? A I don't quite get that. 10

Q I mean there was quite a period of time before you got together on the kind of work and so forth and the amount of work? A Yes, sir.

Q Now, during that period did Mr. Ruderman come in with Mr. Cohen? A Yes, sir.

Q About how many times? A Why, various times; it was at least once a week.

Q And they were figuring up the job? A Yes, sir. 20

Cross examination by Mr. Fisch.

Q You say they came in once a week. For how many weeks were these negotiations pending? A That was during the month of September, if I am not mistaken.

Q Yes, and it ran on until when? A About the middle of the month of October, this job was given out then. 30

Q So, he was in there once a week for four weeks? A Probably more than that.

Q Now, which was it? A It was probably either once or twice a week.

Q So that he was in there five or six times? A No, he wasn't.

Q He was not in there that many times? A No, sir. 40

Louis E. Backer, cross.

Q Was he in as many as four times? A He was not.

Q Now, this blue print, Exhibit D. 3 for identification, that you say was given to you by Mr. Cohen? A Yes, sir.

Q Mr. Ruderman was not present then? A
10 He was not, no.

Q Now, when you were asked on your direct examination concerning this estimate you say you did not get any? A I didn't remember because I have various estimates in my business and various contracts.

Q You didn't remember that? A I didn't remember it, no, sir.

Q I suppose one of the reasons for it was that it is such a long time ago? A Well, coun-
20 selor, I have probably a quarter of a million dollars' business on my head and I can't remember offhanded.

Q Yes, that is what I said, one of the reasons for your failure to remember it was that it is so long ago and you have so many things on your mind, is that right? A Yes, sir.

Q Now, then, can you tell us how it is, Mr. Backer, that you remember so distinctly that Mr. Ruderman and Mr. Cohen were together at the
30 time they gave you this estimate? A Yes, sir.

Q How is that? A It came to my recollection that I got it.

Q What called it to your recollection? A I just happened to remind myself that I happened to get it and I found it in my safe.

Q When did you find this in your safe? A I found it the early part of the week, Monday.

Q You found this in your safe the early part of this week? A Yes, combining this here (in-
40 dicating plan).

Louis E. Backer, re-direct.

Q And you turned it over to Mr. Cohen or his lawyer? A Yes, sir.

Q And yet, when you were asked on the stand this morning whether you got a type-written estimate you said you did not remember.

A I did not remember it.

Q In spite of the fact that you found it only Monday of this week? A Yes, sir. 10

Q And yet you want the Court and the jury to believe that you remember distinctly that Mr. Cohen and Mr. Ruderman were together when they gave you this? A Before they gave me the card they gave me that.

Q You want the jury to believe that Mr. Cohen and Mr. Ruderman were together and that Mr. Ruderman made the statement to you that he was Mr. Cohen's partner, is that right? 20

A I have not asked for any certificates that they were partners; I asked them who is the Rudco Construction Company.

Q And Mr. Ruderman told you? A Yes, he said, "Me and my partner."

Q You remember that very well? A I do, sir.

Q And that was over a year ago? A Yes, sir.

Q And yet you cannot remember from Monday on whether or not you received the type-written estimate which you turned over to the defendant or his counsel? A If I had taken enough time to look at it I would remember when I turned it over to him. 30

Re-direct examination by Mr. Silver.

Q The prosecutor asked you when this blue print was given to you whether it was given to 40

Louis E. Backer, re-cross.

you by Mr. Cohen and had this Rudco Construction Company on it. A Pardon me, counselor, before I got this blue print I had to ring up the boys in order to get this blue print.

Q My question is you got that blue print from Mr. Herman Cohen? A Yes, sir.

10 Q And when you got this white one the both of them were together, and it had the name Rudco on it and also the address? A Yes, sir.

Re-cross examination by Mr. Fisch.

Q Who did you speak to on the telephone, do you know? A I think the young lady answered the 'phone.

Q Where? A At 86 Hedden Terrace.

20 Q How do you know it was 86 Hedden Terrace? A It was a number in Waverly, but I don't remember the exact number because I looked at the number, the 'phone number on the card. When they gave me the card they said that any time I want to get in touch with them I should just ring up on the 'phone.

Q Who told you that? A Mr. Ruderman.

Q Mr. Cohen told you that, too, I suppose?

30 A Mr. Cohen, yes.

Q They both told you that? A Yes, sir.

Q They both told you everything? A Yes, sir.

Alex S. Magnus, direct.

ALEX S. MAGNUS, sworn in behalf of the defendant.

Direct examination by Mr. Silver.

Q Mr. Magnus, you were employed by Mr. Backer? A Yes, sir.

Q Are you the manager of his store? A I am the manager and assistant buyer of all his stores.

Q Do you know Jack Ruderman and Herman Cohen? A I do.

Q Are you the party who introduced them to Mr. Backer? A I am.

Q And do you know what business they were in, that is Herman Cohen and Ruderman? A They were in the construction business.

Q How did you know that? A I was told so by both.

Q When? A Upon meeting Herman Cohen and Jack Ruderman on the street and after talking about an alteration Mr. Backer was going to put through or intended to go through with—

Q Did you speak to both of them at the time? A I did.

Q They both told you they were in the construction business? A They did.

Q Did they mention the name of any company they were trading under? A No, they did not mention the name at that time.

Q Did he ever mention it at any subsequent time? A Yes, when I asked them who the Rudco Construction Company was.

Q What did they say?

Mr. Fisch: What did who say?

Alex S. Magnus, cross.

Q Either one? A Both were together at the time.

Q When you asked that question? A Yes, sir.

Q And where were they and where were you when you asked that question? A At 195 Market street.

10 Q Is that one of Mr. Backer's stores? A That is Mr. Backer's headquarters.

Q Who answered you? A I asked Herman Cohen and he said he and Jack Ruderman were in business together under the Rudeco Construction Company. I said, "Do you think you can handle this job?" both being present, Herman Cohen and Jack Ruderman, and they said, "Yes, we are doing some business on Prince street, an alteration of the same kind; if you want we will take you up to see it." The reason I asked this question was, there was a certain kind of an entrance to be made, and it was a question whether it could be made or not, and they said they were doing a job similar to that on Prince street.

20 Q And Jack Ruderman was with Cohen all the time during this conversation? A Yes, sir.

30 Q And did Ruderman participate in the conversation occasionally? A Yes, sir.

Cross examination by Mr. Fisch.

Q Mr. Cohen is a friend of yours? A An acquaintance.

Q How long have you known him? A Why, since 1916.

Q About eight years? A Yes, sir.

40 Q And you were interested enough in him to try to get him a job on the alteration that

Alex S. Magnus, cross.

Mr. Backer proposed to make, is that right?

A Beg pardon?

Q (Question read.) A No, I was not interested enough to get him the job; I was interested enough to see that they put their figures in and if they made the price, why, then, I was interested in the job for them.

10

Q And Mr. Cohen told you that they were doing the same kind of work on Prince street?

A Mr. Cohen told me in the presence of Mr. Ruderman.

Q Were you in court yesterday? A No, sir.

Q Did you hear the defendant Cohen testify that he had nothing to do with the Prince street job and that Ruderman was doing this job? A I heard nothing; this is the first time I have been in court.

20

Q What day was it when you met Cohen and Ruderman together? A Why, positively I cannot tell you the date; I can tell you the month, September.

Q What month was it? A About September, 1923.

Q That is over a year ago? A Yes, sir.

Q And you remember the conversation word for word? A No, not word for word. I remember the conversation clearly, though.

30

Q You remember clearly, however, that Cohen told you, in Ruderman's presence, that Ruderman and Cohen were in the Rudco Construction Company? A Yes, sir.

Q What impressed that on your mind? A Chiefly because I had not seen Cohen for a matter of five years and at that time I said, "How do you do"? to him for the first time, having seen him and asked him what he was

40

Alexander Allen, direct.

doing, and he told me he was in the construction business with Mr. Ruderman.

10 Q What was it that impressed it on your mind so that you remembered it for this period of fourteen months? A Because they came in so many times with plans and wanted to know how their bids were and they came in with helpful suggestions.

Q As a matter of fact, didn't Ruderman tell you that he was helping Mr. Cohen out to get the contract? A No, sir.

Q He didn't tell you that? A No, sir.

Re-direct examination by Mr. Silver.

20 Q You were subpoenaed to come here last night, weren't you? A Yes, sir.

ALEXANDER ALLEN, sworn in behalf of the defense.

Direct examination by Mr. Silver.

30 Q Mr. Allen, what is your business? A Parquet flooring contractor.

Q Do you remember doing a parquet floor contract up on 95 Prince street, Newark, New Jersey? A Yes, sir.

Q About when was that? A I should judge it was the last of August or September, as near as I can remember.

Q Did you see Cohen up there? A Yes, sir.

Q Do you know Cohen?

40 Mr. Fisch: I would like to inquire as to what the purpose of this testimony is. If

Alexander Allen, direct.

the purpose of this testimony is to impeach the testimony of Ruderman given on direct examination as a witness for the defendant, I object.

The Court: I think Ruderman said on the original testimony that they were not partners and had nothing to do with each other in a business way except that he was helping him. 10

Mr. Fisch: If the Court please, I am entitled to know the purpose of the testimony. It seems to me it is to impeach the testimony of Ruderman given on the direct examination as a witness for the defendant.

The Court: It does not seem so. If that was his testimony for the State he has a right to contradict it. 20

(Question read.)

A Yes, sir.

Q Did you see him up on that job? A Yes, several times.

Q What was he doing? A Supervising the work.

Q How many men were on that job? A 30
What do you mean, just my men?

Q No, how many men? A Altogether?

Q Yes, if you know. A I don't know how many men there were there; there were men working on the trim in the windows at the same time I was.

Q Who gave you the job to do the parquet flooring? A Mr. Cohen.

Q Mr. Cohen? A Yes, sir. 40

Alexander Allen, cross.

The Court: Who did you say was superintendent of the work?

The Witness: Mr. Cohen was there, Mr. Cohen and Mr. Ruderman were both there.

10 Q Who gave you the contract for the parquet flooring? A Mr. Cohen.

Q How did it come about that he gave you the job? A I was doing a job for his brother-in-law, Mr. Levine, on Market street, and he came in there while I was doing that work, and he told me that he had a job that he was doing on Prince street and that he wanted me to do.

Q And did you give him an estimate? A Not at that time.

20 Q Subsequently did you give him an estimate? A Yes, I did; that was about two or three weeks after that.

Q And you did give him an estimate? A Yes, sir.

Q What was the estimate? A That I can't say now; I think it was around ninety to a hundred dollars.

Q Did you perform the work? A I did.

Q And were you paid? A Yes, absolutely.

30 Q Who paid you? A Why, I don't remember now just who made the check out, the check was left for me with the owner of the store and handed to me by the owner of the store. I don't know who made the check out.

Cross examination by Mr. Fisch.

Q Mr. Ruderman paid you, didn't he? A I don't know.

40 Q Did you get the contract from Mr. Ruderman? A No, sir.

Alexander Allen, cross.

Q Don't you know that Ruderman was the contractor, the general contractor of the job? A No, sir, I know he was interested in it, I found that out after I had started the job.

Q Did you make a written contract for the performance of that work? A No, sir, it was verbal.

10

Q With whom? A Mr. Cohen.

Q Mr. Ruderman wasn't present at all? A No, sir.

Q Ruderman had nothing to do with it? A No, sir.

Q Now, you say that Cohen was working on the job? A He was, yes, sir.

Q You don't know whether he was hired by somebody or hired by Ruderman to do a particular branch of work there, do you? A I do not; I don't know that.

20

Q All you know is you got the job and you were paid for it by a check that was left at the place of business there for you? A That is correct.

Q And you don't know whose check it was? A I don't remember that.

Q Did you make any contract with the Rudeo Construction Company? A No, sir.

30

Q Did you ever hear of that company at any time? A Yes, sir.

Q From whom? A Mr. Ruderman.

Q What did he say to you? A Why, I will lead up to that—

Q What did he say to you? Never mind about leading up to it? A He told me he was in business with Mr. Cohen as a partner.

Q When? A On that job while I was working there.

40

Alexander Allen, re-direct.

Q When? A What do you mean, when?

Q When did he tell you that? A While I was working on that job.

Q What was the occasion for telling you that? A Well, I remember very definitely—

10 Q Tell us about it. A Mr. Ruderman came over on another job after I had contracted for the job and he said that this job was in a hurry and he found out where I was working on another job and he came after me, up to that time I had not met Mr. Ruderman and he asked me when I was coming over to do the job on Prince street and I immediately got a couple of men together and went over on the job. I thought up to that time Mr. Ruderman was probably the owner of the store.

