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*Writ of Error to Supreme Court.***Writ of Error.**

Filed December 12, 1916.

NEW JERSEY, ss:

THE STATE OF NEW JERSEY to the
 Chief Justice, and Associated Justices 10
 (L. s.) of the Supreme Court of the State of
 New Jersey: Because in the judg-
 ment of the Supreme Court, affirming
 the conviction in the Court of Oyer and Terminer
 of the County of Essex, upon a certain indictment
 against John B. Scarlett, that at all times and
 days hereinafter mentioned Raymond E. Smith
 was the treasurer of the Roseville Trust Com-
 pany, a trust company organized and existing 20
 under the laws of the State of New Jersey,
 located and doing business at the City of New-
 ark in the County of Essex and State of New
 Jersey, and had the custody of the moneys, prop-
 erty and securities of the said Roseville Trust
 Company, and was charged with the keeping of
 its books of account, and was authorized in the
 name of the said Roseville Trust Company to
 make certification and payment of checks and
 negotiable papers drawn upon it by the deposi- 30
 tors of the said Roseville Trust Company when-
 ever such depositors had funds to their credit
 to the amount mentioned in such checks and
 negotiable papers; that Augustus R. Jennings
 was a teller in the employ of the said Roseville
 Trust Company, and was authorized in the name
 of the said Roseville Trust Company to make
 certification and payment of checks and nego-
 tiable paper drawn upon it by the depositors of
 said Roseville Trust Company whenever such 40
 depositors had funds to their credit to the

Writ of Error to Supreme Court.

amount mentioned in such checks and negotiable paper; that William J. Thompson was a teller in the employ of the said Roseville Trust Company, and was authorized in the name of the said Roseville Trust Company to make certification and payment of checks and negotiable paper drawn upon it by the depositors of the said Roseville Trust Company whenever such depositors had funds to their credit to the amount named in such checks and negotiable paper, and that John B. Scarlett was a director of the said Roseville Trust Company, and a depositor therein, and had an account with the said Roseville Trust Company; that the said John B. Scarlett, Raymond E. Smith, Augustus R. Jennings, and William J. Thompson, on the twenty-third day of July, nineteen hundred and twelve, and on all the other days hereinafter mentioned, with force and arms in the county aforesaid, and within the jurisdiction of this Court, did amongst themselves conspire, combine and confederate and agree together fraudulently and falsely to cheat and defraud said Roseville Trust Company, a corporation aforesaid, of its moneys, goods, chattels and property; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company of divers large sums of money, to wit, six thousand six hundred and forty-two dollars and sixty-three cents, the property of the said Roseville Trust Company, by procuring the fraudulent application of the funds of the said Roseville Trust Company to the payment of certified checks drawn by the said John B. Scarlett in overdraft of funds standing to his credit with the said Roseville Trust Company; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company of its moneys

Writ of Error to Supreme Court.

and property by procuring the fraudulent application by the treasurer of the said Roseville Trust Company of divers large sums of money, the property of the said Roseville Trust Company, for the use other than the use of the said Roseville Trust Company, and wilfully and corruptly concealing the said fraudulent application of said moneys and property, by falsely keeping the accounts of the Roseville Trust Company; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company, its stockholders and depositors, of its moneys, by fraudulently and corruptly procuring the taking and withdrawing of such moneys by the said John B. Scarlett, a depositor of said Roseville Trust Company, by moneys of withdrawals in excess of moneys which the said John B. Scarlett had to his credit with said Roseville Trust Company, and wilfully and corruptly concealing such taking and withdrawing of such moneys, by falsely keeping the accounts of the said Roseville Trust Company; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company of its moneys, property and securities, by procuring the embezzlement of Raymond E. Smith, Treasurer as aforesaid, of the moneys, property and securities of the said Roseville Trust Company, committed to the keeping of the said Raymond E. Smith as its Treasurer; whereby the said Roseville Trust Company became and was cheated and defrauded of a large sum of money, to wit, the sum of six thousand six hundred and forty-two dollars and sixty-three cents, the property of the said Roseville Trust Company; that in execution of and according to the said conspiracy the said John B. Scarlett did, on the twenty-third day of July, nine-

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Writ of Error to Supreme Court.

10 teen hundred and twelve, at the City of Newark,
 in the County of Essex aforesaid, fraudulently
 and corruptly draw a certain check on the said
 Roseville Trust Company for the sum of five
 hundred dollars, to the order of John B. Scar-
 lett and did fraudulently and corruptly cause
 and procure the same to be presented to the said
 Roseville Trust Company for payment, the said
 John B. Scarlett then and there well knowing
 that he did not have to his credit at the Rose-
 ville Trust Company moneys to said amount of
 five hundred dollars; (*pro ut* the indictment and
 the said counts therein); manifest error hath
 20 intervened to the great damage of the said John
 B. Scarlett as from his complaint we have re-
 ceived information, we being willing in this behalf
 to correct the error in due form and manner,
 if any there be, and that speedy justice be done
 to him, the said John B. Scarlett, command you
 that if judgment be thereon given, then that you
 distinctly and openly send, under your seal, the
 record and proceedings aforesaid before you in
 the said case, to our Court of Errors and Ap-
 peals, in the last resort in all causes, to be
 holden at Trenton, on the twelfth day of Decem-
 ber next, and this writ, that the record and pro-
 ceedings aforesaid being inspected, we may fur-
 30 ther 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.

WITNESS EDWIN ROBERT WALKER, Chancellor
 of the State of New Jersey, and President Judge
 of the Court of Errors and Appeals, in the last
 resort in all causes at Trenton, aforesaid, this

Writ of Error to Supreme Court.

twenty-third day of November, nineteen hundred
and sixteen.

THOMAS F. MARTIN,
Clerk.

MCCARTER & ENGLISH,
Attorneys of Plaintiff-in-Error.

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Supreme Court
of the
State of New Jersey

Writ of Error

(Filed December 4, 1915)

NEW JERSEY SUPREME COURT 20

THE STATE, Defendant in Error, VS JOHN B. SCARLETT, Plaintiff in Error.	}	On Indict- ment for Conspiracy.
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New Jersey, to wit,
The State of New Jersey to William P. 30
Martin, Esquire, and Harry V. Os-
(L. S.) borne, Esquire, Judges of the Common
Pleas of the County of Essex, consti-
tuting the Court of Oyer and Terminer
holden at Newark, in and for the Coun-
ty of Essex, of the Term of April, in the year
of our Lord, one thousand nine hundred and fif-
teen.

Writ of Error

Because in the record and proceedings, and also in the giving of judgment upon a certain indictment against John B. Scarlett, of the City of Newark, in the County of Essex, for that at all times and days hereinafter mentioned Raymond
10 E. Smith was the Treasurer of the Roseville Trust Company, a trust company organized and existing under the laws of the State of New Jersey, located and doing business at the City of Newark in the County of Essex and State of New Jersey, and had the custody of the moneys, property and securities of the said Roseville Trust Company, and was charged with the keeping of its books of account, and was authorized in the name of the said Roseville Trust Company to make certifica-
20 tion and payment of checks and negotiable papers drawn upon it by the depositors of the said Roseville Trust Company whenever such depositors had funds to their credit to the amount mentioned in such checks and negotiable papers that Augustus R. Jennings was a teller in the employ of the said Roseville Trust Company, and was authorized in the name of the said Roseville Trust Company to make certification and payment of checks and negotiable paper drawn upon it by the depositors
30 of said Roseville Trust Company whenever such depositors had funds to their credit to the amount mentioned in such checks and negotiable paper; that William J. Thompson was a teller in the employ of the said Roseville Trust Company, and was authorized in the name of the said Roseville Trust Company to make certification and payment of checks and negotiable paper drawn upon it by the
40 depositors of the said Roseville Trust Company

Writ of Error

whenever such depositors had funds to their credit
 to the amount named in such checks and negotiable
 paper, and that John B. Scarlett was a director
 of the said Roseville Trust Company, and a de-
 positor therein, and had an account with the said
 Roseville Trust Company; that the said John B. 10
 Scarlett, Raymond E. Smith, Augustus R. Jen-
 nings and William J. Thompson, on the twenty-
 third day of July, nineteen hundred and twelve,
 and on all the other days hereinafter mentioned,
 with force and arms in the County aforesaid, and
 within the jurisdiction of this Court, did a-
 mongst themselves, conspire, combine and confeder-
 erate and agree together fraudulently and falsely
 to cheat and defraud said Roseville Trust Com-
 pany, a corporation aforesaid, of its moneys, 20
 goods, chattels and property; and fraudulently
 and falsely to cheat and defraud the said Rose-
 ville Trust Company of divers large sums of
 money, to wit, Six thousand six hundred and
 forty-two dollars and sixty-three cents, the prop-
 erty of the said Roseville Trust Company,
 by procuring the fraudulent application of the
 funds of the said Roseville Trust Company to
 the payment of certified checks drawn by the
 said John B. Scarlett in overdraft of funds stand- 30
 ing to his credit with the said Roseville Trust
 Company; and fraudulently and falsely to cheat
 and defraud the said Roseville Trust Company
 of its moneys and property by procuring the
 fraudulent application by the treasurer of the
 said Roseville Trust Company of divers large
 sums of money, the property of the said Rose-
 ville Trust Company, for the use other than 40

Writ of Error

the use of the said Roseville Trust Company, and wilfully and corruptly concealing the said fraudulent application of said moneys and property, by falsely keeping the accounts of the Roseville Trust Company; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company, its stockholders, and depositors, of its moneys, by fraudulently and corruptly procuring the taking and withdrawing of such moneys by the said John B. Scarlett, a depositor of said Roseville Trust Company, by moneys of withdrawals in excess of moneys which the said John B. Scarlett had to his credit with said Roseville Trust Company, and wilfully and corruptly concealing such taking and withdrawing of such moneys, by falsely keeping the accounts of the said Roseville Trust Company; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company of its moneys, property and securities, by procuring the embezzlement of Raymond E. Smith, Treasurer as aforesaid, of the moneys, property and securities of the said Roseville Trust Company, committed to the keeping of the said Raymond E. Smith as its Treasurer; whereby the said Roseville Trust Company became and was cheated and defrauded of a large sum of money, to wit, the sum of Six thousand six hundred and forty-two dollars and sixty-three cents, the property of the said Roseville Trust Company; that in execution of and according to the said conspiracy the said John B. Scarlett did, on the twenty-third day of July, nineteen hundred and twelve, at the City of Newark, in the County of Essex, aforesaid, fraudulently and corruptly

Writ of Error

draw a certain check on the said Roseville Trust Company for the sum of Five hundred dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of Five hundred dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the thirteenth day of September, nineteen hundred and twelve, at the City of Newark, in the County of Essex, aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of One thousand two hundred and forty-seven dollars and seventy-six cents, to the order of H. J. Stanley, tax collector, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of one thousand two hundred and forty-seven dollars and sevnty-six cents; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the twenty-first day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of Eighty-two dollars, to the order of the Clinton Hill B. & L. Association, and did fraudulently and corruptly cause

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Writ of Error

and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of Eighty-

10 two dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did on the twenty-first day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of Twenty-

20 six dollars, to the order of the K. of P. B. & L. Association, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of twenty-

30 six dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the twenty-ninth day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of Fifty

40 Dollars, to the order of Thomas A. Webb Co., and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of fifty dollars; that in further execution of and according to the

Writ of Error

said conspiracy the said John B. Scarlett did, on the twenty-ninth day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of eighty-nine dollars and ninety-five cents, to the order of Lehigh Valley Railroad Company, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of Eighty-nine dollars and ninety-five cents; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the third day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of one hundred and twenty-five dollars, to the order of N. R. Sica, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of one hundred and twenty-five dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the fifteenth day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check

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Writ of Error

on said Roseville Trust Company for the sum of Eighty-six dollars and ninety-two cents, to the order of the Lehigh Valley Railroad Company, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of eighty-six dollars and ninety-two cents; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the nineteenth day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check

10 on said Roseville Trust Company for the sum of Four hundred dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of four hundred dollars; that in further execution of and according to the said conspiracy the said John

20 B. Scarlett did, on the twenty-first day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of four hundred dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said

30 Roseville Trust Company for payment, the said

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Writ of Error

John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of four hundred dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the fourth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of five hundred dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of five hundred dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the thirteenth day of March, nineteen hundred and thirteen, at the city of Newark in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of One hundred dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of one hundred dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the thirteenth day of March, nineteen hundred and thirteen, at the city

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of Newark in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of ninety dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of ninety dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the seventeenth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of Three hundred and fifty dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of Three hundred and fifty dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the seventeenth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of One hundred dollars, to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust

Writ of Error

Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of One hundred dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the nineteenth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of One Hundred and seventy-five dollars, to the order of the Clinton Hill B. & L. Association, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of said One hundred and seventy-five dollars, that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the twelfth day of June, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of One hundred and twenty dollars, to the order of David Goldsmith, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of said One hundred and twenty dollars; that in further execution of and according to

Writ of Error

the said conspiracy the said John B. Scarlett did, on the second day of July, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of Twelve hundred dollars, to the order of Manning Freeman Company, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of said Twelve hundred dollars; that in further execution of and according to the said conspiracy the said John B. Scarlett did, on the third day of July, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, fraudulently and corruptly draw a certain check on said Roseville Trust Company for the sum of One thousand dollars, to the order of David Goldsmith, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to the amount of said One thousand dollars.

Whereof before you he has been indicted and is thereon convicted by a certain jury of the County, taken between the State of New Jersey and the said John B. Scarlett, as it is said, manifest error hath intervened to the great damage of the said John B. Scarlett, as from his complaint we have received information; we being willing in his be-

Judgment Record

half to correct the error in due manner, if any there shall be, and that speedy justice be done to him the said John B. Scarlett, command you that if judgment thereon be given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things 10 touching the same, to our Justices of our Supreme Court of the State of New Jersey, of the second day of June, next, and this 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 of New Jersey ought to be done.

WITNESS, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this Fourteenth day of May, in the year of our Lord, 20 one thousand nine hundred and fifteen.

McCARTER & ENGLISH,
Attorneys.

Wm. C. Gebhardt,
Clerk.

Judgment Record

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(Filed December 4th, 1915)

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 second Tuesday of December, in 40

Judgment Record

the year of Our Lord, one thousand nine hundred and thirteen, by the Honorable William S. Gunmere, 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
 10 for the County of Essex, New Jersey, by the oath of Christian W. Feiganspan, John P. Fannan, John H. Ely, Joseph Horweitz,, William Arthur, John A. Cohane, Jacob Meyer, John McCarthy, Ernest Hirschhoff, Thomas J. Kenny, Gustave Jay, James A. Wormley, James M. Beldon, John Ens-
 20 tice, William H. Roemer, Jacob Holle, Jr., John Harrold, David C. Seymore, Mortimer C. Newman, Henry Sternberger, Timothy J. Faughnan, Isaac Roth, James Maloney, 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 OYER & TERMINER

December Term A. D. 1913

Essex County, to wit; the Grand Jurors of the State of New Jersey, in and for the body of the
 30 County of Essex, upon their oath present that at all times and days hereinafter mentioned Raymond E. Smith was the Treasurer of the Roseville Trust Company, a trust company organized and existing under the laws of the State of New Jersey, located and doing business at the City of Newark, in the County of Essex and State of New Jersey, and had the custody of the moneys,
 40 property and securities of the said Roseville Trust

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Company, and was charged with the keeping of its books of account, and was authorized in the name of the said Roseville Trust Company to make certification and payment of checks and negotiable papers drawn upon it by the depositors of the said Roseville Trust Company whenever such depositors had funds to their credit to the amount mentioned in such checks and negotiable paper; that Augustus R. Jennings was a teller in the employ of the said Roseville Trust Company, and was authorized in the name of the said Roseville Trust Company to make certification and payment of checks and negotiable paper drawn upon it by the depositors of said Roseville Trust Company whenever such depositors had funds to their credit to the amount mentioned in such checks and negotiable paper; that William J. Thompson was a teller in the employ of the said Roseville Trust Company, and was authorized in the name of the said Roseville Trust Company to make certification and payment of checks and negotiable paper drawn upon it by the depositors of the said Roseville Trust Company whenever such depositors had funds to their credit to the amount named in such checks and negotiable paper, and that John B. Scarlett was a director of the said Roseville Trust Company, and a depositor therein, and had an account with the said Roseville Trust Company;

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath aforesaid, do further present that the said John B. Scarlett, Raymond E. Smith, Augustus R. Jennings, William J. Thomp-

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son and divers other persons to the Grand Jurors aforesaid unknown, late of the City of Newark, in the County of Essex aforesaid, on the Twenty-third day of July, in the year of our Lord, One Thousand Nine Hundred and Twelve, and on all the other days since and up to the taking of this inquisition, with force and arms at the City aforesaid, in the county aforesaid and within the jurisdiction of this court, did amongst themselves, conspire, combine and confederate and agree together fraudulently and falsely to cheat and defraud said Roseville Trust Company, a corporation aforesaid, of its moneys, goods, chattels and property; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company of divers large sums of money, to wit, Six Thousand Six Hundred and Forty-two Dollars and Sixty-three Cents, the property of the said Roseville Trust Company, by procuring the fraudulent application of the funds of the said Roseville Trust Company to the payment of certified checks drawn by the said John B. Scarlett in overdraft of funds standing to his credit with the said Roseville Trust Company; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company of its moneys and property by procuring the fraudulent application by the Treasurer of the said Roseville Trust Company of divers large sums of money, the property of the said Roseville Trust Company, for the use other than the use of the said Roseville Trust Company, and willfully and corruptly concealing the said fraudulent application of said moneys and property, by falsely keeping the accounts of the Roseville

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Trust Company; and fraudulently and falsely to cheat said defraud the said Roseville Trust Company, its stock holders and depositors, or its moneys, by fraudulently and corruptly procuring the taking and withdrawing of such moneys by the said John B. Scarlett, a depositor of said Roseville Trust Company, by moneys of withdrawals in excess of moneys which the said John B. Scarlett had to his credit with said Roseville Trust Company, and wilfully and corruptly concealing such taking and withdrawing of such moneys, by falsely keeping the accounts of the said Roseville Trust Company; and fraudulently and falsely to cheat and defraud the said Roseville Trust Company of its moneys, property and securities, by procuring the embezzlement of Raymond E. Smith Treasurer as aforesaid, of the moneys, property and securities of the said Roseville Trust Company, committed to the keeping of the said Raymond E. Smith as its Treasurer; whereby the said Roseville Trust Company became and was cheated and defrauded of a large sum of money, to wit, the sum of Six Thousand Six Hundred and Forty-two Dollars and Sixty-three Cents, the property of the said Roseville Trust Company; And the Grand Jurors of the State of New Jersey. in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present that in execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Twenty-third day of July, nineteen hundred and Twelve, at the City of Newark, in the County of Essex aforesaid, the

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said John B. Scarlett, did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of Five Hundred Dollars to order of John B. Scarlett and fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company moneys to said amount of Five Hundred Dollars: and that afterwards, to wit, on the day and year last aforesaid, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith, being then and there Treasurer of the said Roseville Trust Company and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Five Hundred Dollars, upon the presentation of said check, did fraudulently and corruptly certify the said check, (in the name of the said Roseville Trust Company) and on the Twenty-fourth day of July, nineteen hundred and Twelve, at the City of Newark, in the County of Essex aforesaid, did pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the said Twenty-fourth day of July, nineteen hundred and twelve, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville

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Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of Five Hundred Dollars. 10

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Thirteenth day of September, nineteen hundred and twelve, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company to the order of H. J. Stanley, Tax Collector, for the sum of One Thousand Two Hundred and Forty-seven Dollars and Seventy-six Cents and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to said amount of One Thousand Two Hundred and Forty-seven Dollars and Seventy-six Cents: And that afterwards, to wit, on the said Thirteenth day of September, nineteen hundred and twelve, 40 30

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at the City of Newark, in the County of Essex aforesaid, the said William J. Thompson being then and there teller of the said bank and then and there well knowing that the said John B. Scarlett did not have to his credit with the said
10 Roseville Trust Company moneys to the amount of One Thousand Two Hundred and Forty-seven Dollars and Seventy-six Cents, upon the presentation of said check, did fraudulently and corruptly certify the said check, (in the name of the said Roseville Trust Company) and on the Sixteenth day of September, nineteen hundred and twelve at the City of Newark, in the County of Essex aforesaid, (the said William J. Thompson and the said Raymond E. Smith) did fraudulently and corruptly pay and cause the same to be
20 paid with the moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the Sixteenth day of September, nineteen hundred and twelve, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted (the payment) of said check in the books
30 of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of One Thousand Two Hundred and
40 Forty-seven Dollars and Seventy-six Cents.

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And the said Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Twenty-first day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the Roseville Trust Company for the sum of Eighty-two Dollars to the order of the Clinton Hill B. & L. Assoc., and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to said amount of Eighty-two Dollars: And that afterwards, to wit, on the Fifth day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Augustus R. Jenning, being then and there teller of the said Roseville Trust Company and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Eighty-two Dollars upon the presentation of said check, did fraudulently and corruptly certify the said check, (in the name of the Roseville Trust Company) and afterwards, to wit, on the Eighteenth day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex

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aforesaid, did fraudulently and corruptly pay
 and cause to be paid with the moneys and funds
 of the said Roseville Trust Company: And after-
 wards, to wit, on the said Eighteenth day of Feb-
 ruary, nineteen hundred and thirteen, and on all
 10 the other days since and up to the taking of this
 inquisition, at the City of Newark, in the County
 of Essex aforesaid, the said Raymond E. Smith
 did fraudulently and corruptly omit to post and
 to cause to be posted the (payment of) said check
 in the books of account of the said Roseville
 Trust Company and did fraudulently and cor-
 ruptly omit to charge and to cause to be charged
 the said John B. Scarlett with the (payment of)
 said check on the books of account of the said
 20 Roseville Trust Company and did fraudulently
 and corruptly retain in his own possession the
 said check, whereby the said Roseville Trust
 Company was then and there defrauded of a
 large sum of money, to wit, of the sum of Eighty-
 two Dollars.

And the Grand Jurors of the State of New
 Jersey, in and for the body of the County of
 Essex aforesaid, upon their oath aforesaid, do
 further present, that in further execution of and
 30 according to the said conspiracy, combination,
 confederacy and agreement amongst themselves.
 had as aforesaid, and to effect the object thereof,
 afterwards, to wit, on the Twenty-first day of
 January, nineteen hundred and thirteen, at the
 City of Newark, in the County of Essex afore-
 said, the said John B. Scarlett did fraudulently
 and corruptly draw a certain check on the said
 Roseville Trust Company for the sum of Twen-
 40 ty-six Dollars to the Order of the K. of P. B. &

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L. Assoc., and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to said amount of Twenty-six Dollars: And that afterwards, to wit, on the Twenty-second day of January, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith being then and there Treasurer of the said Roseville Trust Company and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Twenty-six Dollars, upon the presentation of said check, did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the said Twenty-second day of January, nineteen hundred and thirteen, and on all the other days since and up to the taking of this inquisition, at the city of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (Payment of) said check on the books of account of the Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded

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of a large sum of money, to wit, of the sum of Twenty-six Dollars.

10 And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Twenty-ninth day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of
20 Fifty Dollars to the order of Thomas A. Webb Co., and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company moneys to the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to the said amount of Fifty Dollars: And that afterwards, to wit, on the said Twenty-ninth day of January, nineteen hundred and thirteen, at the City of
30 Newark, in the County of Essex, the said Raymond E. Smith, being then and there treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Fifty Dollars upon the presentation of said check, did fraudulently and corruptly certify the said check, (in the name of the said Roseville
40 Trust Company) and on the First day of Feb-

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ruary, nineteen hundred and thirteen, in the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company; That afterwards, to wit, on the First day of February, nineteen hundred and thirteen, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession of said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of Fifty Dollars.

And the Grand Jurors of the State of New Jersey. in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy, and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the twenty-ninth day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlet did fraudulently and corruptly draw a certain check on the said Roseville

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Trust Company for the sum of Eighty-nine Dollars and Ninety-five Cents to the order of Lehigh Valley R. R. Co., and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to the said amount of Eighty-nine Dollars and Ninety-five Cents: And that afterwards, to wit, on the Twenty-ninth day of January, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith being then and there Treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Eighty-nine Dollars and Ninety-five Cents, upon the presentation of said check, did fraudulently and corruptly certify the same, (in the name of said Roseville Trust Company) and on the Third day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company: And afterwards, to wit, on the Third day of February, nineteen hundred and thirteen, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville

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Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of Eighty-nine Dollars and Ninety-five Cents. 10

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy, and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Third day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of One Hundred and Twenty-five Dollars to the order of N. R. Sica, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to the said amount of One Hundred and Twenty-five Dollars: And that afterwards on the Third day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith being then 20 30 40

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and there treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of One Hundred and Twenty-five
10 Dollars, upon the presentation of said check, and fraudulently and corruptly pay and cause the said to be paid with the moneys and funds of the said Roseville Trust Company: And afterwards, to wit, on the Third day of February, nineteen hundred and thirteen, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause
20 to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with (the payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of
30 money, to wit, of the sum of One Hundred and Twenty-five Dollars.

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy, and agreement amongst themselves had as aforesaid, and to effect the object thereof,
40 afterwards, to wit, on the Fifteenth day of Feb-

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ruary, nineteen hundred and thirteen ,at the City
 of Newark, in the County of Essex aforesaid, the
 said John B. Scarlett did fraudulently and cor-
 ruptly draw a certain check on the said Rose-
 ville Trust Company for the sum of Eighty-six
 Dollars and Ninety-two Cents, to the order of 10
 Lehigh Valley R. R. Co., and did fraudulently
 and corruptly cause and procure the same to be
 presented to the said Roseville Trust Company
 for payment, the said John B. Scarlett then and
 there well knowing that he did not have to his
 credit at the said Roseville Trust Company mon-
 eys to said amount of Eighty-six Dollars and
 Ninety-two Cents: And that afterwards, to wit,
 on the said Fifteenth day of February, nineteen
 hundred and thirteen, at the City of Newark, in 20
 the County of Essex aforesaid, the said Raymond
 E. Smith, being then and there Treasurer of the
 said Roseville Trust Company, and then and
 there well knowing that the said John B. Scar-
 lett did not have to his credit with the said
 Roseville Trust Company moneys to the amount
 of Eighty-six Dollars and Ninety-two Cents, up-
 on the presentation of said check, did fraudu-
 lently and corruptly certify the same, (in the
 name of said Roseville Trust Company) and on 30
 the Twentieth day of February, nineteen hundred
 and thirteen, at the City of Newark, in the Coun-
 ty of Essex aforesaid, did fraudulently and cor-
 ruptly pay and cause the same to be paid with
 the moneys and funds of the said Roseville Trust
 Company: That afterwards, to wit, on the said
 Twentieth day of February, nineteen hundred
 and thirteen, and on all the other days since and
 up to the taking of this inquisition, at the City. 40

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of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of Eighty-six Dollars and Ninety-two Cents.

20 And the Grand Jurors of the State of New Jersey, in and for the body of the county of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Nineteenth day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of Four Hundred Dollars to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to said amount of

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Four Hundred Dollars: And that afterwards, to wit, on the said Nineteenth day of Newark, in the County of Essex aforesaid, the said Raymond E. Smith, being then and there treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Four Hundred Dollars, upon the presentation of said check, did fraudulently and corruptly certify the same, (in the name of said Roseville Trust Company) and on the said Twentieth day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the said Twentieth day of February, nineteen hundred and thirteen, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of Four Hundred Dollars.

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And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Twenty-first day of February, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of Four Hundred Dollars to the order of John B. Scarlett and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to the said amount of Four Hundred Dollars: and that afterwards to wit, on the day and year last aforesaid, at the City and County aforesaid, the said Raymond E. Smith, being then and there the treasurer of said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Four Hundred Dollars upon the presentation of said check, did fraudulently and corruptly certify the said check (in the name of the said Roseville Trust Company) and on the Twenty-second day of February, nineteen hundred and thirteen, at the City and County aforesaid, did fraudulently and corruptly pay and

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cause the same to be paid with the moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the day and year last aforesaid, and on all the other days since and up to the taking of this inquisition, at the City and County aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of Four Hundred Dollars.

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid and to effect the object thereof, afterwards, to wit, on the Fourth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of Five Hun-

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dred Dollars to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he
10 did not have to his credit at the said Roseville Trust Company moneys to said amount of Five Hundred Dollars; And that afterwards, to wit, on the said Fourth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith, being then and there treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with the said
20 Roseville Trust Company moneys to the amount of Five Hundred Dollars upon the presentation of said check, did fraudulently and corruptly certify the said check, (in the name of the said Roseville Trust Company) and on said Fourth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company; That
30 afterwards, to wit, on the said Fourth day of March, nineteen hundred and thirteen, and on all the other days since and up to the taking of this inquisition at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the Books of account of the said Roseville Trust Company and did fraudulently
40 and corruptly omit to charge and to cause to be

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charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check whereby the said Roseville Trust Company was then and there defrauded of a large sum of money to wit, of the sum of Five Hundred Dollars. 10

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of an according to the said conspiracy, combination confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Eleventh day of March, 1913, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of One Hundred Dollars to the order of John B. Scarlett, and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to said amount of One Hundred Dollars: And that afterwards, to wit, on the said Eleventh day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith, being then and there treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with 20
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the said Roseville Trust Company moneys to the amount of One Hundred Dollars, upon the presentation of said check, did fraudulently and corruptly pay and cause the said to be paid with moneys and funds of the said Roseville Trust
10 Company: that afterwards, to wit, on the said Eleventh day of March, nineteen hundred and thirteen, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said
20 Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of One Hundred Dollars.

And the Grand Jurors of the State of New
30 Jersey in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of, and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the Thirteenth day of
40 March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently

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and corruptly draw a certain check on the said Roseville Trust Company for the sum of Ninety Dollars to the order of John B. Scarlett, and did not have to his credit with the said Roseville Trust Company moneys to the amount of Ninety Dollars upon the presentation of said check did fraudulently and corruptly certify the said check (in the name of the said Roseville Trust Company) and on the said Thirteenth day of March, nineteen hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with the money and funds of the said Roseville Trust Company: That afterwards, to wit, on the said Thirteenth day of March nineteen hundred and Thirteen, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money to wit, of the sum of Ninety Dollars.

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do fur-

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ther present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves, at as aforesaid, and to effect the object thereof, afterwards, to wit, on the
10 Seventeenth day of March, One Thousand Nine Hundred and Thirteen at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of Three Hundred and Fifty Dollars and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said
20 John B. Scarlett then and there well knowing that he did not have to this credit at the said Roseville Trust Company moneys to said amount of Three Hundred and Fifty dollars: and that afterwards, to wit, on the said seventeenth day of March, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith being then and there treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his
30 credit with the said Roseville Trust Company moneys to the amount of Three Hundred and Fifty dollars, upon the presentation of said check (in the name of the said Roseville Trust Company) did fraudulently and corruptly certify the said check, and on the said seventeenth day of March, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly
40 pay and cause the same to be paid with the mon-

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eys and funds of the said Roseville Trust Company: That afterwards, to wit, on the said seventeenth day of March, one thousand nine hundred and thirteen and on all other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of Three Hundred and Fifty dollars.

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the seventeenth day of March, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of One Hundred dollars to the order of John B. Scarlett, and did fraudulently and corruptly

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cause and procure the same to be presented to the Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the Roseville Trust Company, moneys to said amount of

10 One Hundred dollars: And afterwards, to wit, on the day and year last aforesaid the said Raymond E. Smith being then and there treasurer of the said Roseville Trust Company and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of One Hundred dollars, upon the presentation of said check, did fraudulently and corruptly certify the said check, (in the name of the said Roseville Trust Company) and on the said seven-

20 teenth day of March, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the said seventeenth day of March, one thousand nine hundred and thirteen, and on all other days since and up to the taking of this inquisition at the

30 City of Newark, County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Com-

40 pany and did fraudulently and corruptly remain

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in his own possession the said check whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, to the sum of One Hundred dollars.

And the Grand Jurors of the state of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the nineteenth day of May, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulent'y and corruptly draw a certain check on the said Roseville Trust Company, for the sum of One Hundred and Seventy-five dollars to the order of Clinton Hill B. & L. Assoc., and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to said amount of One Hundred and Seventy-five dollars: And that afterwards, to wit, on the said nineteenth day of May, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid the said Raymond E. Smith, being then and there treasurer of the said Roseville Trust Company, and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of One Hundred and Seventy-five dol-

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lars, upon the presentation of said check did fraudulently and corruptly certify the said check (in the name of the said Roseville Trust Company) and afterwards, to wit, on the twentieth day of May, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with the monies and funds of the said Roseville Trust Company: That afterwards, to wit, on the said twentieth day of May, one thousand nine hundred and thirteen and on all other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession, the said check whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of One Hundred and Seventy-five dollars.

And the Grand Jurors of the State of New Jersey in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid and to effect the object thereof, afterwards, to wit, on the twelfth day of June,

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one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company, for the sum of One Hundred and Twenty dollars to the order of David Goldsmith and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit at the said Roseville Trust Company moneys to said amount of One Hundred and Twenty dollars: And that afterwards, to wit, on the thirteenth day of June, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith, being then and there treasurer of the said Roseville Trust Company and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of One Hundred and Twenty dollars, upon the presentation of the said check did fraudulently and corruptly certify the same (in the name of said Roseville Trust Company) and on the said thirteenth day of June, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the said thirteenth day of June, one thousand nine hundred and thirteen and on all the other days since and up to the

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taking of this inquisition at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and cause to be charged the said John B. Scarlett with the (payment of) check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of One Hundred and Twenty dollars.