20 Q You did not know he was the man who was giving out the work? A No, sir; I didn't know him at all.

Q You did know Cohen's brother-in-law, Levine? A I knew him, yes, sir.

Q From doing business with him? A I did one job for Mr. Levine.

Q Had you done any other business with Mr. Cohen? A Not outside of that.

30 *Re-direct examination by Mr. Silver.*

Q You started to say you would lead up to how you knew it was the Rudeco Company—

The Court: There is no use going into that.

By Juror No. 12.

40 Q You said that Cohen was on the job all the time and you stated, if I am correct, that you

Jacob Gross, direct.

didn't know Mr. Ruderman until later? A I said I didn't know Mr. Ruderman was partners in that concern or had any interest in that contract until after I started the work.

Q You said in the beginning, if I remember right, that they were both on the job all the time. A I think you misunderstood me.

10

The Court: Didn't you say at one time that both Cohen and Ruderman were on the job?

The Witness: Yes, after I started work the two of them were there, but I didn't know up to that time whether Mr. Ruderman had any interest in the job whatever.

20

JACOB GROSS, sworn in behalf of the defendant.

Direct examination by Mr. Silver.

Q Mr. Gross, do you know Mr. Cohen? A Yes, sir.

Q Do you know Jack Ruderman? A Yes, sir.

Q You know both of them for quite a while? A Yes, sir.

30

Q What is your business? A The building game.

Q When did you first meet Cohen and Ruderman? A I met them on Plane street about a year ago.

Q Did you at any time take Cohen and Ruderman up to see a man named Kerger? A Yes, sir.

40

Samuel Lieberston, direct.

Q Who runs a drug store? A Yes, sir.

Q Where does he run the drug store? A
On Sussex avenue and Central avenue.

Q What was your purpose in taking Cohen
and Ruderman up there?

10 Mr. Fisch: I object to that, if the Court
please.

The Court: What happened when they
went up there?

The Witness: He gave them an estimate
as to putting in a front for Mr. Kerger.

Q Did they give Mr. Kerger an estimate? A
Yes, sir.

Q Were you there at the time? A Yes, sir.

20 *Cross examination by Mr. Fisch.*

Q Who gave the estimate? A Mr. Cohen
and Mr. Ruderman.

Q Cohen gave the estimate and Ruderman
had to make out the figures, is that it? A
Well, they both told him, they didn't give him
in writing.

30 Q Ruderman helped Cohen make up the fig-
ures, is that right? A Yes, they were both
there.

SAMUEL LIEBERSTON, sworn in behalf of
the defendant.

Direct examination by Mr. Silver.

40 Q Mr. Lieberston, what is your business? A
I am a cabinet maker, making store fixtures.

Samuel Lieberston, direct.

Q Do you know Jack Ruderman? A Yes, sir.

Q And you know Herman Cohen? A Yes, sir.

Q Where did you meet them, and when? A I met Mr. Ruderman the first time in Prince street. He had a job there and I asked him about the panel work. 10

Q You did some panel work? A Yes, sir.

Q And did you give them an estimate for the cabinet work?

Mr. Fisch: Now, if the Court please, I must object to that question.

Q Where did you meet Mr. Cohen? A The same time in Prince street.

Q At the same job with Mr. Ruderman? A Yes, sir. 20

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

Q What was the conversation about? A I had to take the job from both together.

Q Did you give them an estimate for any job on Prince street? A I gave to Mr. Ruderman the job on the panels on Prince street.

Q And was that estimate in writing? A Just an estimate, it is on a piece of card, I left my card. 30

Q When you gave him that estimate was Mr. Cohen there? A No, sir.

Q Did you see Mr. Cohen after you were doing the work? A Yes, sir.

Q Did you have a conversation with Mr. Cohen about the work? A Yes, sir.

Q What was the conversation? A He tried to tell me what to do—

Samuel Lieberston, cross.

The Court: What difference does that make?

Mr. Silver: I just want to follow up that line of testimony. Mr. Ruderman said Mr. Cohen wasn't there at all and he had nothing to do with it.

10

Q Answer, Mr. Lieberston, please. A What?

Q (Question read as follows): What was that conversation? A They gave me the job.

Q Were both of them there? A Yes, sir.

Cross examination by Mr. Fisch.

Q Both of them were there? A Yes, sir.

20

Q You gave the estimate to Mr. Ruderman, didn't you? A Yes, sir.

Q You didn't give it to both of them, did you? A I gave the estimate first to Mr. Ruderman.

Q Cohen wasn't there, was he? A At that time Cohen was not.

Q And Ruderman was the man who had the contract for that job? A Yes, sir.

30

Q And he employed you as a sub-contractor for the cabinet work? A Ruderman and Cohen were there to give me the agreement.

Q In writing? A Yes, sir.

Q Where is it? A I haven't got it with me.

Q Who signed it? A Mr. Ruderman.

Q Cohen didn't sign it? A No.

40

Aaron Levine, direct.

AARON LEVINE, sworn in behalf of the defendant.

Direct examination by Mr. Silver.

Q What is your business? A Building contractor.

Q Where is your place of business? A 326 10
Plane street.

Q You are a brother-in-law to the defendant, Herman Cohen? A Yes, sir.

Q Do you know Jack Ruderman? A I do.

Q I will ask you whether you ever saw Exhibit D. 1? A Yes, a good many times.

Q Where? A In my place, in my office.

Q At your office? A Yes, sir.

Q Did you see many of them there? A 20
About fifty or so.

Q And Mr. Cohen and Mr. Ruderman visited your office? A Frequently.

Q Did they transact any business there? A They did.

Q Did you ever have a conversation in the presence of your brother-in-law, Mr. Cohen, and Mr. Ruderman about this Rudco Construction Company? A Yes; I was interested in them.

Q Did they ever speak or talk to you about their business affairs? A Yes, sir. 30

Q Did they ask your advice? A Many times.

Q And you know Jack Ruderman's family very well? A Very well; I was partners with his father.

Q You were partners with his father? A I still am.

Q And you had some litigation with him? A Yes, sir.

Q Is that litigation settled? A Last week. 40

Aaron Levine, cross.

Q Did you see Mr. Ruderman handle these billheads in your office? A Oh, yes.

Q At your office? A Very often he would make out different estimates.

Q Who, Jack Ruderman? A Jack Ruderman and Herman Cohen.

10 *Cross examination by Mr. Fisch.*

Q Did they make them out on the typewriter? A Sometimes on the typewriter and sometimes with pen and ink.

Q What? A Sometimes on the typewriter and sometimes with pen and ink.

Q And you stayed there and watched them do it? A I did not exactly watch them do it, but I seen them do it now and then.

20 Q Who else was there when Ruderman and Cohen would make out estimates on this stationery? A Oh, various times there was somebody in the office.

Q Who? A I can't say.

Q Did you employ a stenographer? A I do at present.

Q What is her name? A Miss Pollack.

Q She was there? A I did not have a girl there at the time.

30 Q Did you have a bookkeeper? A I do my own bookkeeping.

Q And Cohen and Ruderman were there, both of them, when these estimates were being made out? A Yes; every now and then they would go out and many times I sent them to different architects that I knew; I sent them to an architect by the name of Edward Wern that he had some store fronts to do.

40 Q When was this that you saw Ruderman make out estimates on this stationery? A Vari-

Jeannette Levine, direct.

ous times from time to time; I cannot exactly pick the dates out.

Q You say they consulted you with regard to their business? A Sometimes they did.

Q With regard to contracts? A Yes, sir.

Q What contracts that you know about? A In regards to the Backer contract they were ready to sign the contract and they told me the terms of the contract and I told them they would be very foolish to sign up in any such form. 10

Q Who did you tell that to? A To Jack Ruderman and my brother-in-law, Herman Cohen.

Q You were interested in your brother-in-law, weren't you? A Both; I was interested in both of them.

Q Weren't you interested in your brother-in-law rather than in Ruderman? A To a certain extent; yes. 20

Q He was your brother-in-law and that was the reason? A Yes, sir.

JEANNETTE LEVINE, sworn in behalf of the defense. 30

Direct examination by Mr. Silver.

Q You are a sister of Herman Cohen? A Yes, sir.

Q And you know Jack Ruderman? A I certainly do.

Q Has he ever visited you at your home?

Mr. Fisch: I object to that, if the Court please. There is an attempt to impeach his 40

Jeannette Levine, direct.

own witness. That question was asked of Ruderman on direct examination by counsel for the defendant when he put Ruderman on.

(Question withdrawn.)

10 Q Did Jack Ruderman talk to you in the month of June, 1924? A Yes, sir.

Q What did he say? A There was a litigation pending between my husband and him and I and he came to me and asked me why I would not sign the property to him; he was a young fellow and he started in telling me a tale of woe and I said, "No, I don't intend to sign," and he stood there for quite some time trying to get me around, and I said I would not sign, and then he said, "Mrs. Levine, if you would not sign I have something against someone that you think a whole lot of, and if you don't sign I will get them in a lot of trouble," and I thought he was referring to my husband, and I said, "Why, I don't need to be worried, my husband doesn't do any wrong. He is a straighter man than you are," and he said, "No, not your husband, your brother," so I immediately said, "What did my brother do" and he said, "I have something I am holding and if you don't sign this paper I will use it against him and get him in trouble," and I said, "What is it about?" and he said, "You know when I was in partners with him he gave me a check that I am holding, and I will give you until tomorrow morning. I am going out of town, and if you do not sign I will do all in my power to do what I can to get him in trouble."

30 Q That was some time in June? A Yes, sir.

40

Jeannette Levine, cross.

Cross examination by Mr. Fisch.

Q You are the defendant's sister? A Yes, sir.

Q Where did this conversation take place?
A In my parlor, in my home.

Q Who was there? A The maid. 10

Q What is her name? A Helen Neville.

Q What part of the month was the conversation held in? A It was some time in June.

Q Well, now, was it in the early part of June or the latter part? A It was early because I know the twentieth I went to the shore.

Q Was it before the fifteenth of June? A Yes, I think it was.

Q How long before? A Probably a day or two. 20

Q What day of the week was it? A Oh, I think a Thursday.

Q It was a day or two before the fifteenth?
A I think it was two days before, if I am not mistaken, if I am not wrong.

Q What kind of a paper was this that you say he wanted you to sign? A My husband had sold property, my husband and I were in partners with another gentleman, and he had sold the property to his father and I was not consulted on the matter, and when he came down to the last to sign over he called me up and asked me to come down to sign, and I said no, I would not sell that property; I was living in the property and did not want to sell. 30

Q In other words, your husband had signed a contract to sell the property? A He made plans to sell it. 40

Helen Neville, direct.

Q And when it came to delivering the deed you refused to join in executing the deed for it, is that right? A When they came to the last I said I would not sign.

Q And Ruderman wanted you to sign? A That is the property he wanted me to sign for.

10 Q And he told you if you did not sign he would make trouble for your brother? A Exactly.

HELEN NEVILLE, sworn in behalf of the defendant.

Direct examination by Mr. Silver.

20 Q Miss Neville, you were employed by Mrs. Levine some time in June of this year? A Yes, sir.

Q You are not in her employ now? A No, sir.

Q Do you know Mr. Ruderman? A I have seen him.

Q Jack Ruderman? A Yes, sir.

30 Q Is Mr. Ruderman in court? Is that the gentleman (indicating Mr. Ruderman)? A Yes, sir.

Q Did you see him in Mrs. Levine's home this year some time? A Yes, sir.

Q Did you hear a conversation between him and Mrs. Levine? A Yes.

Q Tell us what you heard of the conversation; tell us as much as you heard of the conversation. A I heard loud talking and that's all.

40 Q Did you open the door for Mr. Ruderman? A Yes.

Jack Ruderman, re-direct.

Q Were you in the house? A Yes, sir.

Q You heard loud talking between Mrs. Levine and Mr. Ruderman? A Yes, sir.

Q Did you hear what was said? A Not exactly.

Q Did you hear anything that was said? A Well, I understood that— 10

Q Not what you understood; if you heard anything, why, tell it. If you did not, why, tell us that you did not hear anything. We want the truth. A I saw Mr. Ruderman and he had a slip in his hand, a paper in his hand.

Q Did you hear anything else beside the loud talking? Don't hesitate. If you did not, just say so. A I did not.

Cross examination waived. 20

THE DEFENDANT RESTS.

JACK RUDERMAN, recalled by the State in rebuttal.

Re-direct examination by Mr. Fisch.

Q Ruderman, were you at Mrs. Levine's home some time in June, before the 15th of June, 1924? A No, I was not. 30

Q When were you there? A Why, I was there when they lived on Stuyvesant avenue.