20 And the Grand Jurors of the state of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves, had as aforesaid, and to effect the object thereof, afterwards, to wit, on the second day of July, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of Twelve Hundred dollars, to the order of Manning Freeman Co., and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett, then and there well knowing that he did not have to his credit at the
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40 said Roseville Trust Company moneys to said

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amount of Twelve Hundred dollars: And that afterwards, to wit, on the said second day of July, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith, being then and there treasurer of the said Roseville Trust Company and then and there well knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of Twelve Hundred dollars, upon the presentation of said check did fraudulently and corruptly certify the said check, (in the name of the said Roseville Trust Company) and on the said second day of July, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust Company: That afterwards, to wit, on the said second day of July, one thousand nine hundred and thirteen, and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check, whereby the said Roseville Trust Company was then and there defrauded of a

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large sum of money, to wit, of the sum of Twelve Hundred dollars.

10 And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex aforesaid, upon their oath aforesaid, do further present, that in further execution of and according to the said conspiracy, combination, confederacy and agreement amongst themselves had as aforesaid, and to effect the object thereof, afterwards, to wit, on the third day of July, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said John B. Scarlett did fraudulently and corruptly draw a certain check on the said Roseville Trust Company for the sum of One Thousand dollars to the order of David Goldsmith and did fraudulently and corruptly cause and procure the same to be presented to the said Roseville Trust Company for payment, the said John B. Scarlett then and there well knowing that he did not have to his credit, at the said Roseville Trust Company, moneys to said amount of One Thousand dollars: And that afterwards, to wit, on the said third day of July, one thousand nine hundred and thirteen, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith being then and there treasurer of the said Roseville Trust Company and then and there will knowing that the said John B. Scarlett did not have to his credit with the said Roseville Trust Company moneys to the amount of One thousand dollars, upon the presentation of said check did fraudulently and corruptly pay and cause the same to be paid with the moneys and funds of the said Roseville Trust

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Company: That afterwards, to wit, on the said third day of July, one thousand nine hundred and thirteen and on all the other days since and up to the taking of this inquisition, at the City of Newark, in the County of Essex aforesaid, the said Raymond E. Smith did fraudulently and corruptly omit to post and to cause to be posted the (payment of) said check in the books of account of the said Roseville Trust Company and did fraudulently and corruptly omit to charge and to cause to be charged the said John B. Scarlett with the (payment of) said check on the books of account of the said Roseville Trust Company and did fraudulently and corruptly retain in his own possession the said check whereby the said Roseville Trust Company was then and there defrauded of a large sum of money, to wit, of the sum of One Thousand dollars, 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.

(signed) LOUIS HOOD,
Prosecutor of the Pleas.

On the twenty-seventh day of January, A. D. nineteen hundred and fourteen, on which day the said indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and then and there the said indictment was duly 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 minutes 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 thirty-

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first day of January, nineteen hundred and four-
teen, at the Court of Oyer and Terminer, holden
in Newark, in and for the County of Essex, be-
fore the Honorable Harry V. Osborne, presiding
Judge of the Court of Oyer and Terminer, John
10 B. Scarlett in the custody of John F. Monahan,
Sheriff of the County of Essex aforesaid and the
said John B. Scarlett being brought before the
bar in his own proper person and forthwith be-
ing demanded of and concerning the premises in
the above indictment 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,
&c. and Frederick F. Guild, Prosecutor of the
20 Pleas, of said state, for said County of Essex in
this behalf doth the like.

Therefore, let a Jury thereupon come before
the Court of Oyer and Terminer, to be holden in
Newark, and for the County of Essex, on the
ninth day of March, A. D. Nineteen hundred and
fifteen, 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 afore-
said, above the age of twenty-one years and un-
30 der 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 John B. Scarlett, to recog-
nize upon their oath whether the said John B.
Scarlett is guilty of the premises in the said in-
dictment specified or not guilty because the said
Frederick F. Guild, Esq., Prosecutor, &c. as the
said John B. Scarlett puts himself upon the jury
and the same time is given to the parties afore-
40 said at the same place.

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And afterwards, that is to say, on the fifteenth day of March, Nineteen hundred and fifteen, at the same session of the Court of Oyer and Terminer, holden before Honorable Harry V. Osborne, presiding Judge of the Court of Oyer and Terminer, comes the said Frederick F. Guild, who prosecutes as aforesaid, and the said John B. Scarlett and the jury of whom mention is before made, and by Ralph B. Schmidt, Sheriff of the County of Essex, for this purpose empanelled and returned to wit: (After the following challenges were exhausted, for the State—ten jurors; for the defendant, ten jurors): Oscar C. Follett, Joseph A. Marty, Frank Albrecht, Edward Abrahams, William Cashion, Morris Applebaum, Harry N. Needham, John English, Albert Asher, Samuel Harnett, Bernard Rammelkampf and William Ash, being called were sworn upon that jury to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the thirteenth day of April, Nineteen hundred and fifteen, 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 they find the said defendant John B. Scarlett Guilty, and so they say all.

WHEREUPON, all and singular, the premises being seen and by the Court now here fully understood, it on this fourteenth day of May, Nineteen hundred and fifteen, Ordered and adjudged that the said John B. Scarlett be committed to the State Prison for a term of not less than eighteen months and not more than three years, at hard labor. This sentence to commence on and

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Return

after the expiration of a previous sentence imposed upon this defendant this day on Conviction #396 (Dec. 13) and stand committed until the costs are paid, which said costs are taxed by the Clerk at the sum of Sixty-one dollars and

10 forty-eight cents.
And the said defendant be in mercy, etc.

Return

(Filed Dec. 4, 1915)

20 State of New Jersey, }
County of Essex. }ss:

I, Harry V. Osborne, Judge of the Court of Common Pleas and constituting the Court of Oyer and Terminer, Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the Judgment record and proceedings together with all things touching and concerning the same as by the within Writ to me directed together

30 with the entire record.

In Witness Whereof, I have hereunto set my hand and the official seal of said Court and County at Newark this
(Seal) 2d day of June, A. D. 1915.

H. V. OSBORNE

Return

ENDORSEMENT

NEW JERSEY SUPREME COURT

 THE STATE,

Prosecutor,

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v.

JOHN B. SCARLETT,

Defendant.

WRIT OF ERROR

Returnable June 2d, 1915.

McCarter & English,
Attorneys of Defendant,

765 Broad Street,

20

Newark, N. J.

Presented in open court this
fourteenth day of May, 1915.

H. V. Osborne,

J.

Signed &
Sealed May
14, 1915,
3 p. m.

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Testimony

ESSEX COUNTY OYER AND TERMINER

Wednesday, April 7, 1915

10	STATE, <div style="text-align: center;">vs.</div> JOHN B. SCARLETT.	}	Indictment No. 5 April Term, 1915. Conspiracy.
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Before HON. HARRY V. OSBORNE, Judge, and a
 Jury.

For the State appears Frederick F. Guild,
 Esq., Prosecutor of the Pleas, and Wil-
 20 bur A. Mott, Esq., Assistant Prosecutor
 of the Pleas.

For the defendant appear Philip J. Schotland,
 Esq., and Eugene Dotto, Esq.

Mr. Guild opens for the state.

RAY E. MAYHAM, sworn in behalf of State:

Direct-examination by Mr. Guild:

30 Q. Mr. Mayham, where do you reside? A.
 Westfield, New Jersey.

Q. What is your business? A. State bank ex-
 aminer.

Q. How long have you been engaged in that
 business? A. Two and a half years.

Q. Did you have anything to do with the affairs
 of the Roseville Trust Company after its failure?

40 A. I did.

Ray E. Mayham—Direct

Q. When was the institution closed, if you know? A. The institution was closed on the morning of August 14, 1913.

Q. Who took charge of it? A. It was taken charge of by the bank examiners, several of them.

Q. Acting for whom? A. Acting for the Department of Banking & Insurance of New Jersey. 10

Q. Were you assigned to work at that institution? A. I was.

Q. What were your duties there? A. My duties were of very general nature; they had to do with trying the best way we could to collect the affairs of the institution together and to save anything from the wreck that we could.

Q. So that you went through the papers that you found in the institution in connection with your work? A. Yes, sir. 20

Q. I show you a package of checks, nineteen in number, drawn on the Roseville Trust Company, bearing the name of John B. Scarlett, and ask you whether you have seen those checks before? A. Yes, sir.

Q. Where for the first time? A. I saw checks No. 34 for \$500 and No. 38 for \$1,247.76; I found those in the desk of Raymond E. Smith, secretary-treasurer of the trust company, when I searched that desk on or about the 15th of August, 1913. 30

Q. Where was the desk? A. In the office of the bank, of the trust Company. Check No. 42 for \$82, check 43 for \$26, No. 46 for \$50, 45 for \$89.95, 47 for \$125, 48 for \$86.92, 49 for \$400, 50 for \$400, 51 for \$500, 52 for \$100, 53 for \$90, 54 for \$350, and 55 for \$100, I found in safe deposit box No. 55, in the vault of the Roseville Trust 40

Ray E. Mayham—Direct

Company when I caused that box to be broken open on or about the 20th of August, 1913; check No. 60 for \$175 I found in Mr. Smith's desk when I searched—

10 Q. The same desk you have spoken of? A. The same desk I spoke of before when I searched it on or about the 15th day of August, 1913. 63 for \$120, 65 for \$1,000, 64 for \$1,200 I found in safe deposit box No. 55 when I caused that box to be broken open on or about the 20th of August, 1913.

Q. Did you cause any marks, identification marks, to be placed on those checks? A. I caused identification marks, to be placed on each and every one.

20 Q. Are they all the same marked? A. They are not.

Q. Will you say what the difference is? A. The ones which I found in Mr. Smith's desk I caused to be marked with three naughts, and the ones which I found in box 55 I caused to be marked 055.

Q. And these checks are so marked? A. These checks are so marked, yes, sir.

30 Q. What did you do with these different checks? A. I kept them in my possession; I returned them to one of the safety deposit boxes, of which I kept the key, in the vault of the Roseville Trust Company.

Q. Did you subsequently deliver them to any person? A. I took them at one time to bankruptcy court and allowed them to be placed as an exhibit there, but they were returned to me at once. I finally delivered them to Mr. Hargan and Prosecutor Hood.

40 Q. Mr. Hargan of the Prosecutor's office? A. Mr. Hargan of the prosecutor's office, yes, sir.

Ray E. Mayham—Direct,

Mr. Schotland: You may put those in evidence. We admit that those checks bear the signature of Mr. Scarlett, and they are admitted without objection.

The Court: Mark them with a blue pencil in order to distinguish them from the exhibits which were used in the other case, so there will be no confusion. Many of these exhibits were used in the bankruptcy court and some of the exhibits were used in the prior case, therefore all exhibits will be marked with a blue pencil. 10

Marked Exhibits 1 to 19 inclusive.

The Court: Are those checks which have been marked 1 to 19 the checks mentioned specifically in the indictment? 20

Mr. Guild: Yes.

Q. I show you another lot of checks. Have you seen them before? A. Yes, sir; I have seen them before.

Q. Where? A. In the Roseville Trust Company.

Q. That is where you first saw them? A. Yes, sir.

Q. Did you take possession of them there pursuant to your examination into its affairs? A. I did. 30

Q. Will you say where you found them and give us a slight description of them. A. Check No. 58 for \$300 I found in Mr.—

Q. Whose name appears as maker? A. Drawn by John B. Scarlett.

Q. So signed by John B. Scarlett? A. Signed by John B. Scarlett, for \$300, I found in Mr. Smith's desk. 40

Ray E. Mayham—Direct

- Q. The desk you have already mentioned? A. The desk I have mentioned, in the office of the trust company, on or about the 15th day of August, 1913. Check No. 62 for \$300, drawn by John B. Scarlett, I found in box 55, in the vault of the Roseville Trust Company when I caused the same to be broken open on or about the 20th of August, 1913. Check bearing no number, but dated December 20, 1912, for \$500, signed John B. Scarlett, I found in box No. 55; check No. 104 on the Broad & Market National Bank, Newark, signed by John B. Scarlett, for \$150, I found in Mr. Smith's desk; check No. 2022, drawn on the Metuchen National Bank, signed by the Middlesex Hat Company, for \$350, I found in Mr. Smith's desk; there was a protest notice from the Metuchen National Bank attached to that check. Check No. 1941, dated September 19, 1911, on the State Bank of Hartford, signed the Bras d'Or Land Company, by John B. Scarlett, treasurer, for \$500, I found in Mr. Smith's desk; attached to that check is a protest notice. Check No. 1940 for \$150, also signed by the Bras d'Or Land Company on the State Bank, Hartford, Connecticut, for \$150, I found in box No. 55; there is also a protest notice attached to that check. Check bearing no number, but bearing date October 23, 1911, drawn on the Brooks National Bank of Torrington, Connecticut, signed John B. Scarlett, for \$650, I found in Mr. Smith's desk. There is a protest notice attached to that check. Check bearing no number, but dated October 3, 1911, on the B. M. C. Durfee Safe Deposit & Trust Company, of Fall River, Massachusetts, signed John B. Scarlett, for \$650, I found in box

Ray E. Mayham—Cross

55 in the Roseville Trust Company, and there is a protest notice attached to that check.

Q. For the purpose of identification did you cause any marks to me made on those checks? A. I did.

Q. What are the marks? A. The ones found in Mr. Smith's desk I caused to be marked with three naughts, and the ones in box 55 I caused to be marked 055. 10

Q. Did those checks continue to be in your possession or in the trust company's building? A. I kept those checks in my possession, kept them locked up in the safe deposit vault of the trust company, I exhibited them at the bankruptcy Court, but received them back, and finally delivered them to Mr. Hargan, of the prosecutor's office, and Mr. Hood. 20

Mr. Guild: I desire merely to offer these for identification at this time.

Checks referred to are marked Exhibits 20 to 28 for identification, both inclusive.

CROSS-EXAMINATION by Mr. Schotland:

Q. Are these the only checks that you found in that box 55? A. No, sir.

Q. What did that box 55 contain? A. That box 55 contained a great many things; it contained a great many checks and papers of various kinds. 30

Q. Did it contain a great many checks that did not bear the name of Mr. Scarlett or in connection with Mr. Scarlett? A. Yes, sir.

By the Court: Q. That is also true of the desk? Yes, sir.

By Mr. Scotland: Q. Do you know whose box 40

Charles Mindnich—Direct

that was, box 55? A. I can't say of my own knowledge whose box it was, no, sir.

Q. Do you know who had the key for it? A. Only what I heard. I don't know who had the key.

10 Q. You don't know yourself? A. No.

By the Court: Q. As a result of your inquiries you have ascertained, but you don't know of your own knowledge? A. I don't know of my own knowledge, no, sir.

CHARLES MINDNICH, sworn in behalf of State.

20 Direct-examination by Mr. Guild:

Q. Mr. Mindnich, were you formerly connected with the Roseville Trust Company? A. Yes, sir; I was.

Q. In what capacity? A. I was bookkeeper for a time.

Q. Were you with the bank up to the time it closed? A. Yes, sir.

30 Q. And previous to that how long had you been in the service of the bank? A. From April 21, 1910.

Q. Was it part of your duty to take care of the individual ledger? A. Yes, sir.

Q. Was John B. Scarlett a depositor in that institution? A. Yes, sir; he was.

Q. And had an account there as a depositor? A. Yes, sir.

40 Q. What is that large book in front of you? A. This is an individual ledger, from M to Z.

Charles Mindnich—Direct

Q. Is that one of the books that you kept? A. Yes, sir.

Q. And had charge of as bookkeeper? A. Yes, sir.

Q. Will you see whether the book contains an account of a John B. Scarlett? A. Yes, sir; it does. 10

Q. Commencing with what date? A. July 30, 1909.

Q. And ending with what date? A. July 26, 1913.

Q. On what pages of the ledger? A. Sheet No. 1 and sheet No. 2.

Q. Are the entries in that book all in your hand? A. No, sir; not all of them.

Q. Is there any date down to the closing of the account that the entries are all yours, a date from which you can start? A. No, sir; my handwriting appears in connection with several of the other employees of the bank. 20

Q. In whose handwriting other than yourself are the entries made? A. Mr. Thompson's, that is all, Mr. Thompson's and my own handwriting.

Q. My question was whether there is a date from which your entries begin and continue uninterruptedly in the account? A. No, sir. 30

Q. Then the entries there are either yours or Mr. Thompson's? A. Yes.

Q. That is one of the books that was kept in the regular course of the institution's business? A. Yes, sir.

Q. What was Mr. Thompson's connection with the bank? A. At the time of the closing he was acting in the capacity of paying teller.