Q Did you go to her house and ask her to sign a paper? A I did not.

Q Did you ever tell her if she did not sign the paper that you would make trouble for her brother? A I did not. 40

Jack Ruderman, re-direct.

Q When you were there did this young lady, who was just on the stand, the maid, did she open the door for you? A I wasn't there.

Q Well, you were to her house at some time? A That was up on Stuyvesant avenue; that was a few years ago.

10 Q Did you write out any estimates on this Rudeco Construction Company stationery in Mr. Levine's office? A I did not.

Q Did you discuss your business dealings with Mr. Levine? A I did not. I am down to his office most every month because I manage an apartment house where Mr. Levine is interested.

Q You manage an apartment house that Mr. Levine is interested in? A Yes, sir.

Q You collect the rents? A Yes, sir.

20 Q And then you go to his office every month? A And give him the report.

Q Is that where you first met Cohen? A No; I met him five years ago.

Q Do you know Mr. Lieberston? A I do.

Q Did you give Mr. Lieberstein a contract for work on Prince street for the Rudco Construction Company? A I gave him a contract of my own.

30 Q Did Cohen have any work on that job? A He did not.

Q Did you give Mr. Allen a job up on Prince street? A I did.

40 Q Did Cohen have anything to do with giving Allen the job? A No, sir; I called him up on the 'phone, called up a few men for estimates and he came down on the job and I gave him that job and then he didn't show up in time and I went after him on a job on Hawthorne avenue and told him this is a hurry job and I want him to finish up the job.

Jack Ruderman, cross.

Q Who paid Allen for this job? A I did.

Q By what? A By a check.

Q Your own personal check? A Yes, sir.

Q Did you hand him the check yourself? A I did not.

Q How did you pay him? A I left it there at 95 Prince street and he called for it. 10

Q With whom did you leave it? A With Mr. Feldman, the owner.

Q Is Mr. Feldman here? A Yes, sir.

Q Did you tell Mr. Magnus that you were helping Cohen with this contract? A I did.

Q Did you tell Mr. Magnus that you and Cohen were in business together under the name of the Rudco Construction Company? A I did not. 20

Q Did you ever tell that to Mr. Backer? A I did not.

Q Did you ever, in company with Mr. Cohen, see Mr. Backer, and did you say to Mr. Backer, "Mr. Cohen is my partner. Mr. Cohen and I will do this work"? A No, sir.

Q Did you ever get any telephone call from Mr. Backer? A No, sir.

Cross examination by Mr. Silver. 30

Q You heard Mr. Backer testify? A Yes, sir.

Q You heard Allen testify? A Yes, sir.

Q You heard Mrs. Levine testify? A I did.

Q You heard Mr. Lieberston testify? A I did.

Q And they have all made mistakes, is that what you want us to understand? 40

Milton Feldman, direct—cross.

Mr. Fisch: I object to that.

The Court: Overruled.

Q You heard them all testify? A I did.

10 MILTON FELDMAN, sworn in behalf of the
State in rebuttal.

Direct examination by Mr. Fisch.

Q Mr. Feldman, are you the gentleman who was having this work done up on Prince street that we have been talking about in this case?

A Yes, sir.

Q And did Mr. Cohen have anything to do with that work? A Not that I know of.

20 Q Who did you give the contract to? A Jack Ruderman.

Q Did Mr. Ruderman leave a check with you for Mr. Allen, the parquet floor man? A Yes, sir.

Q Whose check was that? A Jack Ruderman's.

Q You turned it over to Mr. Allen? A Yes, sir.

30 Q And you made a general contract with Jack Ruderman, is that right? A Yes, sir.

Q For how much money? A I don't remember the exact amount.

Cross examination by Mr. Silver.

Q You saw Mr. Cohen there? A Probably once during the construction of the front.

40 Q Were you there all the time? A Yes, sir.

Lester Cannold, direct.

Q Day and night? A I was until ten or eleven o'clock in the evening, yes.

Q Were they working on that job at night?

A No, sir.

Q Didn't they do the parquet flooring at night? A That job they did nights.

10

LESTER CANNOLD, sworn in behalf of the State in rebuttal.

Direct examination by Mr. Fisch.

Q Mr. Cannold, you are a teacher in the Central High School? A I am.

Q You are also in the printing business? A Not exactly in the printing business. I am in sort of the stationery and printing business, and I have done printing. 20

Q Do you know Mr. Cohen? A I do.

Q Did he order from you some stationery for the Rudco Construction Company? A He did.

Q Such as I show you now, Exhibit D. 1?

A Yes, sir.

Q Did you know Mr. Ruderman at that time?

A I did not. 30

Q Did Mr. Cohen have anything to do with the order? A No, sir.

Q When was the order given to you by Mr. Cohen? A September 10, 1923.

Q When was the work delivered? A That is when it was delivered, September 10, 1923; the bill was made out then.

Q Where the work delivered? A It was delivered to Mr. Levine's office, that is his store; it was up on the second floor at that time. They 40

Lester Cannold, direct.

were renting out some stores and they had an apartment upstairs.

Q What street was it on? A On Plane street.

Q Did you see Mr. Ruderman there? A No, sir.

10 Q When was the first time you saw Mr. Ruderman in your life? A Last Sunday, when I went to visit him.

Q How did you go to visit him? A I received a telephone call to come down to Plane street to meet Mr. Cohen on some matter of importance. I went down there that night to find out what it was and Mr. Cohen asked me if I knew anyone was in trouble and if I could help personally would I do it, and I said I would be only too glad to do it provided it was absolutely honest; if I could do it and tell the truth, and I asked him what the trouble was and he told me he was being accused—

20

Mr. Silver: I object to that; that is not rebuttal.

Q You had a conversation with Mr. Cohen last week? A Yes, sir.

Q And as a result of that conversation you went up to see Mr. Ruderman? A Yes, sir.

30

Q And that was the purpose of your going up to see Mr. Ruderman? A I wanted to find out what it was all about.

Mr. Silver: I object to the question. It is not rebuttal.

The Court: How is this rebuttal, Mr. Prosecutor?

Mr. Fisch: I think it is rebuttal, if the Court please, because the defendant has con-

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Lester Cannold, cross.

tended that this stationery was the stationery of a partnership existing between himself and Mr. Ruderman, one of the witnesses for the State, and the defense further contended that Mr. Ruderman knew about this stationery, and I am trying to show by this witness that he did not know about it, and the defendant endeavored to have this witness identify Mr. Ruderman as the man who ordered the stationery. 10

The Witness: No, sir; he did not.

Mr. Fisch: That is what I wanted to find out; I wanted to find out the purpose of his going up there.

The Court: He said he didn't do that.

Q What was the purpose of your going up there? A I really wanted to find out what it was all about, to see whether it was true or not that he was a partner. 20

Mr. Silver: I object to that.

The Court: Strike it out.

Q Has your bill been paid? A No, sir.

Cross examination by Mr. Silver. 30

Q You sent statements for this bill to the Rudeco Construction Company at 86 Hedden Terrace? A I did.

Q Several of them? A I sent several of them.

Mr. Fisch: If the Court please, I have the gentleman from the bank here on the question of the day when this check was presented. 40

Charge to Jury.

Mr. Silver: I admit it was presented on the day the slip calls for.

Mr. Fisch: The 16th of October, 1923?

Mr. Silver: Yes, and that the bank's statements are correct.

Mr. Fisch: Then the State rests.

10 Exhibits D. 3 for identification, D. 4 for identification and D. 5 for identification were marked Exhibits D. 3, D. 4 and D. 5 in evidence.

Blue print marked Exhibit D. 6.

Mr. Silver sums up in behalf of the defense.

Mr. Fisch sums up in behalf of the State.

20

CHARGE TO JURY.

The Court charged the jury as follows:

FLANNAGAN, J.:

Gentlemen of the Jury—The Court is the judge of the law. The jury are the sole and exclusive judges of the facts. The defendant is presumed to be innocent and unless the crime charged and each of its elements is proved against him beyond a reasonable doubt he is entitled to an acquittal. The burden of so proving the defendant guilty rests upon the State and never shifts.

I have been requested by defendant's counsel to charge you as follows, and I so charge you:

40 "If you find from the evidence and the facts in the case as presented before you that the check in question was not given with the intention that it was to be used as a check, but merely as an evidence of a debt, or as so much

Charge to Jury.

evidence of money advanced or heretofore loaned to the defendant by the State's witness, Ruderman, then the State has failed to prove beyond a reasonable doubt that the check was given with intent to defraud, and the State's case must fail."

This defendant, gentlemen, comes before you 10
under an indictment that has been found by the grand jury of our county, and this indictment is found under a statute of our State which provides for such a crime as is charged under the indictment.

Now, the elements of the crime are these: Making, drawing, uttering or delivering a check—that is, I should have said, the elements of the crime provided for under the statute are these: First, making, drawing, uttering or de- 20
livering a check, draft or order for the payment of money; second, on a bank or other depository; third, knowing at the time of said making, uttering or delivery (a) that the maker or drawer has not sufficient funds in such bank or other depository for the payment of said check, draft, or order in full upon its presentation; and (b) that he has no arrangement or understanding with such bank or depository for its payment in full 30
upon presentation for payment; and (c) with intent to defraud.

Now, the defendant does not claim that he did not make the check. He does not contend that the check was not drawn on a bank or other depository. He does not contend that at the time he drew this check he had any money in the bank or had made any arrangement for the payment of the check. He said he had no account in the bank at all, but as to the fourth element, 40

Charge to Jury.

to wit, with intent to defraud, he says there was no intent to defraud.

10 Now, the State contends that this check represented money handed to this defendant by Mr. Ruderman and that in order to get the money to hand to Mr. Cohen, the defendant, Mr. Ruderman went to a certain store, got part of the money and handed the money over to Mr. Cohen. In other words, according to the contention of the State, this check represents money handed by Mr. Ruderman to the defendant Cohen.

20 On the other hand, Cohen says that instead of being an intent to defraud involved in this case, that he gave this check as an evidence of money which had been handed to him by Ruderman from time to time in connection with a partnership that they have had; that the purpose of the check was solely to show that he had received that much money in connection with that partnership dealing, and that there was to be subsequently an accounting between the partners, and when it came to the accounting the check was to be evidence that he had received eighty-five dollars previously and that would then be taken into consideration at the proper time, when they came to account.

30 Now, Ruderman says there was no partnership whatever, and a great deal of testimony here has been brought out and has revolved around the question as to whether or not there was any partnership.

40 Of course, that issue as to whether or not there was any partnership is important, because it goes to the essence of the story of Cohen. He says that this money was handed to him in connection with the partnership, and as I have

Charge to Jury.

stated, was to be taken into consideration when they came to account.

Now, it appears, as admitted, I think, by both sides, that there was a previous check of thirty-five dollars given by Cohen on another and different trust company, and that check, they say, has not been paid, one side, Cohen, saying that this check was given in the same manner, that is, in connection with the partnership, and Ruderman saying it was not given in that connection, it was simply given for money advanced. 10

We have testimony by a stationer, Mr. Lester Cannold, that certain stationery upon which appears an alleged partnership name, or the claimed partnership name, was ordered on September 10, 1923, and the date of the check is October 15, 1923. As far as I recall, September 10, 1923, the delivery of this stationery, is the first use made of this stationery, so that there was a period from September 10, 1923, to October 15, 1923, when, as far as the evidence shows, this stationery might have been used. 20

Now, of course, this evidence is very conflicting and it is the province of the jury to sift it and discover the truth. The province of the Court, as I have said to you, is to advise you as to the law, the construction of the law in the case, and the Court has already done that. It will be for you to unravel the facts and to determine your verdict upon all of the evidence, not only such as may have been referred to by the Court, but all of the evidence, and, of course, your verdict must be in accordance with the charge. So, gentlemen, it is for you now to take this case and determine where the truth lies and bring in your verdict in accordance with the 30 40

Defendant's Requests to Charge.

charge of the Court. The case, gentlemen, is with you.

(The jury retires.)

The Court will refuse to charge the other requests.

10 Mr. Silver: I understand your Honor did charge number six and your Honor refused to charge the other requests.

The Court: Yes, sir.

Mr. Silver: I pray an exception to each refusal.

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

20

DALLAS FLANNAGAN,
Judge.

DEFENDANT'S REQUESTS TO CHARGE.

1. The laws of 1919, at page 72, say that:
 30 "Any person who, with intent to defraud, shall make or draw, or utter or deliver, any check, draft or order for the payment of money, upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivery that the maker, or drawer, has not sufficient funds in, or credit with, such bank or depository for the payment of such check, draft or order in full, upon its presentation, shall be guilty of a misdemeanor, and punishable by imprisonment for not more than one year or by a fine of not more than One Thousand Dollars,
- 40

Defendant's Requests to Charge.

or both fine and imprisonment." The statute makes the jurisdictional element of the crime "with intent to defraud." DENIED.

2. That the Court charge the jury as to the meaning of "intent to defraud" under the statute. DENIED.

3. That the Court charge among other things "intent to defraud" is not a mere misrepresentation, such as predicates a suit for the recovery of damages, but involves a criminal intention *ab initio, i. e.*, from the beginning. DENIED.

4. That the term check is defined under our statute as "a check is a bill of exchange drawn on a bank payable on demand and must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay." DENIED.

5. The failure to make presentation of the check is to be considered by you in the light of the ordinary acceptance of the word check under the criminal statute, meaning thereby that the statute presupposes that the check was given under such circumstances as involved the right of the payee to make presentation within a reasonable course of time, practically on demand. Evidence, therefore, in the case that the check was presented some months later negatives the State's outstanding contention of its being a check in the sense of the word check under the statute. DENIED.

6. If you find from the evidence and the facts in the case as presented before you that the check in question was not given with the intention that it was to be used as a check, but

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Defendant's Requests to Charge.

merely as evidence of a debt, or as so much evidence of money advanced or heretofore loaned to the defendant by the State's witness, Ruderman, then the State has failed to prove beyond a reasonable doubt that the check was given with intent to defraud, and the State's case must fail.

10

CHARGED.

7. If you find as a fact from the evidence that Ruderman was to your minds in business with the defendant, then you can take into consideration the fact of whether or not the check was given as a mere memorandum between the parties as to the amount paid by Ruderman to the defendant out of the partnership fund.

DENIED.

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8. Intent to defraud as in this charge must not be of a civil nature, but must be of criminal intention, and especially beyond all reasonable doubt.

DENIED, except as charged.

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Exhibits.

EXHIBIT S. 1.

FIDELITY UNION TRUST COMPANY

NEWARK, N. J. Oct 15th, 1923.

Pay to the Order of JACK RUDERMAN \$85.00

Eighty-five 00/100DOLLARS

32d B.

Receiving Teller.

10

(Endorsements.)

Jack Ruderman.

EXHIBIT S. 2

STATE OF NEW JERSEY, }
 CITY OF NEWARK, } ss.
 ESSEX COUNTY. }

JACK RUDERMAN, residing at No. 86 Hedden Terrace, in the City of Newark, complains of

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HERMAN COHEN

who is to be found, deponent thinks, at No. in said city, and said complainant, being duly sworn, on oath doth depose and say, that on the 15th day of October, A. D., 1923, at the City of Newark, the said Herman Cohen unlawfully and feloniously and designedly, did receive from deponent \$85.00 under account in the Fidelity Trust Company, and delivering to deponent a sheet which is hereto attached and made a part hereof, statement was false and made for the purpose of defrauding deponent.

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Deponent therefore prays that the said

HERMAN COHEN

may be apprehended and held to answer said complaint, and dealt with as law and justice may require.

Jack Ruderman (Sgnd.)

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*Certificate of Judge.*ESSEX COUNTY COURT OF QUARTER
SESSIONS.

STATE

v.

HERMAN COHEN.

*Indictment
No. 167.**Uttering
Bad Check.*

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I, Dallas Flannagan, Judge of the Essex County Court of General Quarter Sessions, and the Judge who presided over the aforesaid cause, do hereby certify that the above-printed book contains the entire record of the proceedings had upon the trial of said cause, on November 5 and 6, 1924, and that the same is returned by the plaintiff-in-error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

20

Dated January 19, 1925.

DALLAS FLANNAGAN,
Presiding Judge of the Essex County
Court of General Quarter Sessions.

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*Certificate of Stenographer.*ESSEX COUNTY COURT OF QUARTER
SESSIONS.

STATE <i>v.</i> 10 HERMAN COHEN.	}	<i>Indictment No. 167. Uttering Bad Check.</i>
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I, Joseph S. Fishkind, an official stenographer of the Essex County Court of General Quarter Sessions, and the stenographer who reported the aforesaid cause, do hereby certify that the above-printed book contains the entire record of the proceedings taken stenographically by me on the trial of said cause on November 5 and 6, 1924, and afterwards reproduced by me in
 20 typewriting from my shorthand notes. I do further certify that the same is a true and correct transcription of my shorthand.

Dated, January 19, 1924.

JOSEPH S. FISHKIND.

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*Assignments of Error.***ASSIGNMENTS OF ERROR.**

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	<i>On Error to the Essex Quarter</i>	10
<i>vs.</i>		<i>Sessions.</i>	
HERMAN COHEN, <i>Plaintiff-in-Error.</i>	}	<i>Assignments of Error.</i>	

Afterwards, to wit, on the return of the writ of error, issued in this cause, the said Herman Cohen, plaintiff-in-error, by Kraemer & Siegler, his attorneys, say, that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit: 20

1. Because the Court refused defendant's request to charge as follows:

The laws of 1919, at page 72, say that:

“Any person who, with intent to defraud, shall make or draw, or utter or deliver, any check, draft or order for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivery that the maker, or drawer, has not sufficient funds in, or credit with, such bank or depository for the payment of such check, draft, or order in full, upon its presentation, shall be guilty of a misdemeanor, and punishable by imprisonment for not more than one year or by a fine of not more than One Thousand Dollars, 30 40

Assignments of Error.

or both fine and imprisonment." The statute makes the jurisdictional element of the crime, "with intent to defraud."

2. Because the Court refused defendant's request to charge as follows:

10 That the Court charge the jury as to the meaning of "intent to defraud" under the statute.

3. Because the Court refused defendant's request to charge as follows:

That the Court charge among other things, "intent to defraud" is not a mere misrepresentation, such as predicates a suit for the recovery of damages, but involves a criminal intention *ab initio, i. e.*, from the beginning.

20 4. Because the Court refused defendant's request to charge as follows:

That the term check is defined under our statute as "a check is a bill of exchange drawn on a bank payable on demand and must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay."

30 5. Because the Court refused defendant's request to charge as follows:

The failure to make presentation of the check is to be considered by you in the light of the ordinary acceptance of the word check under the criminal statute, meaning thereby that the statute presupposes that the check was given under such circumstances as involved the right of the payee to make presentation within a reasonable

Assignments of Error,

course of time, practically on demand. Evidence therefore in the case that the check was presented some months later negatives the State's outstanding contention of its being a check in the sense of the word check under the statute.

6. Because the Court refused defendant's request to charge as follows: 10

If you find from the evidence and the facts in the case as presented before you that the check in question was not given with the intention that it was to be used as a check, but merely as evidence of a debt, or as so much evidence of money advanced or heretofore loaned to the defendant by the State's witness Ruderman, then the State has failed to prove beyond a reasonable doubt that the check was given with intent to defraud, and the State's case must fail. 20

7. Because the Court refused defendant's request to charge as follows:

If you find as a fact from the evidence that Ruderman was to your minds in business with the defendant, then you can take into consideration the fact of whether or not the check was given as a mere memorandum between the parties as to the amount paid by Ruderman to the defendant out of the partnership fund. 30

8. Because the Court refused defendant's request to charge as follows:

Intent to defraud as in this charge must not be of a civil nature, but must be of criminal intention and especially beyond all reasonable doubt.

Assignments of Error.

9. Because the verdict of guilty against Herman Cohen, the defendant, is against the weight of the evidence.

10. Because the indictment in this cause, upon which the defendant was found guilty, does not, on its face, allege facts sufficient to constitute an offense for which the defendant can be presented by indictment, requiring him to plead to the same according to the statutes in such case made and provided.

20 WHEREFORE, said plaintiff-in-error, Herman Cohen, prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and upon the giving of the judgment and passing of sentence, be reversed, cancelled and held for nothing, and that the said Herman Cohen may be restored to all things by him lost on occasion thereof.

KRAEMER & SIEGLER,
Attorneys for Plaintiff-in-Error.

30 I herewith acknowledge service of a copy of the within assignments of error this 29th day of January, 1925.

J. O. BIGELOW,
Pros.

Specification of Causes.

**SPECIFICATION OF CAUSES
AND REASONS FOR REVERSAL.**

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">HERMAN COHEN, <i>Plaintiff-in-Error.</i></p>	}	<p style="text-align: center;"><i>On Error to Essex Quarter Sessions.</i></p> <p style="text-align: center;"><i>Specification of Causes and Reasons for Reversal.</i></p>	<p style="text-align: right;">10</p>
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The plaintiff-in-error assigns the following reasons and causes for the reversal of the verdict and judgment of the conviction in the above-stated action upon the whole record: 20

1. Because the Court refused defendant's request to charge as follows:

The laws of 1919, at page 72, say that:

“Any person who, with intent to defraud, shall make or draw, or utter or deliver, any check, draft or order for the payment of money, upon any bank or other depositary, knowing at the time of such making, drawing, uttering or delivery that the maker, or drawer, has not sufficient funds in, or credit with, such bank or depositary for the payment of such check, draft, or order in full, upon its presentation, shall be guilty of a misdemeanor, and punishable by imprisonment for not more than one year or by a fine of not more than One Thousand Dollars, 30 40

Specification of Causes.

or both fine and imprisonment." The statute makes the jurisdictional element of the crime, "with intent to defraud."

2. Because the Court refused defendant's request to charge as follows:

10 That the Court charge the jury as to the meaning of "intent to defraud" under the statute.

3. Because the Court refused defendant's request to charge as follows:

20 That the Court charge among other things, "intent to defraud" is not a mere misrepresentation, such as predicates a suit for the recovery of damages, but involves a criminal intention *ab initio*, *i. e.*, from the beginning.

4. Because the Court refused defendant's request to charge as follows:

That the term check is defined under our statute as "a check is a bill of exchange drawn on a bank payable on demand and must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay."

30 5. Because the Court refused defendant's request to charge as follows:

The failure to make presentation of the check is to be considered by you in the light of the ordinary acceptance of the word check under the criminal statute, meaning thereby that the statute presupposes that the check was given under such circumstances as involved the right of the payee to make presentation within a reasonable

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Specification of Causes.

course of time, practically on demand. Evidence, therefore, in the case that the check was presented some months later negatives the State's outstanding contention of its being a check in the sense of the word check under the statute.

6. Because the Court refused defendant's request to charge as follows: 10

If you find from the evidence and the facts in the case as presented before you that the check in question was not given with the intention that it was to be used as a check, but merely as evidence of a debt, or as so much evidence of money advanced or heretofore loaned to the defendant by the State's witness Ruderman, then the State has failed to prove beyond a reasonable doubt that the check was given with intent to defraud, and the State's case must fail. 20

7. Because the Court refused defendant's request to charge as follows:

If you find as a fact from the evidence that Ruderman was to your minds in business with the defendant, then you can take into consideration the fact of whether or not the check was given as a mere memorandum between the parties as to the amount paid by Ruderman to the defendant out of the partnership fund. 30

8. Because the Court refused defendant's request to charge as follows:

Intent to defraud as in this charge must not be of a civil nature, but must be of criminal intention and especially beyond all reasonable doubt. 40

Specification of Causes.

9 Because the verdict of guilty against Herman Cohen, the defendant, is against the weight of the evidence.

10 10. Because the indictment in this cause, upon which the defendant was found guilty, does not, on its face, allege facts sufficient to constitute an offense for which the defendant can be presented by indictment, requiring him to plead to the same according to the statutes in such case made and provided.

The said plaintiff-in-error, for the causes aforesaid, in addition to the assignments of error, prays that the judgment aforesaid may be reversed.

20 KRAEMER & SIEGLER,
Attorneys for Plaintiff-in-Error.

I herewith acknowledge service of a copy of the within specification of causes and reasons for reversal this 29th day of January, 1925.

J. O. BIGELOW,
Prosecutor.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed January 21, 1926.

NEW JERSEY SUPREME COURT.

No. 3. MARCH TERM, 1925.

STATE OF NEW JERSEY,
Defendant-in-Error,
 vs.
 HERMAN COHEN,
Plaintiff-in-Error.

10

Decided.

Argued March 3, 1925, on writ of error, before
 Justices Parker and Katzenbach.

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For the plaintiff-in-error, Kraemer & Siegler,
 Esqs.

For the defendant-in-error, John O. Bigelow,
 Esq.