Q. Hasn't he also acted in the capacity of bookkeeper? A. Yes, sir. 40

Charles Mindnich—Cross

Q. During the same time he acted as teller?

A. No, sir.

Q. Prior to the position of acting teller he acted as bookkeeper and had charge of the keeping of that book, the ledger? A. Yes, sir.

10 Q. Who was bookkeeper from July 23, 1912, down to the closing of the institution? A. I was bookkeeper from the time you mention until some time in July, when Mr. Brennan had charge of the ledger.

Q. July of what year? A. 1913.

Q. Can you say what time in July Mr. Brennan took up the work? A. Not the exact date, no, sir.

Q. Can't you tell by reference to the ledger?

20 A. No, sir.

Q. Are any entries in the Scarlett account in the handwriting of Mr. Brennan? A. No, sir.

Q. So the entries in the Scarlett account are either yours or Mr. Thompson's? A. Yes, sir.

CROSS-EXAMINATION by Mr. Schotland:

30 Q. Where did you get your information from to make whatever entries you made? A. From the checks or the deposit tickets. If it was a check I would get it from the check and if it was a deposit I would get the credit from the deposit slip.

Q. Were all the entries that you made there true entries, to your knowledge? A. Yes, sir; all except one.

Q. Which one is that? A. \$300, entered on December 23, 1912.

40 Q. What is that entry? A. It shows a deposit to Mr. Scarlett's account of \$300.

Charles Mindnich—Cross

Q. By whom made?

The Court: The entry or the deposit?

Mr. Schotland: The deposit.

By Mr. Guild: Q. Does the ledger purport to show by whom the deposit was made? A. No, sir.

By Mr. Schotland: Q. You say that entry showing that deposit is not correct? A. The date of the deposit is not correct.

Q. How do you know that? A. Because I made the entry myself.

Q. Why didn't you make it correctly?

(Witness pauses.)

Mr. Guild: You know.

Witness: Because I was given the deposit on a date different than the ticket was dated.

Q. Were you given the actual deposit? A. No, sir, I was given the ticket.

Q. By whom were you given the ticket? A. I got it from one of the tellers, I think the receiving teller.

Q. Do you know when you got the ticket? A. I believe I got it on December 26, 1912.

Q. And it was dated December 23d? A. Yes, sir.

Q. And you made your entry as of December 23d? A. Yes, sir.

Q. In what particular then is that entry not correct? A. The date is wrong; the entry is not dated correctly.

Q. How do you know the date is wrong? How do you know the deposit was not actually made on the 23d, the date that the slip is dated? A. I can't tell that—I didn't know it.

Q. What makes you say that that entry is

Charles Mindnich—Cross

wrong? A. The mere fact that I got it on the 26th and I dated it in the ledger December 23d.

Q. You dated it the day the deposit slip was dated? A. No, sir; I beg pardon! I did not—I don't know what date the deposit ticket was dated.

10 Q. Didn't you say the deposit slip was dated the 23d and that it was handed to you on the 26th? A. I said I didn't know what date the deposit ticket showed.

Q. Why did you select the date 23d if you don't know what the deposit ticket showed? A. Because it appears on the ledger.

Q. Who made that entry? A. I did.

20 Q. Why didn't you enter it as of December 26th, the date it was handed to you? A. Because there was a check drawn on that date.

Q. Did you receive any instructions as to that deposit? A. Not that I remember.

Q. You received absolutely no instructions as to that deposit from anybody? A. I think I did, yes, sir.

Q. From whom? A. Mr. Smith.

Q. What were your instructions? A. Do I have to answer that question, your Honor? This is the reason I was indicted, on this.

30 The Court: Will answering that question tend to incriminate you?

Witness: I don't know; I haven't got counsel. I don't know that.

The Court: The witness raises the question that he is under indictment and he doesn't know whether this question will tend to incriminate him.

40 (To the witness) You understand that you are not obliged to answer any question which would

Charles Mindnich—Cross

tend to incriminate you, but this question is as to what instructions somebody else gave you, not what you did, but what somebody else instructed you which may or may not have led you to act in a given manner. I cannot see that what somebody else said to you, without it appearing what you did pursuant to that instruction, would tend to incriminate you. That standing alone, I think he should answer that question. What instructions did you get from Mr. Smith about that? 10

Witness: I was told to date that deposit I received on the 26th of December, I was told to date it the 23d.

By Mr. Guild: Q. You mean by that, you entered it in the ledger under date of the 23d? A. Yes, sir.

By Mr. Schotland: Q. You were told to do that by Mr. Smith? A. Yes, sir. 20

Q. You mean the deposit slips, you didn't as bookkeeper receive the actual deposits? A. No, sir.

Q. And pursuant to his instructions you dated the deposit as of December 23d? A. Yes, sir.

The Court: That is the question which he may refuse to answer because that might tend to incriminate him, because that is the charge upon which he has been indicted. He has asked the Court to advise him as to his right. He can answer that question or he can refuse. 30

Mr. Schotland: I appreciate that the witness is all right in the exercise of his privilege and that he is entitled to exercise that privilege, but I object to putting on a witness and examining him on 40

Charles Mindnich—Cross

10 one phase of a proposition, and if I am not to go into the ramifications connected with that transaction, which I am ordinarily entitled to go into on cross-examination, being stopped because the witness has to be put in that position, it is prejudicial to the defendant.

The Court: That is a situation we cannot control. The law says that a witness may refuse to answer on the ground that it may tend to incriminate him. It is a legal right that he is entitled to, regardless of the consequences to the State's case or your case.

20 Mr. Schotland: I submit that if that is the case, on an important feature of his direct testimony, on cross-examination he does take that position, then his direct testimony would have to be taken out.

30 The Court: I do not see that the State is precluded from calling a witness to prove what it may legally prove by the witness and go as far as it can go, and then because the defense on cross-examination cannot go as much further as it would like to go, that the direct testimony should be stricken out.

Mr. Guild: I didn't go into the details of this at all on direct-examination. This has all been divulged on cross-examination.

40 The Court: Yes, this is the result of your cross-examination. It may well be that it is out of the scope of cross-examination, but it was not objected to. All the State

Charles Mindnich—Re-cross

asked is whether this witness kept this ledger and what date, and you opened the question of the correctness of the ledger.

Defendant's Counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly. 10

H. V. OSBORNE,

(Seal)

Judge.

Q. Do you recall in whose handwriting that deposit slip was? A. No, not just at present.

Q. Do you recall whether or not it was in Mr. Smith's own handwriting? A. I don't know; I don't remember.

RE-DIRECT-EXAMINATION by Mr. Guild: 20

Q. Mr. Mindnich, you say that that deposit slip reached you on the 26th? A. Yes, sir.

Q. If it hadn't been corrected as of the 23d what would the account have shown on the 23d? A. An overdraft.

Q. Of how much money?

Mr. Schotland: I object to it unless the account is in evidence. It has not been offered in evidence.

The Court: If he cannot state that of his own knowledge, without the use of the account, he may use it to refresh his memory. 30

A. There would have been an overdraft of \$298.70.

RE-CROSS-EXAMINATION by Mr. Schotland:

Q. Do you know who made the deposit in or- 40

Charles Mindnich—Re-cross

der to avoid the overdraft, have you any personal knowledge on that score? A. I can't remember it just now.

Q. Do you know whether or not Mr. Smith made it personally? A. It is possible.

10 By the Court: Q. But you have no knowledge?
A. Not just at the present time, no, I can't remember.

By Mr. Schotland: Q. Did you ever have knowledge on that point as to that deposit? A. As to whether Mr. Smith made it or not?

Q. Yes. A. Maybe I did at the time; I can't remember just now.

Q. Do you know whether or not Mr. Smith ever made any personal deposits to Mr. Scarlett's account?
20

Mr. Guild: I object to that as not cross-examination.

After discussion, objection withdrawn.

Q. Do you know whether any of the deposits were made by Mr. Smith himself to be credited to Scarlett's account?

Mr. Mott: May I ask if that question means whether Mr. Smith deposited funds for Mr. Scarlett, for him, or whether it applies that the funds were the deposits of Mr. Smith.
30

The Court: The question does not indicate. It is a question of whether he made deposits or not.

By the Court: Q. Do you know whether Mr. Smith ever made deposits to be credited to Mr. Scarlett's account? A. (Examines book.)

40 Q. You are not asked to make deductions from the book; you may use it to refresh your memory,

William J. Thompson—Direct

but you are asked to give us the benefit of your own knowledge on the subject? A. Yes, sir; I believe he has.

By Mr. Schotland: Q. Do you know whether when he made those deposits he made those with his own funds or Scarlett's funds? A. I didn't say deposits; one deposit. 10

Q. One deposit, whether when he made that deposit he made it with his own funds or Scarlett's funds? A. No, sir; I do not.

Q. But you know that Smith made the deposit? A. Yes, sir.

Q. What deposit is it? A. That deposit of \$300.

Q. That deposit which you credited as of December 23, 1912? A. Yes, sir. 20

WILLIAM J. THOMPSON, sworn in behalf of State.

Direct-examination by Mr. Guild:

Q. Were you formerly connected with the Roseville Trust Company? A. I was, yes.

Q. In what capacity? A. In the capacity of bookkeeper up until 1912, and from then on receiving teller. 30

Q. Will you look at the large book in front of you and say what that book is? A. That is the individual ledger.

Q. Part of their system of keeping accounts? A. Yes, sir.

Q. Did you have charge of that book? A. I did, yes, sir. 40

William J. Thompson—Direct

Q. Who else had charge of it as bookkeeper?

A. After I was made receiving teller Mindnich took charge of it.

Q. Will you turn to the account of John B. Scarlett and see whether the entries there are
 10 either in your handwriting or in the handwriting of Mindnich? A. All of them are either in my handwriting or in Mindnich's.

Mr. Guild: I offer them in evidence.

Mr. Schotland: I haven't any objection.

Q. You are shown four small leather bound books. What are they? A. Those are what we call return item books, the exchange outs.

Q. What? A. The items coming up in the ex-
 20 changes which have not been charged in the individual ledger are entered in these return item books.

Q. So that the jury may understand a little more about it, will you please be a little more specific about it, what use was made of them? A. In the exchanges the checks come in from the other bank to the Roseville Trust Company, checks drawn on the Roseville Trust Company by our depositors were either entered up in the individual ledger regularly—that is, checks which were perfectly all-right in every respect were entered up
 30 in the individual ledger; the remainder of the exchanges were entered in these books, checks which for some one of a dozen reasons were held or returned to other banks, some of the reasons being for insufficient funds, checks drawn on the account in the trust company that didn't show a balance sufficient to pay the check; another reason is for endorsement, or signature; all certified
 40 checks were entered in these books, and all items,

William J. Thompson—Direct

just as I say, that couldn't regularly be charged in the individual ledger, were entered in these books; these books would show a proof of the exchanges, the total of the checks listed in this ledger and the total of the checks listed in this would show the total of the exchanges that we received from the Union National Bank that day. 10

Q. The Union National Bank was the Newark Bank through which the Roseville Trust Company bank cleared? A. It was, yes, sir.

Q. Tell us what you mean by that. A. Why, each trust company has a clearing house, a bank which collects checks, all other banks in the city—our clearing house happened to be the Union National Bank—and all other banks in the city which had received during the day as a deposit or had cashed one of our checks, made them up into a batch and sent them to the Union National Bank, and the Union National Bank, after making this collection of all the checks drawn on our bank and deposited or cashed in other banks, would send the total—would send the lump bunch of checks up to us in what was known as the exchanges, which was just an exchange of checks; it is what the name implies, they collected all our checks and sent them up to us in the morning of each day. 20

Q. In the course of the business would the Union National Bank have paid the checks which they sent up to you or charged them to the Roseville Trust Company on their book? A. Yes, sir, they would have charged them to the Roseville Trust Company on their books. 30

Q. And in following out that course of business did the Roseville Trust Company send a check to the Union National Bank? A. Yes, sir; sent a check for the total of the exchanges. 40

William J. Thompson—Direct

Q. For the check sent out to the Roseville Trust Company? A. Yes, sir.

Q. And the Roseville Trust Company would send this check to the Union National Bank? A. Yes, sir.

10 Q. That is on the presumption that the Union National had paid them? A. Yes, sir.

Q. Had the Union Bank paid them before they sent them to the Roseville Trust Company? A. The other banks had already charged the Union Bank with what they had sent to them; they are separate items; they charge the Union National Bank and then the Union National Bank would charge us with them.

20 Q. And you used these return item books in connection with that check? A. Yes, sir.

Q. They show some of the items which go to make up the checks? A. They show all the items which do not appear in the individual ledger.

By the Court: Q. And all your transactions appear either in the individual ledger account of the depositors or in the return item book? A. Yes, sir.

30 By Mr. Guild: Q. That is with reference to the checks sent through the Union Bank? A. All checks.

Q. They must appear in the exchanges, and would have to prove that day—I should not say “must”—should appear in order to prove? A. In order to get a proof they must necessarily appear in there.

40 By Mr. Guild: Q. Will you look at those four item return books and see if they were kept by you? A. In almost every instance the day's busi-

William J. Thompson—Direct

ness was entered by me, yes, sir, with a few exceptions.

Mr. Guild: I offer them in evidence.

Mr. Schotland: No objection.

Marked Exhibits S-30, S-31, S-32 and S-33.

Mr. Guild: I understand that the defendant Scarlett will admit on the record that Mr. Scarlett received from the Roseville Trust Company the money on the checks mentioned in the indictment.

Mr. Schotland: No; my offer is that Mr. Scarlett received the moneys represented by the checks mentioned in the indictment. That is the whole bone of contention, whether he received them from the Roseville Trust Company or not.

Mr. Guild: If the Roseville Trust Company didn't advance this money on the checks then there is nothing in the indictment, because that is the basis of the whole indictment.

The Court: You go so far then to admit that Scarlett used and got the benefit of these checks, received the moneys from them and credit for them, either in cash or deposited elsewhere, leaving it for the State to prove that the Roseville Trust Company in turn made those checks good; is that right?

Mr. Schotland: That is it exactly.

Mr. Guild: Then Scarlett had the money on these checks, but is not willing to admit that it is the money of the Roseville Trust Company.

William J. Thompson—Direct

Q. You have before you a book with the figures 34. What is that? A. That is also a return item book.

Q. What book do you say that is? A. That is also a return item book, the same kind of records
10 as are kept in these other books, only this is a larger book.

Q. Is this a continuation of those? A. Yes.

Q. When you say those, do you refer to S-30, S-31, S-32 and S-33? A. Yes, sir.

Q. And the book before you is a continuation of these four smaller books? A. Yes, sir.

Q. Was that book kept by you? A. Most all of the entries had been made in my handwriting up to August 1, 1913, when Mr. Mindnich, took
20 charge of the making of the entries.

Q. From January 21, 1913, up to July 22, 1913, who kept that book? A. All of these books were kept by me with the possible exception of a few days, when somebody else might have made some of the entries or taken it to prove the exchanges.

Q. This is one of the books used in the regular course of business of the bank? A. Yes, sir.

Q. And kept in the regular course of business of the bank? A. Yes, sir.

30 Mr. Guild: I offer it in evidence.

Mr. Schotland: No objection.

Q. Mr. Thompson, you have said that in order to pay the exchanges that were sent up by the Union National Bank to the Roseville Trust Company, the Roseville Trust Company would give its check for the total amount of the exchanges? A. Yes.

Q. On what bank would that check be drawn?
40 A. On the Union National Bank, their own bank.

William J. Thompson—Direct

Q. Did the Roseville Trust Company have funds there to meet those checks always? A. I presume they did; they were all paid.

By the Court: Q. How would you pay them, by drawing a Roseville Trust Company treasurer's check to the Union National Bank? A. No, the Union Bank would charge us and we would simply make out a check on the Union National Bank to act as a substitute for that charge. They wanted something to show an officer's signature. 10

Q. They draw a check, however, on your account in the Union National Bank? A. They simply charge our account and we draw a check on our account in the Union National Bank.

By Mr. Guild: Q. I show you another book marked receiving teller's proof book, Roseville Trust Company, and ask you what that is? A. That is just what the name implies, it is the receiving teller's proof; it is a proof of the receiving teller. 20

Q. Kept by whom? A. By the receiving teller.

Q. I show you a book saying "Receiving teller's proof," and ask you what that is? A. That is a continuation of the previous book.

By the Court: Q. Practically one book in two volumes? A. Yes, sir. 30

By Mr. Guild: Q. Were they kept by you from July 23, 1912, down to July 2, 1913? A. Not all of the proofs are made in my handwriting; some of them are; up until August 23, 1912; from then on all of the proofs, I would say, are in my handwriting.