PER CURIAM:

The defendant below, Herman Cohen, was con-
 victed in the Essex Quarter Sessions of utter-
 ing a bad check with intent to defraud. He has
 sued out a writ of error to review the judgment
 of conviction. The indictment was founded upon
 the amendment of the Crimes Act contained in
 Chapter 72 of the Laws of 1919 (P. L. 1919, p.
 133). Cohen and the complaining witness, Jack
 Ruderman, were acquaintances and business as-
 sociates. Cohen claimed Ruderman was his part-
 ner, which Ruderman denied. It is not disputed
 that on October 15, 1923, Cohen drew and deliv-
 ered to Ruderman a check on the Fidelity Union
 Trust Company for eighty-five dollars, which

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Opinion of Supreme Court.

10 Ruderman presented for payment on the following day. The check was returned marked "No Account." Cohen had no account with this bank and never had had. The check was never made good. Ruderman testified that Cohen wanted to buy some clothing, but did not have the money, and asked him to cash a check for eighty-five dollars. Ruderman only had sixty-five dollars, so to oblige Cohen he went to a hat store and borrowed from its manager, a friend, twenty dollars. Ruderman then handed Cohen eighty-five dollars and Cohen wrote out and handed to him the check in question. Cohen contended that Ruderman had advanced him from time to time eighty-five dollars and the check was a memorandum of this indebtedness which Ruderman agreed to hold, and not use as a check.

20 The case is before us under Section 136 of the Criminal Procedure Act as well as upon a strict bill of exceptions.

30 The first point urged by the plaintiff-in-error for reversal is the refusal of the trial court to charge the following request: "Intent to defraud is not a mere misrepresentation such as predicates a suit for the recovery of damages, but involves a criminal intention *ab initio, i. e.,* from the beginning." It is difficult to understand what this request means. If the defendant obtained eighty-five dollars by the misrepresentation that the check was good when he knew it was not, the statute makes such a transaction *prima facie* evidence of intent to defraud. The request does not therefore state any accurate principle of law which the trial court was obliged to charge when requested.

40 The second ground for reversal is the failure of the trial judge to charge the following re-

Opinion of Supreme Court.

quest: "That the term check is defined under our statute as 'a check is a bill of exchange drawn on a bank payable on demand, and must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.'" It was uncontradicted that Ruderman presented the defendant's check for payment the day following its delivery to him. The defendant had no account in the bank. This was not denied. There was not, therefore, any evidence in the case which would have justified the charging of this request. It was properly refused. 10

The third point presented by the plaintiff-in-error is the refusal of the trial court to charge the following request: "The failure to make presentation of the check is to be considered by you in the light of the ordinary acceptance of the word check under the criminal statute, meaning thereby that the statute presupposes that the check was given under such circumstances as involved the right of the payee to make presentation within a reasonable course of time, practically on demand. Evidence therefore in the case that the check was presented some months later negatives the State's outstanding contention of its being a check in the sense of the word check under the statute." The request inaccurately states the testimony when it says the check was presented "some months later." The evidence on the subject of presentment has been referred to. The defendant admitted that the check was presented on October 16, 1923. The Court ruled properly in declining to charge the request. 20 30 40

Opinion of Supreme Court.

10 The fourth ground for reversal argued is the refusal of the Court to charge the following request: "If you find as a fact from the evidence that Ruderman was to your minds in business with the defendant, then you can take into consideration the fact of whether or not the check was given as a mere memorandum between the parties as to the amount paid by Ruderman to the defendant out of the partnership fund." This request calls for a comment upon the evidence which the trial judge was not required to make. The subject matter of the request was, however, referred to and fully covered in the charge. We see no error in the refusal to charge this request.

20 The fifth point urged for reversal is the refusal to charge the following request: "Intent to defraud as in this charge must not be of a civil nature, but must be of criminal intention and especially beyond all reasonable doubt." This is substantially similar to the request considered under the first point. What was said with reference to the former request applies equally to the request under consideration. We think it was properly refused.

30 The sixth point argued on behalf of the defendant is that the indictment is defective. The statute in the second section thereof contains a proviso as follows: "Provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs and protest fees, within five days, after receiving notice that such check, draft, or order has not been paid by the drawee." It is contended that this allegation should have been made in the indictment, and that the State should have furnished evidence that the case did not fall within
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Opinion of Supreme Court.

the proviso mentioned. There is no merit in this contention. It is well settled that if there be an exception in the body of the enacting clause, the party relying on the general clause must in such case negative the exception in his pleading; but if the exception be in some other detached clause it need not be negatived or noticed, and the opposite party must set up the exception. *Wheatman vs. Andrews*, 85 N. J. L. 107; *Mayer vs. State*, 63 N. J. L. 35; *State vs. Marks*, 65 N. J. L. 84; *State vs. Terry*, 73 N. J. L. 554; *State vs. Reilly*, 89 N. J. L. 627. 10

The case of *State vs. Lee*, 126 Atl. Rep. 420, is relied upon by the plaintiff-in-error. In this case the exception is in the body of the statute.

The seventh point argued for the plaintiff-in-error is that the State failed on its case to establish facts sufficient to warrant a conviction. There is no assignment of error or specification of cause for reversal which embodies this contention. It was not raised by any ruling or by any motion to acquit the defendant at any stage. The point therefore will not be considered. 20

The last ground argued for reversal is that the verdict is against the weight of the evidence. In view of the testimony that Ruderman, in order to accommodate the defendant, said that he would borrow from a friend the amount which he required to make the full amount requested as a loan by the defendant; that Ruderman did go to the hat store and borrow from its manager the balance needed to give the defendant the sum he stated he required; that the defendant admitted going to the store with Ruderman; that Mr. Hanson, from whom the money was borrowed, corroborated this, leads us to the view 30

Remittitur.

that the verdict was not contrary to the weight of the evidence.

The judgment of conviction is accordingly affirmed.

REMITTITUR.

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NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

HERMAN COHEN,
Plaintiff-in-Error.

*On
Writ of
Error.*

Remittitur.

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This cause having been argued at the March Term, nineteen hundred and twenty-five, of this Court, by John O. Bigelow, Esq., attorney for the defendant-in-error, and Joseph Kraemer and Joseph Siegler, Esqs., attorneys for the plaintiff-in-error, and the Court having considered the same and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions;

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It is thereupon ordered and adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

Entered February 3, 1926.

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On motion of

J. O. BIGELOW,
Prosecutor of the Pleas.

Remittitur.

I, EDWARD J. KELLEHER, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above-stated cause.

In testimony whereof I have set my
(SEAL) hand and the seal of said Court at 10
Trenton, this seventeenth day of Feb-
ruary, A. D. nineteen hundred and twenty-six.

EDWARD J. KELLEHER,
Clerk.

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*Assignments of Error.***ASSIGNMENTS OF ERROR.**

Filed February 16, 1926.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> HERMAN COHEN, <i>Plaintiff-in-Error.</i>	}	<i>On Writ of Error.</i> <i>Assignments of Error.</i>
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20 Afterwards, that is to say, on the return day of the writ of error, issued in this cause, in the New Jersey Court of Errors and Appeals of the State of New Jersey, came the said Herman Cohen, by Kraemer & Siegler, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the verdict and judgment aforesaid, there is manifest error in this, to wit:—

30 That the judgment of the New Jersey Supreme Court was given against the plaintiff-in-error, whereas under the law of the land the judgment should have been given and rendered in favor of the plaintiff-in-error.

Wherefore, the said Herman Cohen prays that the said judgment and sentence may be reversed and altogether held for nothing, and that he may be restored to all things that he lost by occasion thereof.

KRAEMER & SIEGLER,
Attorneys for Plaintiff-in-Error.

Assignments of Error.

Service of a true copy of the within assignments of error is hereby acknowledged this 13th day of February, 1926.

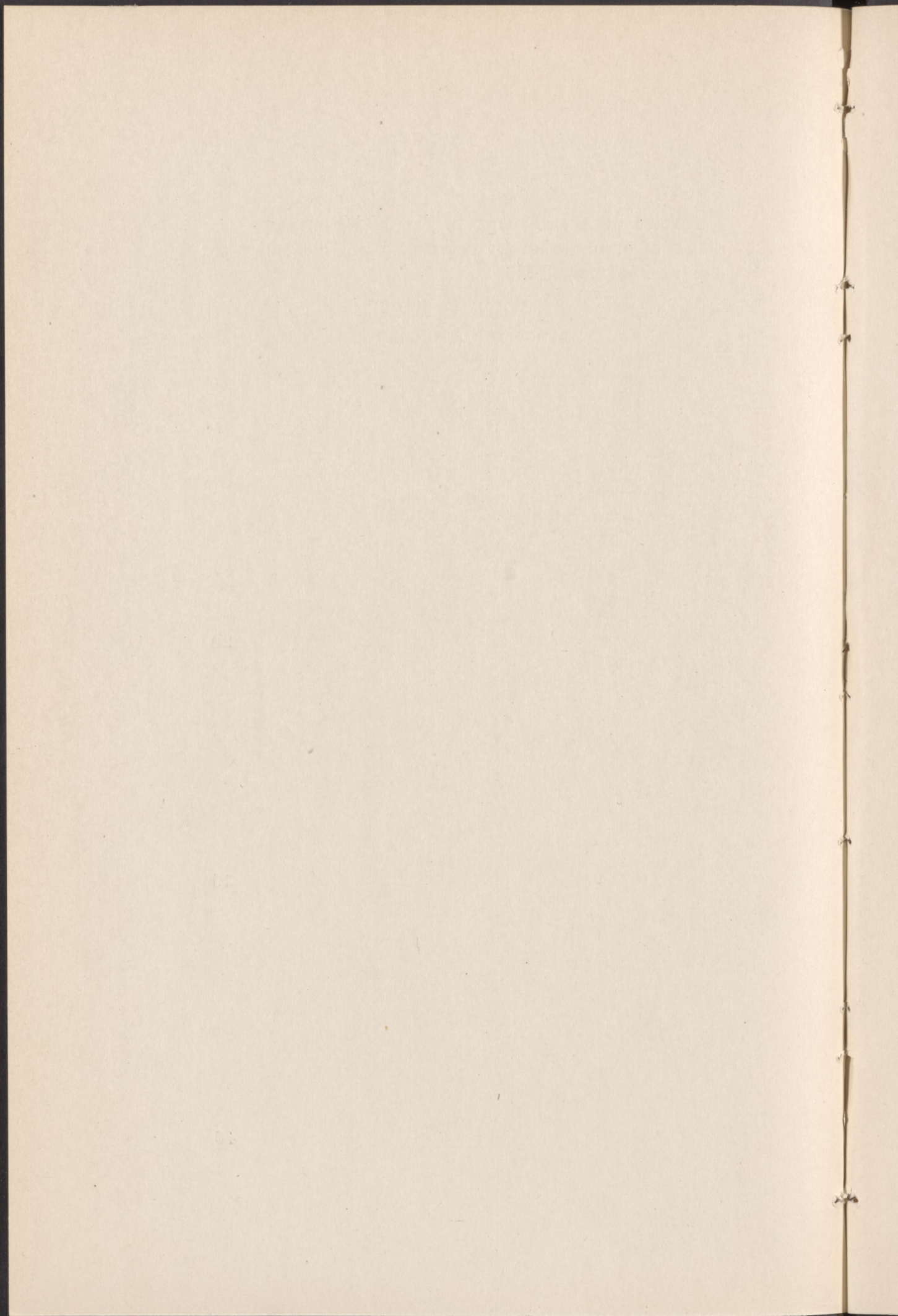
JOHN O. BIGELOW,
Attorney for Defendant-in-Error.