Q. Were those books kept in the regular course of business? A. They were, yes, sir. 40

William J. Thompson—Cross

Q. And used in connection with the bank's every day affairs? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. Schotland: No objection.

10 The books referred to are marked Exhibit it is S-35 and Exhibit S-36.

CROSS-EXAMINATION by Mr. Schotland:

Q. Mr. Thompson, you are one that is mentioned in the indictment in this case? A. Yes, sir.

Q. You are the one indicted in connection with these transactions mentioned in the indictment? A. Yes, sir.

20 Q. Did you enter into any conspiracy with Mr. Scarlett or anyone else to defraud the bank?

Mr. Guild: I object to that as not cross-examination.

The Court: It is not cross-examination, and it calls for a conclusion of the witness. That is what the jury is here to determine, whether there is any conspiracy on the part of Mr. Scarlett. Objection sustained.

30 Defendant's Counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

(Seal) H. V. OSBORNE,
Judge.

Q. Did you make any arrangements with Mr. Scarlett or with anybody else in connection with Mr. Scarlett to defraud the Roseville Trust Company of any of its funds?

40 Objected to. Objection sustained.
Defendant's Counsel prays an exception

William J. Thompson—Cross

to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

Q. You say you were the bookkeeper until August 1, 1913? A. No, I was bookkeeper until some time in July or August, 1912; I was receiving teller from that time on. 10

Q. You talk about drawing a check for the exchanges. Did you draw that check? A. I have drawn such checks, yes, drawn one each and every day, you know.

Q. And do you draw such checks for all the exchanges, whether the checks are good or not? A. Yes, sir.

The Court: Do you mean the checks embraced in these exchanges? 20

Mr. Schotland: Yes.

Q. What did you do at that time in cases where some of your depositors had issued checks when they didn't have any funds in the bank and those checks came in as part of the exchange? A. Why, we would send them back to the bank.

By the Court: Q. In the first place, would you pay them? A. No, sir.

Q. Would you pay the exchange bank? A. Yes, that "no good" check would be included in the check that we gave the Union National Bank. 30

Q. Would you pay it and look to your depositor? A. No, we would pay it and then look to the bank who had received the check the day previous as a deposit or cash, we would send a check to them and get the cash for it, the cash for the amount of the check.

By Mr. Schotland: Q. Suppose Mr. Scarlett— 40

William J. Thompson—Cross

take for instance the first check here No. 1—suppose Mr. Scarlett, on July 23, 1912, drew a check on the Roseville Trust Company for \$500 and when it came in in the next day's exchange you would receive that as the receiving teller, wouldn't you?

10 A. Yes.

Q. Now, in drawing up the checks to the Union National Bank for the total of the check included in the exchange, would you pay his \$500, whether the check was good or not? A. Yes.

Q. And then what would you do? A. With the average "no good" check, just as I say, I would return the check to the bank from which the Union National Bank had received it.

Q. Would you return it direct to that bank?

20 A. Direct to that bank, yes, sir.

By the Court: Q. That is to say, the bank the check was drawn on? A. No, all these checks are drawn on us. The bank which had consummated the first transaction. I will illustrate with that check, if it is an exchange check, I will show you what I mean by sending it back to the bank. The Federal Trust Company received the check on July 24th, the day before, and we paid the Union National Bank for this check, with others of course, and this check being not good ordinarily
30 would be returned to the Federal Trust Company and from them we would receive the face value of the check.

By Mr. Schotland: Q. Then in the course of your business, if this check for \$500 came into the bank, you paid the Union National Bank that \$500, and then you went to Mr. Scarlett's account, if you found that he didn't have \$500 to his credit, would you return that check to the Federal
40

William J. Thompson—Cross

Trust Company, which is the bank that had sent it to the Union National Bank, and get back from the Federal Trust Company the \$500 that you had paid the Union National Bank? A. That would be it in the ordinary case.

Q. That wouldn't be the case in the case of a certified check? A. Yes. The bank is already obligated to pay the check. 10

Q. But in the ordinary case that would be the case? A. Yes.

By the Court: Q. I do not understand why a check drawn on your bank by one of your depositors, you send it, as you say, to the Federal Trust Company and get the money from them? A. Yes.

Q. Why should they pay it—it is drawn on your bank? A. No, it is pretty hard to understand. 20
I think for a time we did return the check to the Union National Bank, "no good" checks, or the checks being returned for any reason, we did return it to them, but it got so, of course, with the increase of business the return items increased also, and they refused to collect, it was just simply a case of we returning them in the bulk to them, and then they sending their messenger to the other banks, and they asked us to do it. Of 30
course, every other bank collects their own return items, checks which have been returned for various reasons, they do the collecting on them, they get the money from the other bank, the bank from which the check originated—that is the bank who either cashed the check in the first place, or had it deposited in their institution, they pay us for the check either in cash or in a check. 40

William J. Thompson—Cross

Mr. Guild: I don't know whether he has answered your Honor's question as to why they should do it.

Q. I do not see why, when a check is drawn on your bank, you do not collect it yourself? Why do you send it to the Federal Trust Company? A. No, because he is not good for it; we hold the bank. You see we have no connection—

Q. Why do you hold the Federal Trust Company? A. Because it was their depositor that got the money on it, in the first place, and they in turn hold their depositor responsible for the person who cashed it in their bank. We know nothing of their customer, our customer not being good and his check being returned for some reason or other, we naturally hold the bank.

Q. Won't that come back to you? A. If the reasons have been overcome it may come over the course again, but that completes its first round of experience.

By Mr. Schotland: Q. Mr. Thompson, did you make any arrangement with Mr. Scarlett, alone or with others in connection with Mr. Scarlett, to honor checks drawn by him on the bank whether or not he had the funds there?

Mr. Guild: Objected to.

The Court: He has not been asked anything about that on direct-examination. The objection is sustained on the ground that it is not cross-examination of this witness. All this witness has done is to identify certain books.

Mr. Schotland: This witness is a defendant; he has been jointly indicted with the defendant in this alleged conspiracy;

William J. Thompson—Cross

he has testified on direct-examination to his duties, to his books, to the entries that he made. I am cross-examining him as to whether he acted any differently in connection with this defendant than he did in accordance with his duties as he testified on direct-examination. I submit that is proper cross-examination, considering his position in the case, as well as his testimony on direct. 10

The Court: I did not understand that was the question you asked. That may have been what you wanted to adduce by the question you asked him.

Mr. Schotland: That is what I want to ascertain, and I was going about it in a most indirect way instead of leading up to it. 20

The Court: The objection is sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,

(Seal)

Judge.

Q. Did you treat the John B. Scarlett account any different than any other account as the receiving teller of the Roseville Trust Company? 30

Mr. Guild: I haven't asked him anything about how he treated the account. I have asked him only to identify these books.

The Court: I think that is as far as the direct-examination went. 40

William J. Thompson—Cross

Mr. Schotland: I submit that his examination went further than identifying these books. It went to the extent of his duties, how he made entries and what these entries represented and what the method of doing business was.

10

The Court: Generally, for the purpose of outlining to counsel and jury as to banking procedure. That was, I think, as far as the direct was concerned, merely for the purpose of showing the nature of the exhibits, amplified somewhat by your cross-examination. But he has not been asked anything about the treatment of the specific amount. This evidence may all be competent at a proper time, either upon a further examination of this witness at a later stage of the proceedings, or by making him your own witness. I will sustain the objection.

20

Defendant's Counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

Judge.

30

Q. Mr. Thompson, you say that you kept the Exhibits 30, 31, 32, 33 and 34, the return exchange books? A. As a general rule yes, sir.

Q. What did you do with the return checks that you received and which you entered in these books? A. I did various things with them.

Q. What were the various things? A. Why, the checks returned for insufficient funds, the
40 checks returned for signature and the checks re-

William J. Thompson—Cross

turned for endorsement or for any such reasons as those were sent back to the bank from which they had started and we received the money in return for them.

Q. You made the entries in these books of the checks which you sent back? A. Made the entries of all checks which we sent back and other we held in the bank. 10

Q. Where did you get the information from as to whether the check was good or not, whether to send it back or not? A. The bookkeeper; the bookkeeper would get the exchanges—I would see the exchanges when they came into the bank and then they would go to the bookkeeper in bulk; he would go through them, in the first place, for endorsement, and if any of the endorsements were incorrect those checks would be turned back, and then, when charging the checks upon the ledger, you could ascertain whether the account was good for the face value of the check or not; if it was not good, he would return that to me, and therefore by the time he got finished posting the exchanges I had all the checks returned to me which were no good on the ledger, he couldn't charge them up on the ledger because of insufficient balance, so he returned them to me. 20

Q. Between July, 1912, and July, 1913, did you have charge of the ledger? A. No, I did not. 30

Q. Between those dates you had no personal knowledge of the status of any depositor's account? A. Yes, I did, a general personal knowledge of most all the accounts.

Q. How did you get that? A. In the course of business, one naturally has to have a knowledge 40

William J. Thompson—Cross

of the account; if you are in the capacity or receiving or paying teller, you had a general knowledge of the account; you can't tell exactly what the balance is, but you can tell what the general condition of the account is.

10 Q. And you would have to do that frequently?
A. Frequent in some cases and not frequent in others, depending on whether the account was active or inactive.

Q. Did you in the capacity of receiving teller treat the account of John B. Scarlett different than any other accounts?

Objected to.

Objection withdrawn.

A. I did, yes.

20 Q. When did you treat it differently? A. From the time I acted in the capacity of receiving teller.

Q. And that is from about August 1, 1912? A. I should say before that I acted intermittently as receiving teller, before that, Saturday morning and different times, but I took charge of the receiving teller's desk from August 13, 1912, right up to August 13, 1913.

30 Q. In what way did you treat the account differently? A. All checks returned back to me by the bookkeeper signed by John B. Scarlett were referred to Mr. Smith to get instructions on them.

Q. Mr. Smith was what? A. Secretary-treasurer.

Q. And your superior officer in the bank? A. Yes, sir.

Q. You referred them to him? A. Yes.

40 Q. And then did you continue in charge of them or did he take charge of them? A. I continued in charge of them for one day, that day.

William J. Thompson—Cross

Q. What did you do with them on that day?
A. Turned them over to the paying teller.

Q. Under whose instructions? A. General course of business; no instructions necessary in that case.

By the Court: Q. The receiving teller only holds his items one day? A. Yes, sir. 10

Q. And in the course of business they are turned over to the paying teller? A. Yes, sir.

By Mr. Schotland: Q. Did you ever talk to Scarlett of the fact that you did that?

Objected to as not cross-examination.
Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly. 20

H. V. OSBORNE,

(Seal) Judge.

Q. Did you ever talk to Mr. Scarlett at all about his account or any of the checks that were drawn against his account?

Objected to.
Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly. 30

H. V. OSBORNE,

(Seal) Judge.

Q. Do you know what was done with the checks when you referred them to Mr. Smith? A. Yes.

Q. What was done with them? A. Paid, invariably.

Q. Who paid them? A. The Roseville Trust Company. 40

William J. Thompson—Cross

Q. How do you know? A. Because they went through the accounts as Roseville Trust Company liabilities.

10 Q. What accounts did they go to? A. The general account; they appeared in the receiving teller's proof among other checks which were held for that day; they went through the books generally as Roseville Trust Company items.

Q. You kept the individual ledger of Mr. Scarlett's account, you say? A. I did, yes, sir.

Q. Are the entries there correct? A. As far as I know, they are absolutely correct.

Q. All the entries? A. All the entries are absolutely correct, as far as I know.

20 Q. You don't know whether those checks that were paid after the bookkeeper reported to you insufficient funds were entered on Scarlett's account? A. I don't know as some of them were entered; some of them were and some were not, I believe.

Q. Is that account correct? A. The account—I don't know whether the account is correct or not, but I know the entries entered are correct, as far as I know.

30 The Court: His answer was confined to the entries that were already in the account.

Q. Are all the entries that should be there there? A. I wouldn't say they were, no, sir.

Q. Who should have made the entries that are missing? A. Well, the actual entry should have been made by the bookkeeper.

40 Q. Well, you were the bookkeeper at the time that entries that should have been made are not there? A. There may be some of these checks

William J. Thompson—Cross

that you mentioned that were held out that came in the bank during the time I was bookkeeper, but that does not signify that the bookkeeper should have made the entries, but if the bookkeeper doesn't get the entries to make he cannot make them. He makes all entries if he receives the data. 10

Q. Could those checks have been paid or taken out without cash being substituted for them? A. No, I wouldn't say they could be cashed or the equivalent of cash.

Q. Cash or equivalent of cash be substituted in order to keep the receiving teller and paying teller's account straight? A. Yes, sir.

Q. And that was what was done in this case, you think? 20

Mr. Guild: He has not said any such thing.

A. Why, I don't know anything about the checks, what was substituted for them, how they were taken out of the cash, or anything about the checks whatsoever. I hold them one day—I acted in the capacity of receiving teller—I hold them one day, they appear in the receiving teller's proof, and I turned them over to the paying teller, and they were held there for how long I don't know, for some period of time, but whether they were taken out I don't know, or what they were taken out with either I don't know. After they left my desk I have no knowledge of them whatsoever. 30

By Mr. Guild: Q. Your attention was called to a check of John B. Scarlett's for \$500, Exhibit S-1, and you explained how, when the check came in, check drawn on the Roseville Trust Company 40

Raymond E. Smith—Direct

came in as not good, it would be sent back to the bank that originally received it in deposit, and that you said in the case of this check, Exhibit S-1, that it would have gone back to the Federal Trust Company and the Roseville Trust Company would have collected from that institution. I ask you whether that check ever did go back to the Federal Trust Company for that purpose?
 10 A. No.

Mr. Schotland: I object to that as not re-direct-examination.

The Court: He said that would not be true with a certified check. It appears from an examination of this exhibit that it was certified, and it therefore did not happen in this case.
 20

Mr. Guild: Mr. Schotland asked a question of this witness, and I objected, and that is the question, whether he had ever had any talk with Mr. Scarlett about Scarlett's account, dealings with the bank; that is my recollection of the question. I withdraw the objection and desire to have the question answered.

Mr. Schotland: Do you want me to renew my question?
 30

Mr. Guild: Yes.

Witness: The question as to whether I had any talk with Mr. Scarlett in reference to his account? I did not, no.

RAYMOND E. SMITH sworn in behalf of the State:

40 Direct-examination by Mr. Guild:

Raymond E. Smith—Direct

Q. Mr. Smith, are you the Raymond E. Smith mentioned in this indictment? A. Yes, sir.

Q. And you entered a plea of guilty to that charge? A. A plea of non vult.

Q. You were formerly connected with the Roseville Trust Company? A. I was. 10

Q. In what capacity? A. Secretary-treasurer.

Q. From what date? A. From the date of its inception, December 1, 1908, until August 13, 1913.

Q. And the bank closed down on that date? A. On the day after, yes, sir, the day following.

Q. Occupying the position which you did there, were you familiar with the affairs of the bank generally? A. Yes, sir.

Q. Were you familiar with the book used by the institution? A. I was. 20

Q. Was the defendant John B. Scarlett a depositor in that institution? A. Yes, sir.

Q. Was he a director? A. He was.

Q. From what time to what time? A. From December 1, 1908, until the bank was thrown in liquidation.

Q. Then he was one of the original directors? A. Yes, sir.

Q. Who kept the minutes of the meetings of the board of directors? A. The secretary-treasurer, myself. 30

Q. Who kept the minutes of the meetings of the stockholders? A. The secretary.

Q. Which was yourself? A. Yes, sir.

Q. I show you a book and ask you what it is? A. That is the minute book of the Roseville Trust Company.

Q. And containing minutes of what meeting?

A. Minutes of stockholders' meetings, board of 40

Raymond E. Smith—Direct

directors' meetings and also executive committee meetings.

Q. Will you turn to the minutes showing the election of the original board of directors? A. (Indicating.) Yes, sir, I have it here.

10 Q. Under what date was that meeting held? A. Held November 20, 1908.

Mr. Guild: I understand that counsel for Mr. Scarlett is willing to admit that Mr. Scarlett was a director of this institution from the date of its organization, the election of the first board of directors, down to February 3, 1913.

Mr. Schotland: Or to that last annual meeting, if it was December 12th, then it is up to that time.

20 Q. The annual meeting was when? A. The annual meeting of that year would be the second Tuesday in January.

Q. Prior to the last one which was actually held? A. December of 1912, regular meeting of the board of directors.

Q. No, meeting of the stockholders. They elected the directors, didn't they? A. Yes, sir; that was the second Tuesday in January, 1913.

30 Mr. Guild: Will you admit that he was a director up to that time?

Mr. Schotland: Yes.