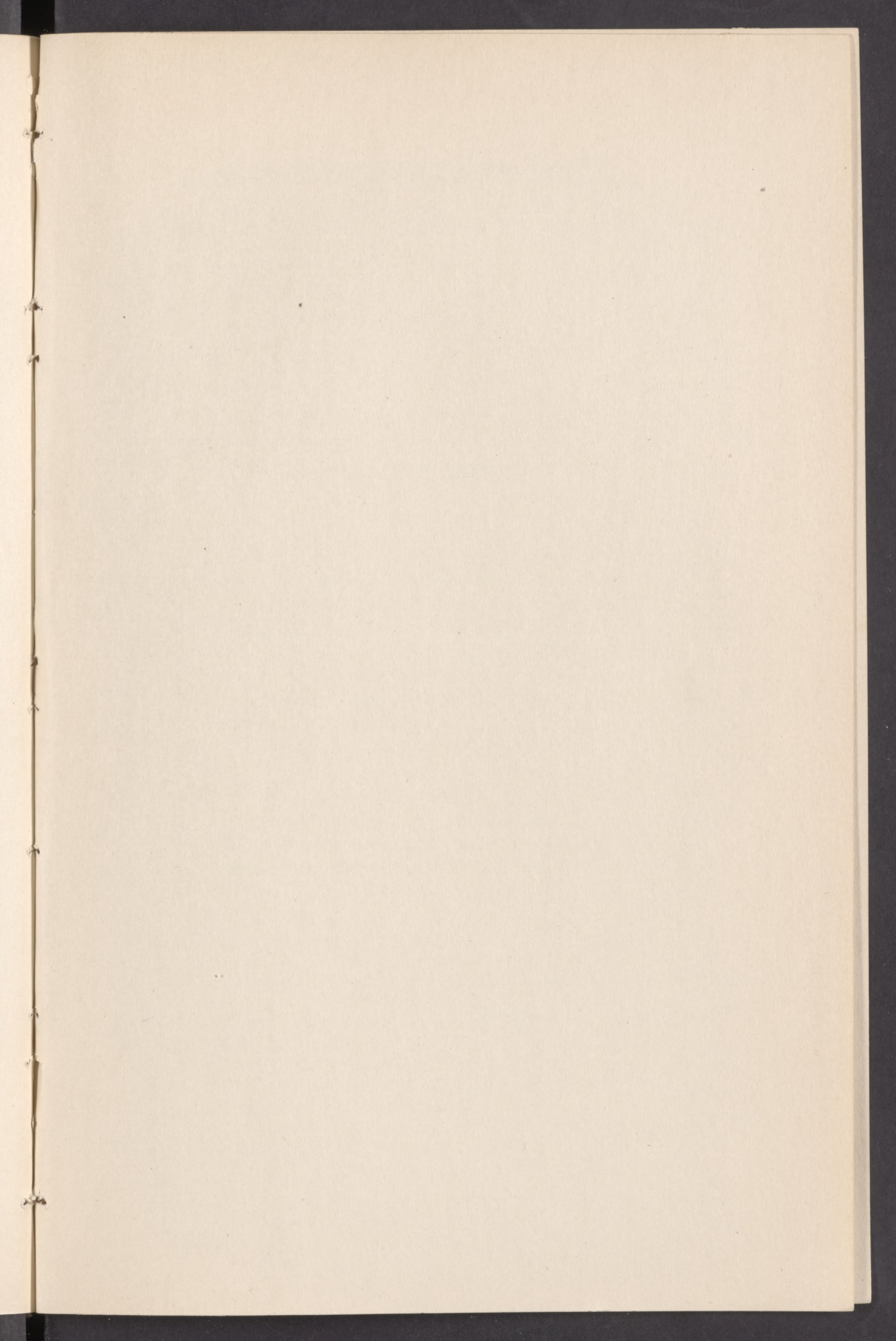
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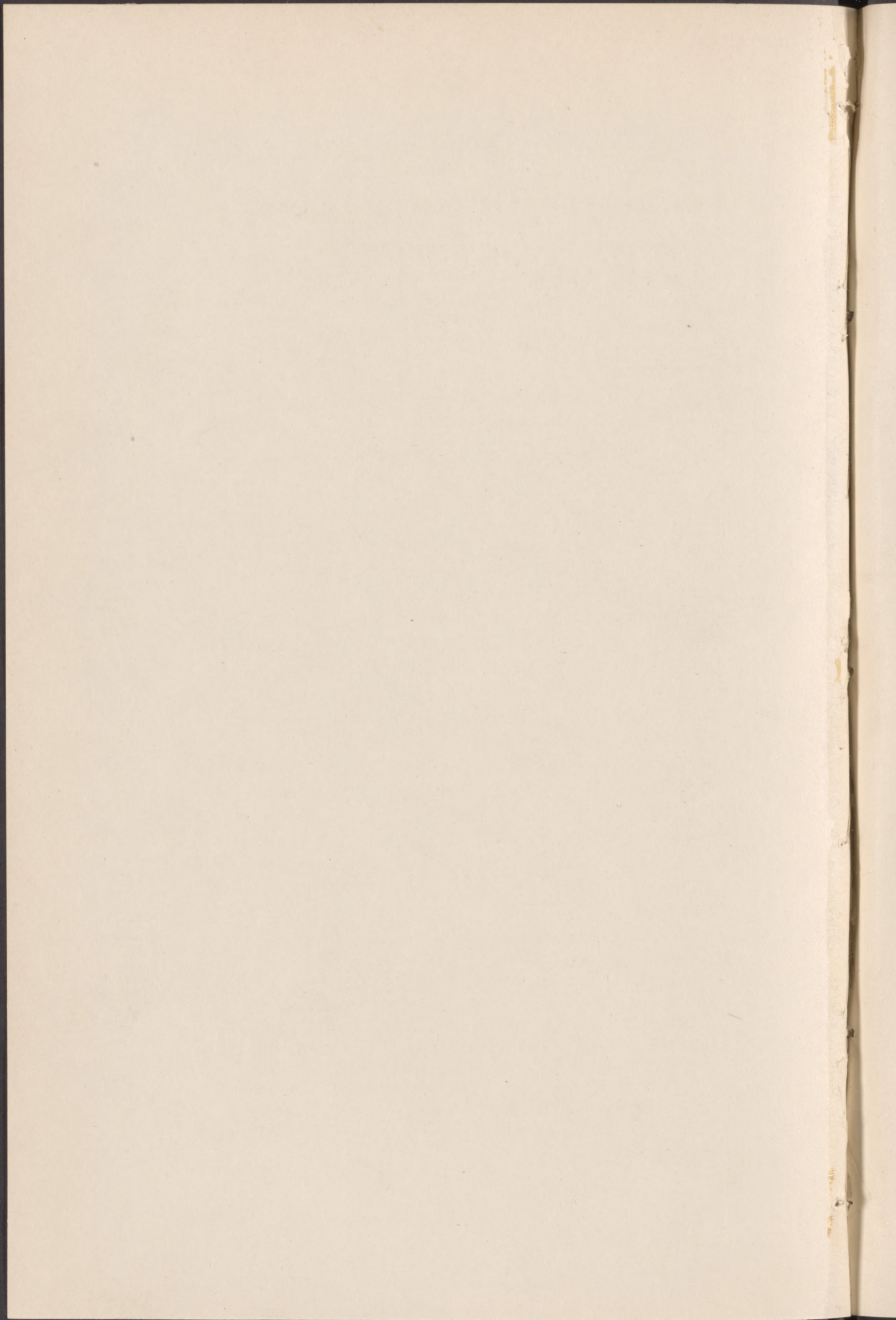
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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Plaintiff-Appellee,

vs.

HERMAN COHEN,
Defendant-Appellant.

APPELLANT'S BRIEF.

Facts.

The writ of error in this case brings up a conviction had against the defendant in the Essex Quarter Sessions Court, upon an indictment which charged that he, on the fifteenth day of October, 1923, with intent to defraud, did make and deliver to the order of Jack Ruderman, a check for \$85.00, bearing date the fifteenth day of October, 1923, knowing at the time of the making and delivery of the check that he had not sufficient funds in, or credit with the bank on which it was drawn, with which to pay the check upon its presentation. The indictment charges the statutory offense declared in section 1 of the supplement of our Criminal Procedure Act, passed April 10, 1919 (P. L., p. 133), which provides that:

“Any person who, with intent to defraud, shall make or draw, or utter, or deliver, any check, draft or order for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivering, that the maker, or drawer, has not sufficient funds in, or credit with, such bank or other depository for the payment of such check, draft or order, in full, upon its presentation, shall be guilty of misdemeanor.”

And section 2 of the same act provides that:

“As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be *prima facie* evidence of intent to defraud, and of knowledge of insufficient funds in, or credit with, such bank or other depository; provided, such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs of protest fees within five days after receiving notice that such check, draft, or order, has not been paid by the drawee.”

The defendant established in this case, that he was a very intimate friend of the complaining witness during a long period of time. The evidence will also show that this friendship extended to daily contact with each other, both in business and in a social way. It is further established beyond a doubt that Ruderman, the complaining witness, and the defendant had been engaged in business as partners, doing alteration carpenter jobs and generally in building and construction work under the style and firm name of “Rudco Construction Company.” It is very evident from the name “Rudco” assumed by them as their trade name, that it is intended to represent the first three letters of Ruderman’s name and the first two letters of Cohen’s, the defendant herein; that it is further established by the defendant, and by the great weight of the evidence in the case, that in the course of their joint business it was usual and customary for Ruderman to make advances of money to the defendant from time to time, and to be charged against him at such times as the complaining witness and the defendant would account for their respective receipts and disbursements in their joint business; that even after the time of

the date of the check upon which the indictment in this cause is based, Ruderman advanced money to the defendant and such advance was evidenced by paper writing. The defendant showed by evidence, that the check of October 15, 1923, the subject-matter of the indictment in this cause, while on its face, is a check drawn upon the Fidelity Union Trust Company of Newark, New Jersey, was not so regarded by the defendant, nor Ruderman, the complaining witness, but was a course of conduct, or rather a business method theretofore adopted between them to evidence advances of money made from one to the other. The complaining witness, from October 15, 1923, until probably July of 1924, a period of over eight months, and after he had received the return of the check from the bank, dishonored, continued the usual intimate friendship and business relations with the defendant and did not make his complaint against the defendant on this check until June of 1924. There is no evidence in the case that the complaining witness, Ruderman, gave the defendant the five days' notice of the dishonor and the refusal by the drawee to pay the check, as required under the Act upon which this indictment is based.

ARGUMENT.

POINT I.

The defendant requested the Court to charge as follows (State of the Case, p. 113, l. 10):

“That the Court charge among other things ‘intent to defraud’ is not a mere misrepresentation, such as predicates a suit for the recovery of damages, but involves a criminal intention *ab initio*, *i. e.*, from the beginning.”

The defendant was entitled to have this request charged to the jury so that the jury might be in a position to understand that the "intent" required to be established by the State beyond a reasonable doubt was an intent to defraud. A criminal intent, carrying with it a knowledge and a motive to deprive and to injure the complaining witness. This is a different kind of intent as is usually sufficient in a civil action between parties for the recovery of damages. Further, the intent to defraud must be from the very beginning, that is *ab initio*, as requested of the Court to charge the jury. It cannot be an intent picked up from circumstances or facts, after the transaction, to which it would have no relevancy. The intent to defraud must have existed contemporaneously and at the time that the defendant received the money from the complaining witness, under such circumstances that would leave no other inference than that the defendant intended to defraud the complaining witness from his money when he gave it to him, as alleged in the indictment. The defendant was entitled to have the jury clearly understand the quality of the evidence that was necessary in the consideration of the facts on the question of whether or not the defendant was guilty of the crime charged in the indictment as distinguished from that which is generally required in suits for misrepresentation on the ground of fraud for the recovery of money damages. The Court having failed to charge as requested, was error and prejudicial to the rights of the defendant and on this ground is entitled to a reversal of the conviction.

POINT II.

The Court has failed to charge defendant's fifth request (State of the Case, p. 113, l. 22).

The provisions of section 2 of the Act under which this prosecution is had, provides that:

"As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, *shall be prima facie evidence of intent to defraud, and of knowledge of insufficient funds in, or credit with such bank.*"

This presumption is a rebuttable presumption, and like all presumptions of this character is a mere standard of proof which when reached, is sufficient to establish a *prima facie* case. The defendant always has the right to come forward with additional evidence to meet the presumption or rebut it, as was done in this case. The defendant, therefore, was entitled to have the Court charge that if the check was not presented at the bank within a reasonable time, that the usual presumption of intent to defraud would not prevail, and the defendant would not be liable for a criminal intent to defraud, thereby, and would be entitled to an acquittal. The Court refused to charge this request and no reason given by the Court for its refusal, deprives the defendant of the benefit of this request, and should entitle him to a reversal of the conviction.

POINT III.

The Court refused to charge defendant's seventh request (State of the Case, p. 114, l. 10).

The defendant's request to charge embraced so much of the evidence that indicated that the defendant and Ruderman were in business, and

that it should be taken into consideration, together with the other facts in the case. That while the paper writing which was signed and delivered by the defendant to Ruderman, on its face showed to be a check, was not so intended because of the business relationship that existed between the parties at that time. That whatever moneys were received by the defendant from Ruderman were received with relation to their partnership fund and to be accounted for at the usual accounting period. The jury should have been charged as requested for the purpose of directing them to consider their business relations as part of the case on the question of intent to defraud. The Court having failed to do this, worked prejudice to his rights and is, therefore, entitled to a reversal of the conviction.