Q. Will you turn to your minutes of the meeting of January 13th. A. I have the minutes of the annual meeting of the stockholders of the Roseville Trust Company held January 14, 1913, at which meeting the following directors were elected: William J. Banister, J. R. Banister, W. T. Benjamin, J. S. Bell, E. D. Dunn, William Fair-

40

Raymond E. Smith—Direct

lie, H. W. Foster, W. Keim, Frederick Kilgus, George E. Krug, Charles C. Lurich, C. F. McCord, Harvey Mott, G. Rowland Munroe, William P. Odell, John B. Scarlett, E. K. Sexton, R. E. Smith, W. W. Woodward.

Q. Those minutes were kept by you? A. Yes, 10
sir.

At one o'clock, p. m., the Court took a recess of one hour.

After recess.

RAYMOND E. SMITH resumes the stand: 20

Direct-examination by Mr. Guild (continued):

Q. You have stated that Mr. Scarlett continued a director up to the liquidation of the bank? A. Yes, sir.

Mr. Guild: I desire to put in evidence the oath of Mr. Scarlett as director of the Roseville Trust Company, sworn to under date of February 3, 1913, together with a letter which accompanied the affidavit when it was sent to the Roseville Trust Company. 30

Mr. Schotland: I object to it on the ground that it is incompetent and immaterial to the issues in this indictment. The indictment does not allege as a director, in his official capacity.

The Court: Is the fact that Mr. Scarlett was a director one of the elements of this offense? 40

Raymond E. Smith—Direct

10 Mr. Guild: No, sir, but the indictment charges that he was a director at the time of these alleged offenses, and it is a material feature, and we desire to show by this affidavit that he accepted the election recited in the minutes, that he was elected; that does not necessarily qualify him.

Mr. Schotland: The indictment says as a depositor.

20 The Court: It is in the indictment. In any event, if it is not material it is descriptive of his relations with the company, and having alleged it in the indictment, although it is not necessary, it is mere surplusage. If it is descriptive matter it may be proven.

Mr. Schotland: Where the indictment charges the conspiracy in the language that this indictment does, making the gravamen of the offense and the overt acts under the statute that as a depositor he drew out the money, not in his official capacity as a director, for that reason I submit that the oath, or anything connected with that, is incompetent in this issue.

30 The Court: I think it may be material as showing the relations between the parties, if for nothing else; it is descriptive of his relations with the institution, and I think it is competent, if it is properly proved. This is not in the shape of an offer; it is a question whether you will admit it.

40 Mr. Schotland: My objection is that it is not material. As far as the signatures are concerned, I don't object.

Raymond E. Smith—Direct

The Court: You do not raise any technical objection as to its proof?

Mr. Schotland: No.

The Court: The defendant objects to it on the ground that it is incompetent, and the objection is overruled and an exception allowed. 10

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,

Judge.

(Seal)

Marked Exhibit S-37.

Q. I show you what purports to be the oath of John B. Scarlett as director of the Roseville Trust Company and ask you when you first saw that, or on or about what time? A. I received it from Mr. Scarlett on February 3d. 20

The letter referred to is offered in evidence and marked Exhibit S-38.

Q. I show you a letter dated Newark, N. J., February 3, 1913, and ask you whether the letter accompanied the affidavit? A. Yes, sir; it did.

Q. Following the receipt of the oath what did you do with it? A. I sent it to Trenton, to the Commissioner of Banking & Insurance, to be filed. 30

Mr. Guild: Will you concede that it was filed?

Mr. Schotland: I am not raising any technical objections of that kind at all.

Mr. Guild: It is admitted that it was sent to the Commissioner of Banking & Insurance and stamped, filed February 5, 1913.

Q. How long had you known Mr. Scarlett, if at all, before the Roseville Trust Company closed 40

Raymond E. Smith—Direct

its business? A. A few months prior to the time we opened the institution.

Q. He was a depositor of the Roseville Trust Company? A. Yes, sir.

10 Q. I show you two books, one of them bearing date July 17, 1912, to September 6, 1912, and the other September 7, 1910, to October 21, 1912, and ask you what books they are? A. Those are the return item books used in the proof of exchanges, daily exchanges.

Q. They constituted part of your system of books showing the transactions of the bank? A. Yes, sir.

20 Q. Will you look at that, please, and see in whose handwriting the entries are? A. Mostly in Mr. Thompson's and Mr. Jennings', the teller's handwriting.

Q. Will you look under date of July 23, 1912, and see on that date who kept the book? A. Mr. Jennings.

Q. July 25, 1912? A. That was also in Mr. Jennings's handwriting.

Q. September 16, 1912? A. Mr. Jennings' handwriting.

30 Mr. Guild: Mr. Jennings does not happen to be here. He has been subpoenaed. I can call him later.

The Court: As I understand it, these books have been identified as a part of the records of this bank, under this witness's supervision and they would be competent no matter whose handwriting they are in. That being so, I think the witness can read into the record anything from those exhibits that you wish to have read.

40

Raymond E. Smith—Cross

Mr. Schotland: Before they are offered in evidence I would like to cross-examine on this offer.

Mr. Guild: I offer the book.

The Court: Are they the same type of books that have already been admitted?

Witness: Yes.

10

The Court: The same series?

Witness: Yes.

CROSS-EXAMINATION by Mr. Schotland:

Q. Mr. Smith, have you any personal knowledge as to the contents of these books—by that I mean, have you personal knowledge of the subject-matter of the entries? A. Some of the contents of the books I personally know of, yes, sir.

20

Q. What proportion? A. I couldn't tell you just what proportion.

Q. Have you any personal knowledge of anything in here referring to the John B. Scarlett account? A. Yes, sir.

Q. Have you personal knowledge of all such items? A. I think not, not—you mean by personal knowledge, that I know all about them without referring to the book, I suppose?

Q. No. I mean if there is an entry in here showing a check drawn by John B. Scarlett on his account in the Roseville Trust Company, returned on a certain day, which you know, from having come into personal contact with that check, what that entry was about? A. Pretty apt to know, yes, sir.

30

The Court: Assuming that he had come in contact with that particular check.

Mr. Schotland: I want to find out if he

40

Raymond E. Smith—Re-direct

did come in contact with all the personal items that may be entered in these books.

Witness: I think I did. You mean at the time of their presentation for payment?

Q. Yes. A. I think they were all referred to me.

10 Q. Then any entries that would appear in any one of these two books in connection with the John B. Scarlett account you had personal knowledge of at the time the entries were made, whether they were made by you or any subordinate in the bank?

A. Yes, sir.

Mr. Schotland: I haven't any objection to the book.

20 The books referred to are offered in evidence and marked Exhibits S-39 and S-40 respectively.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. I show you Exhibit S-1, being John B. Scarlett's check No. 34 for \$500, dated July 23, 1912, drawn on the Roseville Trust Company; that check is certified, is it not? A. It is.

Q. By whom? A. By myself as treasurer.

30 Q. On that day was John B. Scarlett's account good for that check? A. May I see the ledger? (After examining book.) No, sir, it was not.

Q. What was the date of his account on that date? A. July 23, 1912, the balance on the ledger was \$126.30.

40 Q. Now, can you tell us from the endorsements on that check what course it took back to get to the Roseville Trust Company or what use was made of it? A. The check came to us through the exchanges.

Raymond E. Smith—Re-direct

Q. To whom is the check payable? A. The check is payable to John B. Scarlett.

Q. How is it endorsed? A. Endorsed "Pay to the order of John McGee, John B. Scarlett."

Q. Do you know who John McGee is? A. No, sir, I do not.

Q. How did it get back to the Roseville Trust Company? A. It came through the exchanges of the following day, the 24th or 25th, I think it was. 10

Q. Is there anything to indicate what banks it passed through? A. Federal Trust Company stamp of the 24th of July, 1912. That is the only bank stamp on the back.

Q. When did it get back to the Roseville Trust Company? A. I think on the 26th.

Q. Have you any record to which you can refer to a certain date? A. Yes, sir, the return item book would show it, I think. 20

Q. What book are you referring to?

A book is shown witness and offered in evidence and marked Exhibit S-40.

A. On the 25th of July there is a certified check of \$500 listed in this return item book.

Q. How do you identify that as this check? A. It is simply marked, "Certified, \$500."

Q. Did any other certified check of that amount come in on that date? A. I think not; there are no others here for that amount. All of the certified checks would be listed in this book. 30

Q. And there is only one entry there of that amount and under that date? A. The only certified check, yes, sir, of \$500.

Q. Do you remember this check particularly coming back? A. I remember it having come back, yes, sir. 40

Raymond E. Smith—Re-direct

Q. When it came back to whom was it first presented at the Roseville Trust Company? A. It first came back to the receiving teller; that is, whoever had charge of the exchanges at that time.

10 Q. What did he do with it? A. He put it in the exchange proof as an out, as all the certified checks are listed in the exchange book, which is the return item book.

Q. What did he do with the check himself? A. The check was included in his cash item of that afternoon's work, that day's work.

Q. Have you any book in which that transaction appears? A. It should show in his proof book.

20 Q. Will you refer to it and see if it does appear there? A. The check does not show—it is not listed separately. All of the cash items of that day are bulked.

Q. Can you demonstrate in any way that it was included in that bulk of figures you speak of? A. There were two items in the teller's items that day; the \$500 no doubt is listed in this 644.

30 Q. Is there anything else that appears by your book, \$500, that could have been listed in that book? A. Yes, sir; there is another item on that day, but not a certified check; it is a return item which does not show, whose it is, but it could be traced.

Q. It is not a certified check? A. No, sir.

Q. This check came up to you in the exchange of the Union National Bank; I understood from Mr. Thompson, that that was your system? A. Yes, sir.

Q. The Roseville Trust Company, Mr. Thompson stated, gave its check to the Union National Bank for the amount due it in the exchanges?

40 A. Yes, for the total amount.

Raymond E. Smith—Re-direct

Q. Can you give us the date and the amount of that check? A. Yes, sir; I think I can. On December 25, 1912, the total amount of the exchanges was \$25,346.40.

Q. Can you inform us of what that total was made up, the amount of that check? A. This total was made up of checks paid regularly, that is, charged to the individual account as they came in on both the A to L and M to Z cash book and checks held out for any reason whatever— 10

Q. Mr. Smith, I want you to demonstrate to the Court and jury if you can that that \$500 check was included in the check to the Union National Bank.

The Court. Is the purpose of this to show that it was paid? 20

Mr. Guild. Yes.

Q. I want to know whether the Roseville Trust Company paid the amount of that check to the Union National Bank? A. Yes, sir.

By The Court. Q. What is there in your book to show that? A. This \$500 check was sent to us in the amount of exchanges, \$25,346.40, and that was made up of checks that were paid regularly, that is, that were good and paid the day they came in on both ledgers A to L and M to Z, and checks that were certified, if there were any included in this list, we listed in this return item book as well as any other checks or items that were included in these exchanges that were also listed in this return item book. 30

By Mr. Guild. Q. You say in this case this check wasn't good when it came back? A. The check was certified, that is the reason it was held out. 40

Raymond E. Smith—Re-direct

Q. Do you mean Mr Scarlett's account wasn't good for it? A. The day it was certified?

Q. Yes. A. No, sir.

Q. Was it good the day it came in in the exchanges? A. No, sir.

10 Q. What was his balance on that date? A. \$126.30, the same as the day before.

Q. Was that check retained by the Roseville Trust Company or by you? A. It was, yes, sir.

Q. You say it was turned over by the receiving teller to the paying teller? A. Yes, sir, the paying teller got it the next day.

Q. Then what became of it? A. The paying teller held it in his cash.

20 Q. For how long? A. I can't tell exactly how long he held it.

Q. Then what became of it? A. I took it out of his cash someway or other.

Q. Did Mr. Scarlett ever make it good? A. No, sir.

Q. How did you come to certify that check if his account wasn't good for it? A. Mr. Scarlett asked me to certify it and I did so at his request.

30 Q. To your knowledge, did he or not know that his account was not good for the amount of that check? A. He did know, I believe, that the account was not good for the check.

Q. After you took the check out of the paying teller's drawer can you say when and how you did it? A. No, sir.

Q. What did you do with it? A. It was on my desk.

40 Q. In your desk or on your desk? A. In my desk.

Raymond E. Smith—Re-direct

Q. How long did it remain there? A. Until the examination of the bank on the 13th or 14th of August.

Q. What year? A. 1913.

Q. That was the time of the failure of the bank?
A. Yes, sir.

Q. And you say that during all this time that check was not made good by Mr. Scarlett? A. No, sir. 10

Q. I show you Exhibit S2, being a check signed by John B. Scarlett, drawn on the Roseville Trust Company, for \$1247.76 to the order of John H. Stanley, tax collector, certified September 13, 1913. Do you remember certifying that check?
A. No, sir.

Q. Who did certify it? A. Mr. Thompson. 20

Q. At whose direction? A. At my direction.

Q. Was Scarlett's account good for that check the day you certified it? A. No, sir, it was not.

Q. What was his balance that day? A. \$1.30.

Q. Was that check ever charged against his account? A. No, sir.

Q. Why not? A. The check wasn't good at any time after it was issued.

Q. Will you please give the Court and jury the history of that check at it appears from the records of the trust company? A. The check was certified by teller on September 13th. 30

Q. That was the date of the check? A. Yes, sir, and was given to H. J. Stanley, collector, used in the Irvington National Bank, and came to us through the Merchants National Bank and Union Bank on September 16th. The check was included in the Union National Bank exchanges of \$37,694.84; the check was treated exactly as the 40

Raymond E. Smith—Re-direct

other check was, because it was a certified check, treated as an out.

Q. Does the item appear in the return item book? A. Yes, sir.

Q. The amount? A. \$1247.76.

10 Q. The check was paid by the Roseville Trust Company when? A. It was presented on the 16th of September, 1912.

Q. You say it wasn't charged against Mr. Scarlett's account because all he had in his balance was \$1.30. You said \$1.30. Are you correct about that? A. Yes.

Q. And you have said that the check was never charged to his account, or was it, as a matter of fact? A. No, sir, it never has been charged to
20 Mr. Scarlett's account.

Q. For what reason? A. The check wasn't good on the ledger.

Q. That is a banking man's way of expressing it? A. It was no good.

Q. Was it ever charged to him on the ledger? A. No, sir.

Q. When it came back at the time what was done with it, did it take the same course as the \$500 check? A. No, sir; this check was paid
30 and—

Q. I am speaking of the check itself? A. I would like to refer to the general cash book of that date, September 16, 1912.

Mr. Schotland. That has not been offered in evidence, but I will consent to its being used.

By the Court: Q. You say it is one of the books of the bank? A. Yes, sir.

40 Q. And is a part of the system you had in the

Raymond E. Smith—Re-direct

bank? A. Yes. This check was held over in the receiving teller's cash, turned over to the paying teller next morning.

By Mr. Guild: Q. And then what became of it? A. Then it was taken out of the paying teller's cash.

Q. By whom? A. By myself. 10

Q. You mean you simply went there and took it out? A. No, sir, I gave the paying teller a charge for it.

Q. Then what did you do with the check? A. The check was in my desk since then, ever since then.

Q. You mean up to the time that the bank closed? A. Yes, sir.

Q. After that you don't know what became of it except as you find it here? A. No. 20

Q. I show you Exhibit S3, check dated January 21, 1913, signed by John B. Scarlett for \$82, drawn to the Clinton Hill B. & L. Association, \$82. It is certified. By whom? A. Certified by Mr. Jennings, the teller.

Q. On what date? A. February 5, 1913.

Q. Will you give us the history of that check, where it went, as far as the endorsements go? A. The check was given to the Clinton Hill Building & Loan Association for \$82, certified on the 5th of February, 1913, and came to us for final payment on February 18, 1913. 30

Q. Does it show an endorsement by the building and loan association? A. Yes, sir, the Clinton Hill Building & Loan Association, William M. Berry, treasurer, and the National Newark Banking Company.

Q. Does that seem to be where it was deposited? 40

Raymond E. Smith—Re-direct

A. Yes, sir; it was payable to the building and loan association.

Q. And the check came back in the exchanges?

A. On the 18th of February, I think.

10 Q. Well, see if you find a record of it coming back in your return item book, see if you can find it under the date of the 19th? A. Yes, sir; I have it under date of February 19th, there is a certified check in the return item book for \$82.

Q. Is there any other item there for that amount on that day? A. No, sir.

Q. Did the Roseville Trust Company pay the amount of that check in the Union National Bank?

A. Yes, sir; they did; the amount of the exchanges that day was \$25,339.87.

20 Q. Did it include this item of \$82? A. It did, yes, sir.

Q. On the day the check was certified was it charged to Mr. Scarlett's account? A. It was not.

Q. Why not? A. The check wasn't good.

Q. What was his balance that day? A. \$1.30.

Q. When the check came back in the exchanges on the 19th was it charged to his account? A. No, sir.

30 Q. Why not? A. It was not good.

Q. What was the amount of his balance? A. \$1.30.

Q. Tell us what course this check took from the date of the check until the bank closed? A. That check was held over in the receiving teller's cash on the 19th of February, 1913, the day it was honored in the exchanges, and was later turned over to the paying teller and then taken up with the
40 paying teller's cash by myself and held in box 55.