The defendant, of course, was entitled to the benefit of the instruction in the language in which it was submitted, because that was the substance of his whole defense, to overcome the presumption of fraud on the evidence of the State, that the check given by the defendant was returned by the bank dishonored. It was vitally important to the defendant that the jury consider from the evidence adduced that Ruderman and the defendant were in business with each other, and that there arose a custom in the course of their business where one would give the other paper writings or memorandum in writing when moneys were advanced from one to the other, as evidence of debt, rather than to be considered as a check in such cases where the memorandum was written on a so-called printed check blank. This was the crux of the defense. The jury could find from all the evidence that there was no intent to defraud, nor was there an intent by the defendant to give Ruderman a check and so to be considered

by him. If this were established the jury certainly are justified in acquitting the defendant. Having been deprived of this request, in the language in which it was submitted to the Court, there was prejudicial error, which should result in a reversal of the conviction.

POINT IV.

The defendant's request to charge No. 8 and the denial of the Court was error (State of the Case, p. 114, l. 19).

The request reads:

“Intent to defraud as in this charge must not be of a civil nature, but must be, of criminal intention, and especially beyond all reasonable doubt.”

The defendant is entitled to have the jury understand that there is a difference between civil and criminal fraud. This is within legal limitations. Fraud is never presumed, it must always be proved, and in this case, beyond a reasonable doubt. While it may be, that from the evidence adduced by the State, the jury in a damage suit may find it sufficient to determine against the defendant, it would not be so justified in determining against a defendant on an indictment where it is necessary to find the defendant guilty of criminal intent to defraud beyond a reasonable doubt.

The request that it be “an intent to defraud beyond a reasonable doubt” is clearly the burden which rests upon the State, throughout the whole case. Failure of this must result in an acquittal.

POINT V.

The indictment does not on its face allege facts sufficient to constitute an offense upon which defendant can be prosecuted.

The indictment in this case charges the defendant with violating Chapter 72, P. L. of 1919, page 133, of supplement to an Act entitled, "An Act for the Punishment of Crimes (Revision of 1898)," approved April 10, 1919, which provides, among other things:

"Any person, *who with intent to defraud*, shall make, draw, or utter or deliver any check, draft or order for the payment of money upon any bank, knowing at the time of such making, drawing, or uttering or delivering, that the maker or drawer has not sufficient funds in, or credit with, said bank for the payment of said check, upon its presentation, shall be guilty."

And the second section of the Act provides that the refusal by the drawee to honor the check *shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds*, and such *prima facie* evidence of intent to defraud shall not exist, however, until the maker or drawer shall have failed to pay the drawee the amount due thereon, together with all costs and protest fees within five days *after receiving notice that such check, draft or order has not been paid by the drawee*.

It is conceded that the State failed to present proof that the defendant received notice within five days after the dishonor of his check, that he should pay the same with the protest fees, or stand condemned by the terms of the foregoing Act of the Legislature in such case made and provided.

This is one of the essential elements of this Act, before there can be a *prima facie* case of intent to defraud by the defendant. The State not only failed to establish this additional element by proof, but it had failed to make any allegation in the indictment to the effect that the defendant had five days' notice of the failure by the drawee or the maker to pay the check. The underlying principle in this class of cases where the exception in the criminal statute appears in the enacting or prohibitory clause thereof, the indictment must negative its existence in order to exhibit a crime. See *Mayer v. State*, 63 N. J. L. 35; and affirmed 64 N. J. L. 323; *State v. Marx*, 65 N. J. L. 84; *State v. Reilly*, 88 N. J. L. 104; affirmed 89 N. J. L. 627.

In the case of *State v. Lee* (New Jersey Supreme Court, May Term, 1924), the Court dealt with the third section of Chapter 114 of the Laws of 1919, which declares:

"Any person having in his possession any motor vehicle * * * from which or on which any trade mark * * * has been altered or changed in any manner, shall be guilty * * * unless such person shall within ten days from the time when such motor vehicle shall have come into his possession file with the Commissioner of Motor Vehicles of this State a verified statement required by Section 2 of this Act."

And Chief Justice Gummere, speaking for the Court said:

"The purpose of the legislature, as exhibited in this enactment is clear; and that is that the mere possession of a motor vehicle * * * shall not constitute a criminal offense, unless the person having in his possession such vehicle shall have failed to file the certificate within the ten-day period (italics ours); in other words, that it is his failure to comply with this provision of the

statute when the existing conditions require it, that brings him within its condemnation. This being so, the indictment, in order to set forth a crime under the statute, *must aver not only the possession of the vehicle by the defendant, but the fact that it had remained in his possession more than ten days, and that he had failed to file the certificate within that time.*"

The case at bar is clearly similar to the one expressed in the *Lee case, supra*, because the purpose of the legislature as exhibited in this enactment is clear; and that is that the mere giving of the check and its return by the bank for insufficient funds or refusal by the drawee to honor the same, does not constitute a criminal offense, unless the holder of the check shall first give the drawer or maker of the check notice that said check has not been paid by the drawee, and then if the maker or drawer fails to pay the same within five days after receiving notice, the offense is complete. The indictment in this case must negative the existence of the five-day notice in order to exhibit a crime. This it fails to do, therefore, fails to allege an offense against the defendant.

POINT VI.

The State has failed on its own case to establish facts sufficient to warrant a conviction.

The charge laid in the indictment was that made criminal by the statute, as we construe it, drawn upon a bank in which the maker had not sufficient funds on deposit with which to meet it. The proof submitted on the part of the State, however, conspicuously failed to support charge. "*No attempt was made to prove that at the time of the delivery of the check any promise or representation was made by the defendant*

other than the mere giving of the check, that on the day of its date he would have funds on deposit in the bank sufficient in amount to satisfy it; nor was there even a suggestion in the evidence that the payee had been induced to accept the check by reason of any express representation with relation to it, which was made by the defendant."

It is, therefore, clear that the transaction proved by the State is essentially variant from that laid in the indictment and it would seem that this alone is sufficient to set aside the conviction now before us. This has been the declaration by Chief Justice Gummere in the Supreme Court, in the case of *State v. Barone*, 118 Atl. 779, while in this case the Court does not definitely reverse the Quarter Sessions Court on this point, nevertheless, it is clearly intimated from the language of the Court that it condemned the prosecution of that indictment for the reasons laid here.

The defendant, by proceeding with his defense, does not necessarily waive his right to attack the insufficiency of the evidence produced by the State to establish its case against him beyond a reasonable doubt. It has been held that even though the defendant proceeds with his defense, when as a matter of fact, no case had been made against him, he still retains the benefit, on review to attack the sufficiency of the evidence irrespective of whether or not the defendant, by his evidence, has supplied the deficiencies in the State's case. In other words, the evidence of the State in and of itself, must be sufficient. *State v. Bacheller*, 98 Atl. Rep. 829-830.

POINT VII.

The verdict of guilty is against the weight of the evidence.

The offense charges that the defendant made a check to the order of Jack Ruderman, on October 15, 1923, for the sum of \$85.00, for which the said Jack Ruderman gave the defendant \$85.00 in cash. No attempt was made to prove that at the time of the delivery of the check, any promise or representation was made by the defendant, other than the mere giving of the check, that on the day of its date he would have funds on deposit with the bank sufficient in amount to satisfy it; nor was there even a suggestion in the evidence that the payee had been induced to accept the check by reason of any express representation with relation to it which was made by the defendant. This is peculiarly significant in the analysis of this case, because, upon examination of the evidence you will find that Jack Ruderman and the defendant were personal friends, who saw each other almost every day, knew everything concerning their respective business relations, and even engaged in social intercourse constantly during a period of four to five years. It appears from Jack Ruderman's testimony that on several occasions the defendant and himself were present when estimates for construction work were negotiated. This testimony was presented with the purpose of establishing, first, that Jack Ruderman knew that the defendant had no bank account at the time, or at any other time in the Fidelity Union Trust Company, and that whatever moneys were advanced by Ruderman to the defendant, was with the idea that repayment would be made, or allowance would be given at such time that accountings were had between them. It also appears that Jack Ruderman had

the bank account at the Fidelity Union Trust Company, that Jack Ruderman had the bank account at the Vailsburg Trust Company, a check of which bank he also had in his possession, signed by the defendant. It is indeed a coincidence that it should appear that the two checks which Jack Ruderman received from the defendant were upon banks which Jack Ruderman had accounts in. This can only be reconciled with the story of the defendant, that these checks were not given by the defendant to Jack Ruderman to be used by him as a check for negotiation, but as the defendant says, as evidence that the defendant had received an advance of this amount of money, and to be deducted or allowed on accounting. If this was a check to be used in the regular course of business, and returned dishonored by the drawee on October 17, 1923, why is it that Jack Ruderman did nothing to give notice to the defendant of its dishonor, and second, to continue intimate social and business relations until June 24, 1924, a period of over eight months. This, I take it, is inconsistent with the contention of the State that it was a check for the payment of money out of the funds of the defendant at the Fidelity Union Trust Company, but on the contrary, is consistent with the story of the defendant, that it was to be held by Jack Ruderman as evidence of an advance made to him, in the regular course of their partnership business.

Jack Ruderman's testimony with relation to the partnership business had with the defendant, State of the Case, page 55, line 10, Ruderman went to Backer for a job; State of the Case, page 56, line 10, Ruderman saw the plan with the name "Rudco" which was the trade name or partnership name between Ruderman and Cohen.

You will note that r-u-d are the first three letters of Ruderman's name and c-o are the first two letters of Cohen's name, the combination being taken for the firm name. State of the Case, page 67, line 10, he says, "Q Did you have one (meaning bank account) in October, 1923? A I had an account there for the past seven years." That shows that it was Ruderman who had the account and the possession of checks, and that he knew that Cohen did not have an account with the Fidelity Union Trust Company.

The following testimony shows the continuance of their friendship after the return of the check N. G., State of the Case, page 69, line 22,

"Q Now, after you received this check back, did you continue to go around with Herman Cohen, the defendant? A Did I continue to go around with him? Q Yes. A Yes, sir." Page 69, line 35, "Q Now, if you knew on the 17th of October, 1923, that this check was N. G., why did you wait until June 14, 1924, before you made a complaint on this check? A Because—"

The answer was interrupted by Court and counsel, and on page 70, line 14, Jack Ruderman answers as follows:

"From time to time he promised to pay it and held me off, and I figured it would wait until such time as he did pay it, and finally, he refused to pay."

This story is absolutely denied by the defendant and all of his witnesses, and is so improbable that the mere attempt to assert it on its face shows its improbability.

The defendant establishes by the great weight of the evidence the fact that there was a partnership existing between the defendant and Jack Ruderman, notwithstanding anything to the contrary. The defendant produces disinterested

persons, who throughout their entire evidence leave no room for doubt with respect to the question that there was, first, a firm doing business under the name of Rudco Construction Company, and secondly, that this company consisted of two partners, Jack Ruderman and Herman Cohen, this defendant, and further that these two individuals did business together as such, as is established beyond peradventure of a doubt, first, by the testimony of the witness, Louis E. Backer, State of the Case, page 78, line 33—

“Q Who furnished you with the plans, if any at all, at the time you were negotiating? A Well, there were various plans they furnished, but I haven't got the plans with me, but this one here I recall positively.

Q Who gave you them? A Both of them, Mr. Ruderman and Mr. Cohen.

Q They were both there at the same time? A Yes, sir.”

Further down on page 79, line 17—

“Q Now, during that period did Mr. Ruderman come in with Mr. Cohen? A Yes, sir.

Q About how many times? A Why various times, it was at least once a week.

Q And they were figuring up the job? A Yes, sir.”

I beg to refer to the testimony of the witness Alex S. Magnus, State of the Case, page 83, line 18—

“Q And do you know what business they were in, that is Herman Cohen and Ruderman? A They were in the construction business.

Q How did you know that? A I was told so by both.

Q When? A Upon meeting Herman Cohen and Jack Ruderman on the street and after talking about an alteration Mr. Backer

was going to put through or intended to go through with—

Q Did you speak to both of them at the time? A I did.

Q They both told you they were in the construction business? A They did.”

Proceeding further this witness testified, State of the Case, page 84, line 12—

“Q Who answered you? A I asked Herman Cohen and he said he and Jack Ruderman were in business together under the Rudco Construction Company. I said, ‘Do you think you can handle this job?’ both being present, Herman Cohen and Jack Ruderman, and they said, ‘Yes, we are doing some business on Prince street, an alteration of the same kind, if you want we will take you up to see it.’ The reason I asked this question was, there was a certain kind of an entrance to be made, and it was a question whether it could be made or not, and they said they were doing a job similar to that on Prince street.

Q And Jack Ruderman was with Cohen all the time during this conversation? A Yes, sir.