Raymond E. Smith—Re-direct

Q. What is box 55? A. Safe deposit box in the Roseville Trust Company.

Q. Belonging to the trust company? A. Yes, sir.

Q. And what character of items did you keep there? A. Oh, there were a great many checks there that had been paid irregularly, mostly checks; some notes. 10

Q. You say have been paid irregularly; you mean of this character? A. Yes, sir.

Q. And was this last check you have been speaking of in box 55 when the bank closed down? A. Yes, sir.

Q. You didn't see it again until it was presented here today unless you may have seen it going over this matter in the prosecutor's office? A. I didn't see it until very recently. 20

Q. I show you a check signed John B. Scarlett, being Exhibit S4, dated January 21, 1913, drawn on the Roseville Trust Company to the order of K. of P. B. & L. Association for \$2000; that check is not certified? A. No, sir; it is not.

Q. From the endorsement can you tell us what use was made of it before it came back to the Roseville Trust Company, if it did come back? A. The check was given to the K. of P. Building Association for \$26 on the 21st day of January, and came through to us in the exchanges on the following day, I believe. 30

Q. Look at the 23d. A. Yes, sir, I have it; on the 23d it came to us, on the 23d of January, 1913, in the exchanges from the Union National Bank, the total of which was \$42,231.57.

Q. And that you say included this check for \$26? A. Yes, sir. 40

Raymond E. Smith—Re-direct

Q. Was it charged to Mr. Scarlett's account?

A. It was not, no, sir.

Q. Why not? A. The account was not good for it.

10 Q. Tell us what his account was? A. The check was not charged to his account because it wasn't good.

Q. What was the amount of his balance? A. \$1.30.

Q. That check is not certified? A. No, sir.

Q. And you say that the Roseville Trust Company has paid it? A. Yes, sir; paid it in the exchanges of the 23d of January, 1913.

Q. That is what you say indicates and shows that the Roseville Trust Company has paid it?

20 A. Yes, sir.

Q. That was deposited by the building and loan association in the National Newark Banking Company, and then it went to the Union National Bank, and the Roseville Trust Company included it in the amount of its check to the Union National Bank? A. Yes, sir.

30 Q. What became of that check? A. The check was held over in the receiving teller's cash and then turned over to the paying teller, who got it the following morning, and then later taken out of the cash by myself.

Q. What else did you do with it? A. It was finally put in box 55.

Q. And was there when the bank closed? A. Yes, sir.

Q. I want to take you back to Exhibit S-3, which is the check for \$82, to the Clinton Hill Building & Loan Association, certified, you say, by Jennings. What was Mr. Jennings's position? A. Paying teller.

Raymond E. Smith—Re-direct

Q. Did he have authority to certify checks? A. He did, yes, sir.

Q. You have stated that Scarlett's account was not good for the amount of that check on the day it was certified? A. No, sir; it was not good.

Q. Did you or did you not give any special directions to Jennings about certifying? A. I told him to certify it, I believe. 10

Q. In the face of the fact that Scarlett's account was not good for the check, why did you certify it or have it certified? A. At Mr. Scarlett's request.

Q. I show you check, so as to make certain of it, I will go back to S-2, which is the \$1247.76 check, which is certified by Thompson. Were you requested by anybody to have that check certified? A. Yes, sir; requested by Mr. Scarlett. 20

Q. I show you Exhibit S5, being a check signed by John B. Scarlett, drawn on the Roseville Trust Company for \$50, to the order of Thomas A. Webb Company. That check is certified? A. Yes, sir.

Q. By whom? A. By myself.

Q. Was Scarlett's account good for it the day it was certified? A. No, sir.

Q. What was his balance? A. \$1.30.

By The Court. Q. Referring to S4, which you say was paid by the trust company, which you say was not a certified check, why did you pay it if his account was not good for it? A. I didn't want to send Mr. Scarlett's check back because I knew that it would put him in a very mean position, being a director in the institution, and standing as he did. 30

Mr. Scotland. May I interpose a motion to have that answer stricken out? The 40

Raymond E. Smith—Re-direct

question of the Court was all right and the answer, if it had indicated any arrangement with Mr. Scarlett, or anything, would have been competent, but I submit that the answer shows purely the action of the witness's mind.

10

The Court. If the question was all right you cannot move to strike out the answer. The answer was responsive. You say it does not indicate involving Mr. Scarlett; it merely gives the witnesses' reason for not wanting to inconvenience Mr. Scarlett. It doesn't injure Mr. Scarlett at all. The answer is harmless.

By Mr. Guild. Q. Tell us what course that
20 check took after it was certified. Was it certified by you? A. Yes, sir.

Q. Why did you do it if he only had a balance of \$1.30? A. I certified it at the request of Mr. Scarlett.

Q. What course did the check take? A. The check was used by the Thomas A. Webb Company in the Federal Trust Company on February 1st and came to us in the exchanges probably the following day.

30 Q. Look at February 3d. A. February 3d there is a check listed here, a certified check, \$50.

Q. Is there any other certified check for \$50 on that date? A. No, sir.

Q. You are supposing that is the same check?
A. Yes, sir.

Q. Well, then, what course did it take after that? A. It was paid by a draft on the Union
40 National Bank for a total of \$14,990.92.

Raymond E. Smith—Re-direct

Q. You mean by that this \$50 check was included in that amount? A. Yes, sir, that is what I mean, and was held over by the receiving teller, turned over to the paying teller the following morning, and taken out of the paying teller's cash and put in box 55 by myself. 10

Q. And remained there until the bank closed. In relation to that certification you say Mr. Scarlett asked you to certify it? A. Yes, sir.

Q. Did he know that his account was not good, to his knowledge? A. I believe he did.

Q. I show you a check marked Exhibit S6, John B. Scarlett, drawn on the Roseville Trust Company to the order of Lehigh Valley Railroad Company, \$89.95; is that check certified? A. Yes sir. 20

Q. By whom? A. Certified by myself.

Q. Under what date? A. Date of January 29, 1913.

Q. Was Scarlett's account good for it? A. No, sir; it was not. The balance of \$1.30 was still there.

Q. What course did the check take? A. The check was used by the Lehigh Valley Railroad Company in the E. P. Wilber Trust Company, South Bethlehem Trust Company, Pennsylvania, Philadelphia, and from there it went to Philadelphia, Philadelphia National Bank, and from the Philadelphia to the Union Bank of Newark, and was paid through the exchanges on the 3d of February, 1913. 30

Q. That is what you mean by paid by the Roseville Trust Company? A. Yes, sir, and was included in the same amount as the check of \$50. 40

Raymond E. Smith—Re-direct

Q. That is, the same check took up the \$50 check that you have previously spoken of? A. Yes, sir.

Q. Is that what you mean? A. Yes, sir.

Q. S5. If Scarlett's account was not good on which you certified this check, why did you do it? A. I certified it at Mr. Scarlett's request.

Q. Did he know that his account was not good for it? A. I believe he did, yes, sir.

Q. Has the check ever been charged to his account? A. No, sir.

Q. Has his account been good for that check since the date it was given? A. No, sir; it has not.

Q. Down until the bank closed? A. No, sir.

Q. These checks that you have certified yourself or that Jennings or Thompson certified, you have stated, at your direction when you didn't do it yourself, did you know the time that it was done that Scarlett's account was not good for the amount of the check? A. Yes, sir.

Q. Your bank made it good in the Union by that check you have spoken of in the exchanges? A. Yes, sir.

Q. Then what became of it? A. It was held over in the cash items of that day, receiving teller's items, turned over to the paying teller the following day, and taken out by me later and put in box 55.

Q. And has never been paid by Scarlett, you say? A. No, sir.

Q. I show you S7, check dated February 13, 1913, drawn by John B. Scarlett on the Roseville Trust Company to the order of N. R. Sica for \$125. Have you seen that before? A. Yes, sir.

Raymond E. Smith—Re-direct

Q. Does the check bear the endorsement of the payee? A. Yes, sir; N. R. Sica.

Q. The check is not certified? A. No.

Q. And does not seem to have been used in any other bank? A. No, sir, no bank stamp on it at all.

Q. Was it ever cashed by the Roseville Trust Company? A. It was. 10

Q. Why do you say that? A. I see my initial on the back of it.

Q. Have you any recollection about the transaction? A. The check was cashed by Mr. Jennings, I believe, on the 13th day of February; I authorized him to cash it evidently because my initial is on the back.

Q. Scarlett's account you say was not good for 20 it, that he still had his balance of \$1.30? A. Yes, sir, the same balance.

Q. Had you had any special request from Mr. Scarlett with relation to that check? A. I think Mr. Scarlett called me up on the 'phone and asked me to cash it: I can't remember the exact conversation, but I am sure there was a request to cash the check.

Q. Is there anything on record in the books of the trust company showing that the check was 30 cashed? A. The only record would be in the sundries of the paying teller on that day.

Q. What became of that check? A. This check was put in box 55 also.

Q. And left there? A. And left there.

Q. And was not charged to Mr. Scarlett's account because his balance didn't warrant it? A. Yes, sir, that is the reason.

Raymond E. Smith—Re-direct

Q. And when you paid that check or directed it to be cashed you knew that his balance was only \$1.30? A. Yes, sir; I knew the check was not good.

10 Q. I show you check Exhibit S8, one of Scarlett's checks for \$86.92, payable to the Lehigh Valley Railroad Company, dated February 15, 1913. Was that check certified? A. Yes, sir.

Q. By whom? A. By myself.

Q. Under what date? A. February 15, 1913, the date of certification.

20 Q. What course did that check take? A. That check was given to the Lehigh Valley Railroad Company and deposited by them in the E. P. Wilber Trust Company, South Bethlehem; from there it went to Philadelphia National Bank and then to the National State Bank.

Q. Newark? A. Yes, sir, Newark, and came back to us through the exchanges on the 20th of February, 1913, and it was paid by us to the Union National Bank with a draft of \$21,317.43.

30 Q. What became of the check after that? A. The check was carried as a cash item in the receiving teller's department and turned over to the paying teller, after which it was taken up by myself and put in box 5.

Q. When you say taken up, you mean taken—
A. Taken out of the teller's cash.

Q. Was that ever charged to Mr. Scarlett's account? A. No, sir.

Q. For the reason you before stated? A. Yes, sir; the balance remained as it was.

Q. Has he ever paid it? A. No, sir.

40 Q. I show you Exhibit S9, being check dated

Raymond E. Smith—Re-direct

February 19, 1913, for \$400, payable to himself.

That check was certified? A. Yes, sir; it was.

Q. Under what date? A. February 19, 1913,

Q. Certified by whom? A. By R. E. Smith, treasurer.

Q. That is, yourself? A. Myself, yes, sir. 10

Q. Was Scarlett's account good for it? A. No, sir, it was not good.

Q. The same \$1.30? A. The same balance.

Q. What course did it take? A. The check was certified on that date for \$400, the 19th of February, and made payable on the back to the First National Bank of East Newark, endorsed John B. Scarlett, came to us from the Essex County National Bank in the exchanges of February 20th, received by us on the 20th and held out in 20 the exchange outs, held over by the receiving teller; it was paid with the same draft as the other check for \$86.92; the draft amounts to \$21,317.43.

Q. You mean by that that the check that you gave the Union National Bank in your account with them included this check? A. Yes, sir.

Q. Why did you certify it if his account was not good for it? A. I certified it at Mr. Scarlett's request. 30

Q. Did he know at that time that his account was not good for \$400? A. Yes, I think he did.

Q. Did that check take the same course as the other, and get in box 55? A. Exactly the same course.

Q. I show you Exhibit S20, being a check of John B. Scarlett for \$400, to his own order, Roseville Trust Company check, dated February 21, 40 1913. That check is certified? A. Yes, sir.

Raymond E. Smith—Re-direct

Q. By whom? A. By myself on February 21, 1913.

Q. Was Scarlett's account good for it? A. It was not. The same balance.

Q. \$1.30? A. Yes, sir.

10 Q. Why did you certify it? A. I certified it at Mr. Scarlett's request.

Q. Did he know his account was not good? I believe he did.

Q. What became of the check, how was it used?

A. The check was used by himself in the Broad & Market National Bank and came to us in the exchanges of the 21st of February.

20 Q. Look at the 24th. A. The 24th is right; the 22d was a holiday, and probably the next day was a Sunday. The check was paid by us by giving a draft to the Union National Bank for \$22,085.43 on the 24th of February, 1913.

Q. Did that check eventually get back into box 55 in the same way you testified concerning the others? A. It did.

Q. Has it ever been paid by Mr. Scarlett? A. No, sir; it has never been paid by Mr. Scarlett.

30 Q. I show you Exhibit S-11, being a Scarlett check on the Roseville Trust Company for \$500, dated on March 4, 1913, payable to his own order. Is that check certified? A. It is.

Q. When? A. On March 4, 1913.

40 Q. By whom? A. By myself, used by Mr. Scarlett, endorsed by him, and then the Greylock Land Company, J. B. Scarlett, treasurer, pay Essex County National Bank, Greylock Land Company, and was sent through the exchanges on March 5th, I think it was. On March 5th it came to us through the exchanges.

Raymond E. Smith—Re-direct

Q. Did the Roseville Trust Company pay it?

A. We paid it in a draft to the Union National Bank on the 25th of March, \$24,224.99.

Q. Was it charged to his account? A. No, sir; it was not; his account wasn't good for the check.

Q. Did that check finally get into box 55 through the same course the others took? A. Yes, sir; it did. 10

Q. Has Mr. Scarlett ever paid it? A. No, sir.

Q. You said something about an endorsement of the Greylock Land Company? A. That appears on this check.

Q. The check is made payable to John B. Scarlett? A. Yes, sir.

Q. And endorsed by him to whom? A. Greylock Land Company. 20

Q. Do you know whether he was connected with that as treasurer? A. He was treasurer of it.

Q. I show you Exhibit S-12, being John B. Scarlett's check for \$100 dated March 11, 1913, drawn on the Roseville Trust Company. What can you say about that check? A. This check, I believe, was cashed by the paying teller on the 11th of March for \$100.

Q. The check bears Mr. Scarlett's endorsement, does it? A. Yes, sir. 30

Q. Is there anything on the back to indicate that it was cashed? A. No, the only thing that would indicate it would be the sundries of the paying teller on that date.

Q. That book isn't here? A. No, sir.

Q. You think Jennings cashed that? A. Whoever was paying teller on that date cashed it.

Q. Are your initials on that check as they were 40

Raymond E. Smith—Re-direct

on another that you have spoken of? A. No, sir, they were not.

Q. Was Scarlett's account good for the check that day? A. No, sir; the same balance as before, \$1.30.

10 Q. Why should Jennings have paid it? A. I probably told him to pay it.

Q. And you knowing that the account was not good? A. Yes, sir.

Q. That check is not certified? A. No, sir; it is not.

Q. I show you Exhibit S-1, S-13, being Scarlett's check for \$90, dated March 13, 1913, drawn on the Roseville Trust Company, payable to his own order. Is the check certified? A. Yes, sir.

20 Q. By whom? A. By myself.

Q. Was his account good for it on the day it was certified? A. No, sir, it was not.

Q. Why did you certify it? A. I certified it at Mr. Scarlett's request.

Q. Did he know his account was not good on that day? A. I believe he did.

Q. What course did the check take before it got back to the Roseville Trust Company as indicated by the endorsment? A. The check is drawn to his own order and endorsed by himself and the Greylock Land Company, John B. Scarlett, treasurer.

30 Q. It was endorsed by him over to the land company and deposited to their account? A. It doesn't indicate for deposit; it was used by them in the Essex County National Bank.

40 Q. It was either deposited or cashed? A. Yes, sir.

Raymond E. Smith—Re-direct

Q. And it came back to your bank? A. Yes, sir, in the regular exchanges.

Q. When did you get it? A. March 14, 1913, and was paid by our draft to the Union National Bank of \$20,639.54.

Q. And it reached box 55 in the way that the other check got there? A. The same course exactly. 10

Q. I show you Exhibit S-14, check dated March 14, 1913, for \$350 on the Roseville Trust Company to John B. Scarlett's order. Is that check certified? A. Yes, sir.

Q. By whom? A. By myself, March 17, 1913.

Q. Was his account good that day for the amount of the check? A. No, sir; it was not.

Q. And then it was not charged to his account, I presume? A. No, sir; it has never been charged to his account. 20

Q. Why did you certify it? A. I certified it at the request of Mr. Scarlett.

Mr. Schotland: I object to that question with reference to that check on the particular ground that that check has been the subject of indictment and a trial has been had on that.

The Court: I will overrule the objection. 30

Defendant's counsel pray's an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,
Judge.