Q And did Ruderman participate in the conversation occasionally? A Yes, sir.”

Attention is called to the testimony of Alexander Allen, on cross examination, State of the Case, page 88, line 37—

“Q Did you get the contract from Mr. Ruderman? A No, sir.

Q Don’t you know that Ruderman was the contractor, the general contractor of the job? A No, sir, I know he was interested in it, I found that out after I had started the job.”

The other witness to support the defendant in the contention of the business relationship that existed, Jacob Gross, State of the Case, page 92,

line 21, on cross examination, Mr. Gross testifies—

“Q Who gave the estimate? A Mr. Cohen and Mr. Ruderman.

Q Cohen gave the estimate and Ruderman had to make out the figures, is that it? A Well, they both told him, they didn't give him in writing.

Q Ruderman helped Cohen make up the figures, is that right? A Yes, they were both there.”

It is further supported by the testimony of Samuel Liebertson, State of the Case, page 92, by the witness Aaron Levine, State of the Case, page 94, and this witness also testifies, State of the Case, page 95, line 20, that there were letterheads which both of these individuals used in the course of their business, which this witness saw and observed; line 14—

“Q I will ask you whether you ever saw Exhibit D. 1 (referring to the letterhead of Rudco Construction Co.)? A Yes, a good many times.

Q Where? A In my place, in my office.

Q At your office? A Yes, sir.

Q Did you see many of them there? A About fifty or so.”

State of the Case, page 96, line 1—

“Q Did you see Mr. Ruderman handle these billheads in your office? A Oh, yes.

Q At your office? A Very often he would make out different estimates.

Q Who, Jack Ruderman? A Jack Ruderman and Herman Cohen.”

It further appears that Jack Ruderman went so far as to go to the home of Jeanette Levine, one of the witnesses in this case, and a sister of the defendant, State of the Case, page 98, line 10—

“Q Did Jack Ruderman talk to you in the month of June, 1924? A Yes, sir.

Q What did he say? A There was a litigation pending between my husband and him and I and he came to me and asked me why I would not sign the property to him; he was a young fellow and he started in telling me a tale of woe and I said, 'No, I don't intend to sign,' and he stood there for quite some time trying to get me around, and I said I would not sign, and then he said, 'Mrs. Levine, if you would not sign I have something against someone that you think a whole lot of, and if you don't sign I will get them in a lot of trouble,' and I thought he was referring to my husband, and I said, 'Why, I don't need to be worried, my husband doesn't do any wrong. He is a straighter man than you are,' and he said, 'No, not your husband, your brother,' so I immediately said, 'What did my brother do?' and he said, 'I have something I am holding and if you don't sign this paper I will use it against him and get him in trouble,' and I said, 'What is it about?' and he said, 'You know when I was in partners with him he gave me a check that I am holding, and I will give you until tomorrow morning. I am going out of town, and if you do not sign I will do all in my power to do what I can to get him in trouble.'

Q That was some time in June? A Yes, yes."

Now, it is very evident from the great weight of the evidence in this case, produced not only by witnesses who have an interest in the outcome of this prosecution, but the greater number who are absolutely disinterested, and have no interest one way or the other in any of the parties in controversy, that this paper writing which the defendant gave the complaining witness as evidence of an advance made by Ruderman to him, was given according to the understanding as is so clearly stated by the defendant, and when he found that his purpose in obtaining a deed from

Jeanette Levine, a sister of the defendant, had failed, and after threatening prosecution against her brother, a period over eight months since the date of the alleged check, if she would not sign, he, Ruderman, then, for the first time, attempts, by means of this prosecution, to cause Jeanette Levine to sign a certain deed in which he was essentially interested.

We are aware that the ordinary man against whom an offense of the character alleged against the defendant is committed, would not continue such close friendship, and would not continue in the usual manner of social intercourse and business, and continue it down to a period of over eight months before he would put the machinery of the criminal law in operation. The common and ordinary procedure by a person who was defrauded in the manner in which Ruderman says the defendant defrauded him, would within a very short time upon refusal to meet the obligation, institute criminal proceedings. This conduct by the complaining witness, and the denial by him that he was a partner, in face of the overwhelming disinterested evidence produced by the defendant to the contrary, entirely destroys the veracity of Ruderman's testimony to the point that it should be eliminated and given no credence.

The evidence produced by the defense, through witnesses disinterested in the outcome of this action was overwhelming to the effect that Ruderman, the complaining witness and defendant, to say the least, were in business together, as partners; that there arose a custom by which each would loan to the other or advance to the other, moneys, and accounted for at such times as the business would warrant, and they mutually agreed upon; that they were, besides business associates,

very close friends, and that the check of \$85.00, the basis of this indictment, was not enforced by Ruderman, the complaining witness, until eight months after the giving of the check, and the knowledge of Ruderman that the check was dishonored at the bank. All of this is clearly indicative of the truth of the defendant's story that the check of \$85.00 was not to be considered and used by Ruderman as a check, and that Ruderman knew and understood that it was not to be used or considered as such, as the overwhelming testimony corroborates the defense, in that there was no prosecution under the check for over a period of eight months after its issuance, and only upon the refusal of defendant's sister, Mrs. Levine, to accede to the demand of Ruderman to join in a deed of conveyance, in which Ruderman was interested, to obtain from her, that he, Ruderman, started the criminal prosecution. There was more than reasonable doubt engendered upon the analysis of all the evidence in the case, and it is clear that the verdict of guilty against this defendant was against the great weight of the evidence, and the conviction should be set aside, and a new trial granted.

Respectfully submitted,

KRAEMER & SIEGLER,
Attorneys for and of Counsel with
Defendant.

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New Jersey Court of Errors and Appeals

<p>THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>HERMAN COHEN, <i>Plaintiff-in-Error.</i></p>	}	<i>On Error,</i>
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BRIEF OF JOHN O. BIGELOW FOR THE STATE.

The defendant, Herman Cohen, was convicted in the Essex Sessions of uttering a bad check, with intent to defraud. The Supreme Court affirmed the judgment.

Statement of Facts and Argument on the Weight of the Evidence.

The following facts are undisputed: On October 15, 1923, Cohen drew and gave to Jack Ruderman a check on the Fidelity Union Trust Company for eighty-five dollars (Case, pp. 13 and 32). Defendant did not have at that time and never had any account with the Trust Company, and had not made any arrangement with the company for the payment of the check (Case, p. 32, l. 39, to p. 33, l. 10). Ruderman presented the check to the Trust Company for payment the following day, October 16 (Case, pp. 15 and 110), and the check was returned to him marked "no account." The check was never made good (Case, p. 14, l. 30).

Now for the disputed matter:

Ruderman testified, that the day of the transaction defendant said "he wanted to buy some

clothing and he had no cash; and he asked me whether I could not cash him a check, so I asked him how much, so he said about eighty-five dollars. So I told him, 'I haven't got eighty-five dollars, I only got about sixty-five, but I could walk down to my friend's store and get the twenty dollars,' making it eighty-five, and cash a check for him, which I did'' (Case, p. 13, ll. 3 to 15).

Ruderman further testified that he went with defendant to the Hodgson hat store and there borrowed from Mr. Hanson, the manager of the store, twenty dollars, gave Cohen eighty-five, and Cohen wrote out the check and handed it to Ruderman (Case, p. 13).

Mr. Hanson corroborated this testimony except that he did not know how much money Ruderman gave the defendant and did not know certainly whether the paper which he saw Cohen write out and hand to Ruderman was a check (Case, pp. 19 to 21).

The defendant testified that on October 15, 1923, and for about four months prior thereto, he was in partnership with Ruderman in the construction business (Case, p. 27); that Ruderman had advanced to him from time to time money aggregating eighty-five dollars, and that he gave the check in question to Ruderman as a receipt or memorandum of the money so advanced, at Ruderman's request and upon Ruderman's promise to hold the paper and not to use it as a check (Case, p. 32, ll. 15 to 35).

Defendant admitted going with Ruderman to the hat store about October 15, and there receiving thirty-five dollars. He denied receiving eighty-five dollars at that time, and denied that he then gave the check in question (Case, pp. 42, 43).

Defendant did not produce any witnesses to corroborate his story as to the giving of the check.

Ruderman denied that he was ever in partnership with the defendant, but said that they worked together on one or two jobs. Several witnesses were called on behalf of the defendant, as well as on behalf of the State, to testify to this collateral issue of the partnership.

If the principal issue before the jury on which they gave their verdict had been the partnership it could not be said that their verdict was against the weight of the evidence. There was an irreconcilable conflict in the testimony. But even if the weight of the evidence had established the fact of the partnership that would not be sufficient to upset the verdict. Defendant's story of the giving of the check remains uncorroborated and is contrary to common experience. On the other hand, Ruderman's story carries conviction in itself and is corroborated by the testimony of Mr. Hanson.

The verdict is supported by the evidence.

I.

Assignment of Error No. 3.

Error is assigned on the refusal of the Court to charge defendant's third request:

"Intent to defraud is not a mere misrepresentation such as predicates a suit for the recovery of damages, but involves a criminal intention *ab initio, i. e.*, from the beginning."

This refusal was proper, since the request did not set forth any legal principle.

State v. Harrington, 87 N. J. L. 713, 716.

The only positive statement in this request is that the intent to defraud involves a criminal intention. I am not sure what this statement means, but I am certain that it would not have aided the jury.

The defendant was not prejudiced by the refusal of the Court to charge as requested.

II.

Assignment of Error No. 5.

The Court refused to charge defendant's fifth request:

"The failure to make presentation of the check is to be considered by you in the light of the ordinary acceptation of the word check under the criminal statute, meaning thereby that the statute presupposes that the check was given under such circumstances as involved the right of the payee to make presentation within a reasonable course of time, practically on demand. Evidence therefore in the case that the check was presented some months later negatives the State's outstanding contention of its being a check in the sense of the word check under the statute."

This request assumes as a fact that Ruderman did not present the check for payment until some months after it was given him. Defendant at the trial admitted that the contrary was true, and that Ruderman presented the check for payment one day after he received it (Case, p. 110).

III.

Assignment of Error No. 7.

The Court refused to charge defendant's seventh request:

"If you find as a fact from the evidence that Ruderman was to your minds in business with the defendant, then you can take into consideration the fact of whether or not the check was given as a mere memorandum between the parties as to the amount paid by Ruderman to the defendant out of the partnership fund."

Defendant's counsel contends that this request should have been charged for the purpose of directing the jury to consider the business relations of the parties. This subject was fully brought to the jury's attention by the charge (Case, p. 112, l. 15, to p. 113, l. 2).

The latter part of the request—the effect of the check as a mere memorandum—was charged in a manner more favorable to the defendant than was here requested (Case, p. 110, l. 35, to p. 111, l. 9).

IV.

Assignment of Error No. 8.

The Court refused to charge defendant's eighth request:

"Intent to defraud as in this charge must not be of a civil nature, but must be of criminal intention and especially beyond all reasonable doubt."

This request is essentially the same as the request considered under point I above.

V.

Assignment of Error No. 10.

Error is assigned on the ground that the indictment does not allege facts sufficient to constitute a crime.

No objection to the indictment was made at the trial, or thereafter, by motion in arrest of judgment or otherwise. Before the trial there was a motion to quash, but it was based on entirely different grounds.

There is authority to the effect that in this situation this Court will not consider the assignment in question.

State v. Mor, 85 N. J. L. 558;

State v. Rosenberg, 92 N. J. L. 525.

It may be, however, that if the record upon its face clearly does not charge the defendant with any offense, and hence nothing appears to support the sentence, this Court will reverse the judgment.

The crime charged is defined by P. L. 1919, page 133, section 1, and the indictment follows the phraseology of that section.

The only objection raised by the brief for defendant is that the indictment does not allege the giving of the notice mentioned in the proviso of section 2 of the same act. But that section clearly has nothing to do with the definition of the crime; it relates merely to evidence. The crime is the uttering of the check with intent to defraud. The failure of defendant to make good the check is not an element of the offense, but is merely evidence of the fraudulent intent. The State by proving the notice and failure to

make good the check may establish *prima facie* an intent to defraud.

The indictment charges the crime.

VI.

Under this number counsel for defendant argues that "the State has failed on its own case to establish facts sufficient to warrant a conviction." This argument is not based on any assignment of error or specification of cause for reversal. It therefore requires no answer.

VII.

Assignment of Error No. 9.

This assignment relates to the weight of the evidence, and has already been considered in the statement at the head of this brief.

The judgment of the Supreme Court should be affirmed.

Respectfully submitted,

J. O. BIGELOW,
Prosecutor of the Pleas.

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