(Seal)

Q. And you knew that his account was not good for it? A. Yes, sir.

Raymond E. Smith—Re-direct

Q. Did he know his account was not good for it?

Mr. Schotland: I object to that on the same ground.

The Court: Objection overruled.

10

Defendant's Counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,

(Seal)

Judge.

A. I believe he did.

Q. Why did you certify it?

Mr. Schotland: Same objection.

The Court: Same ruling.

20

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,

(Seal)

Judge.

A. I certified it because I was asked to by Mr. Scarlett.

Q. That check is payable to Mr. Scarlett's own order, is it not? A. Yes, sir.

30

Q. Endorsed by him? A. It is endorsed by Mr. Scarlett, the Greylock Land Company, J. B. Scarlett, treasurer, also, and came back to us on the 18th of March, 1913, and was paid by a check to the Union National Bank for \$50,654.23.

Mr. Schotland: I have already entered one exception on the record as to that exhibit, but I would like to have an exception to all this.

40

The Court: You have your exception

Raymond E. Smith—Re-direct

covering this, but you may have another.

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

H. V. OSBORNE,

(Seal)

Judge.

Q. Did it eventually reach box 55? A. Yes, sir, the same course. 10

Q. The check has not been paid by Mr. Scarlett? A. No, sir.

Q. I show you Exhibit S15, dated March 17, 1913, for \$100, payable to his own order. Is that check certified? A. Yes, sir.

Q. On what date? A. On the 17th of March, 1913.

Q. What endorsements? A. John B. Scarlett, Greylock Land Company, J. B. Scarlett, treasurer, Essex County Bank. 20

Q. How did it get to the trust company? A. It came through the Union National Bank to us in the exchanges on the 18th day of March.

Q. And did the Roseville Trust Company pay it? A. Paid it out of the same draft that the \$350 check was paid, \$50,654.23.

Q. And did the check eventually get into box 55? A. It did, yes, sir.

Q. Has Scarlett ever paid the check of the Roseville Trust Company? A. No, sir. 30

Q. And it has not been charged in his account? A. No, sir; it has not.

Q. Because the account was not good? A. The account was the same as it had been for the last two months.

Q. When that check was certified you knew that his account was not good for it? A. Yes, sir. 40

Raymond E. Smith—Re-direct

Q. Did he know it? A. I believe he did.

Q. I show you Exhibit S16, a Scarlett check for \$175, dated May 19, 1913, to the order of the Clinton Hill Building & Loan Association for \$175. Is that check certified? A. Yes, sir; it

10 is.

Q. By whom? A. By myself.

Q. Was Scarlett's account good for it the day it was certified? A. It was not; the account was the same as it was previously.

Q. That is, \$1.30? A. Yes sir.

Q. Did you know his account was not good for it? A. Yes, sir.

Q. Did he know it? A. I believe he did.

20 Q. What became of the check? A. The check was given to the Clinton Hill Building & Loan Association, deposited by them in the National Newark Banking Company, and came to us in the exchanges of the 21st.

Q. Of what month? A. Of May, and was paid for by us with a check to the Union National Bank for \$16,562.22.

Q. In other words, you paid it in that check?
A. Yes, sir.

30 Q. Did it get into box 55 through the same—
A. No, sir that was held by me in my desk.

Q. You say in your testimony it was there when the bank closed? A. Yes, sir.

Q. It has not been charged against Scarlett's account? A. Never.

Q. It has never been paid by him? A. No, sir.

Q. I show you Exhibit S17, being Scarlett's check on the Roseville Trust Company for \$120, payable to Goldsmith. Is that check certified?

40 A. It is.

Raymond E. Smith—Re-direct

Q. By whom? A. By myself.

Q. Under what date? A. The day of the month is left out; in this stamp it is June, 1913; probably June 12th, the date of this check.

Q. Can you verify that? A. I can verify the payment of the check—that is, the honoring of the check. 10

Q. Paid the following day in the exchange, that is, a check to the order of David Goldsmith?

A. Yes, sir.

Q. Does that show his endorsement? A. Yes, sir.

Q. Is there anything to show what bank it went through? A. Union National Bank.

Q. When did it come back to the Roseville Trust Company? A. On the 14th day of June, 1913. 20

Q. And paid by the Roseville Trust Company? A. Yes, sir; it was paid by the Roseville Trust Company by giving a check to the Union National Bank for \$34,780.30.

Q. On what date? A. On the 14th of June, 1913.

Q. The check's dated what? A. The 12th of June 1913.

Q. And according to the hand stamp on the back it was paid by the Union National Bank on what date? A. The Union National Bank on the 13th of June, 1913. 30

Q. When do you say it was certified? A. I believe it was certified on the 12th.

Q. Was Scarlett's account good for it? A. No, sir, the balance the same as it was before as checks paid previous to this one.

Q. And when it came back it was not charged 40

Raymond E. Smith—Re-direct

to his account for the same reason? A. For the same reason.

Q. You knew the date you certified this the account was not good for it? A. I think so.

10 Q. Why did you certify it? A. I certified it at his request.

Q. Has he ever paid it? A. No, sir.

Q. Did that reach box 55? A. Yes, sir.

Q. I show you Exhibit S-18, being Scarlett's check on the Roseville Trust Company to the order of David Goldsmith for \$1000, dated July 3, 1913; is that check certified? A. No, sir.

Q. Has it been paid by the Roseville Trust Company? A. Yes, sir.

20 Q. What course did the check take? A. The check is dated July 3, 1913, given to David Goldsmith, \$1000, used by David Goldsmith in the Union National Bank, and came to us in the exchanges of July 5th paid by us with a check given to the Union National Bank, \$32,396.12.

Q. On the day that check was paid, Mr. Smith, by the Roseville Trust Company, how much was Scarlett's balance? A. \$1.30.

30 Q. Why did you honor that check under the circumstances? A. I honored it at Mr. Scarlett's request. I remember the history of this check very well. I believe it was a payment on a certain mortgage on his property.

Q. Did he tell you so? A. Yes, sir, and he was very anxious to have the check paid.

Q. Did you know when the Roseville Trust Company paid that check that he had a balance of \$1.30? A. I knew it, yes.

40 Q. Did he know? A. I suppose he knew his account was not good for the check; I don't know

Raymond E. Smith—Re-direct

that he knew exactly the amount of the balance to the cent.

Q. That was my question, whether he knew when he asked you to pay that check, if he did ask you, that his account was not good for it? A. Yes, sir; I believe so.

Q. Has he ever paid it? A. No, sir.

10

Q. You have said in connection with this \$1000 check that you recall about it that it was a payment on a mortgage and that Mr. Scarlett was anxious to have it paid. I think that was your language? A. Yes, sir.

Q. What did he say, what did he tell you? A. He said that Goldsmith had requested a payment on the mortgage that he held against his property and that he had to give a check for \$1000 to meet that payment.

20

Q. What property was the mortgage on, did he say? A. I think it was on his Johnson avenue property.

Q. Where he lived? A. I think so.

Q. Did he tell you so? A. That is my remembrance, yes, sir, it was on that property; that is as I remember it.

Q. That Goldsmith had demanded a payment? A. Yes, sir.

30

Q. Did he say what the amount of the payment was? A. \$1000.

Q. What did you say to Scarlett in reply to his request that you take care of this check? A. I agreed to pay—that is, I agreed to honor it when it came in.

Q. At that time did you say anything about the condition of his account, that it was not good?

A. I probably did; I can't remember exactly

40

Raymond E. Smith—Re-direct

what was said about the account, but I know on several occasions I called Mr. Scarlett's attention to the fact that his account was in bad shape.

Q. On several occasions? A. Yes, sir.

10 Q. You have had eighteen occasions when you say his account was not good for the amount of the checks, you have had presented eighteen different transactions, Mr. Smith, that you say the checks of Scarlett on his account and you say that his account was not good for any of them. How many conversations do you say you had with him in relation to the condition of his account?

A. Several I said; I can't remember just how many.

20 Q. Was that during the time that these checks had been drawn and certified and paid? A. Yes, sir.

Q. What did you say to him? A. I called his attention to the fact that I had paid—

Q. In calling his attention to the fact what did you say to him? A. I told him his account was in bad shape, that I had paid several checks of his that had never been taken care of.

Q. You have told us about eighteen. A. That is several.

30 Q. You mean at that time there had been several; is that what you mean? A. That is what I say.

Q. What did he say? A. He said he would make them good in time.

Q. He didn't do it, you say? A. He did not.

Q. Can't you tell us what you did say to him? A. I can't remember any more of the conversation than that I gave you.

40 Q. Mr. Smith do you remember having had a conversation with Mr. Scarlett in February,

Raymond E. Smith—Re-direct

1913, regarding the condition of his account with the Roseville Trust Company? A. I remember there was a conversation of that kind, yes, sir, February 19, 1913?

Q. Yes. A. I think so.

Q. Do you remember what he said to you and what you said to him? A. I remember having received a letter from him, but I can't remember just the conversation we had. I know it was about his account, about money matters. 10

Q. In that conversation in February do you recall saying anything to Mr. Scarlett about the position that you were being placed in?

Mr. Schotland: I object to that. The witness has said he remembers having a conversation, he remembers the conversation was about the account, but he does not recall the conversation. While it may be proper to call the attention of a witness to a particular subject-matter and ask him if there was any talk about that and if so, what was the conversation, that has already been done in this case, and he recalls there was a conversation about that particular subject-matter and does not recall what the conversation was, and therefore a leading question of that nature is not justified. 20 30

The Court: I think his attention may be directed to any specific matter after it has become evident that he cannot recall anything otherwise.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same 40

Raymond E. Smith—Re-direct

is allowed and signed and sealed accordingly.

H. V. OSBORNE,

(Seal)

Judge.

(Question read.)

10 A. I remember several different conversations that we had, between Mr. Scarlett and myself, in which I called his attention to the fact that I was trying my best to protect him, paying his checks and doing all kinds of things to pay the checks, charging amounts to different accounts and paying the checks in that way, taking them out of the cash, but I can't remember the exact words of the conversation. The purport of it was to that effect.

20 Mr. Schotland: I ask that the answer be stricken out. The witness cannot recall the conversation but his conclusions are stated.

The Court: It would be very strange if he did remember the exact words. He says it is the substance of it. Objection overruled.

30 Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,

(Seal)

Judge.

Q. Were you being placed in an embarrassing position by the payment of those checks in the way you have testified?

Mr. Schotland: I object to that as leading.

40 The Court: Objection sustained.
Question withdrawn.

Raymond E. Smith—Re-direct

Q. I show you still another check, Exhibit S-19, John B. Scarlett, check dated July 2, 1913, on the Roseville Trust Company payable to Manning Freeman Company, \$1200; is that check certified? A. Yes, sir.

Q. By whom? A. By myself.

Q. Under what date? A. July 2, 1913.

10

Q. Was his account good for it that day? A. No, sir; it was not.

Q. What was his balance? A. \$1.30.

Q. And you certified the check? A. I did.

Q. Why? A. At Mr. Scarlett's request.

Q. Notwithstanding the account was not good for it? A. I did.

Q. Did he know it? A. Yes, sir.

Q. What became of the check after it was certified, as far as it appears by endorsement? A.

20

The check was given to Manning Freeman Company, endorsed by Manning Freeman Company, George Silzer, attorney, for deposit, George Silzer, Attorney; endorsements correct and guaranteed, John B. Scarlett," used in the Essex County National Bank of Newark, and came to us on the 3d of July and was paid by us to the Union National Bank in a check given, \$27,882.-68.

Q. Has it ever been charged to Mr. Scarlett's account? A. No, sir.

30

Q. For the reason— A. It has not been made good; his account has not been made good for it.

Q. Have you any special recollection concerning his check, what it was used for, that is information from Mr. Scarlett? A. My recollection is that the check was given to satisfy a judgment against Mr. Scarlett or the Middlesex Hat Company.

40

Raymond E. Smith—Re-direct

Q. He was interested in the Middlesex Hat Company? A. Yes, sir.

Q. And do you know who George S. Silzer is, do you know who he is? A. No, I do not, except in general, that he was the attorney who had the
10 judgment against him.

Q. Has the check ever been paid by Scarlett? A. No, sir.

Q. Did that find its way into box 55? A. Yes, sir.

Q. You say that you certified this at the request of Mr. Scarlett. Do you remember whether or not he said there was any pressing necessity for it? A. I remember there was great necessity for it at that time.

20 Q. Not what you remember, but what he told you? A. I know what the check was given for and I knew it was very urgent that the check be certified and sent along.

By the Court: Q. Mr. Smith, you say that you certified these checks because Mr. Scarlett requested you to do it. Why was that request made, or several requests? A. You mean when was each request made?

30 Q. Were there several requests or just one general one? A. There was several, your Honor.

Q. When did this start, this process of protecting, as you designated it, Mr. Scarlett, at the beginning of these certified checks? A. No, sir.

Q. Before that? A. Yes, sir; back in 1910, I think—not necessarily this way of protecting him.

40 Q. Was there any conversation between yourself and Mr. Scarlett which led up to this series of certified checks beginning with S-1? A. Back in July, 1912, you mean?

Raymond E. Smith—Re-direct

Q. July, 1912, is the first one. A. Yes, Mr. Scarlett and I had several talks previous to that time.

Q. With relation to the certification of checks?

A. Not necessarily, no, not with relation to certification of checks, but with relation to paying his checks or advancing the money one way or another. 10

Mr. Guild: What the Court wants to know is what the conversations were.

Q. Do you remember whether there were any connected with these transactions? A. I think before, as nearly as I can tell conversations, they all related to the one thing, raising money one way or another for Mr. Scarlett by protecting his checks. 20

Q. Was there anything said between you why you should assist him in raising money? A. No, sir.

Q. Was there anything said between you as to whether or not you would assist him in raising money, help him in any way? A. At different times when those checks were sent up to the institution I agreed to pay them—that is, I agreed to honor them.

Q. As a result of conversations between you and him? A. Yes, he usually call'ed me u_ on the telephone or wrote a letter with the check, something of that kind. In fact, I think each one of these checks, there was some conversation of some kind. 30

Adjourned until tomorrow, Thursday,
April 18, 1915, at ten o'clock, a. m.

Second day.

40

Raymond E. Smith—Direct

ESSEX COUNTY OYER AND TERMINER,
Thursday, April 18, 1915.

State

vs.

10 John B. Scarlett.

Met pursuant to adjournment,

Present, counsel as before stated.

RAYMOND E. SMITH resumes the stand.

Direct-examination (continued) by Mr. Guild:

20 Q. In answer to the Court's question yesterday among other things you said that when Mr. Scarlett would send these checks that we have been talking about which he asked to have certified or honored, that you said to him that you would pay them. Do you mean pay them personally? A. No, sir; I meant take care of them, honor them.

Q. You personally or pay them out of the funds of the bank?

30 Mr. Schotland: I object to that. The witness cannot be asked to tell what is in his own mind.

(After discussion, question withdrawn.)

Q. Was there anything said by you to Mr. Scarlett about paying these checks or making them good out of your personal funds? A. I think not.

Q. Were they made good, these checks in the indictment, out of the bank funds of your funds?

40 A. They were paid out of the bank's funds, most altogether, I think.

Raymond E. Smith—Direct

Q. I show you again Exhibit S9, being Scarlett's check of February 19, 1913, for \$400, which you have already seen and given some testimony concerning. Was that check accompanied by a letter? A. Yes, sir; I think so.

Q. I show you a letter written on the letter-head of John B. Scarlett dated Newark, N. J., February 19, 1913, and ask you whether that is the letter that accompanied that check? A. Yes, sir; it is. 10

Q. Are you familiar with the handwriting of John B. Scarlett? A. I am.

Q. Is that letter in his handwriting? A. Yes, sir.

Q. Is it signed by him? A. It is.

Mr. Guild: I offer it in evidence.

Mr. Schotland: No objection. 20

The Court: S-42 accompanied check S9.

Mr. Guild: Yes.

(Mr. Guild reads the letter referred to to the jury.)

Q. Is that the check S9 and which you did certify? A. Yes, sir; I did.

Q. I show you Exhibit S11, being Scarlett's check on the trust company of March 4, 1913, for \$500, and ask you whether a letter accompanied that check? A. I think there was a letter accompanying it. 30

Q. I show you a letter of that date written on the letter paper of John B. Scarlett and ask you whether that is the letter? A. Yes, sir; it is.

Q. Is that letter and signature in the handwriting of John B. Scarlett—at least, the writing? A. Yes, sir. 40

Raymond E. Smith—Direct

The paper referred to is offered in evidence and marked Exhibit S43.

(Mr. Guild reads letter to the jury.)

Q. I show you Exhibit S14, being Scarlett's check of March 17, 1913, for \$350. Did a letter
10 accompany that check? A. Yes, sir. I think so.

Q. I show you a letter written on the letter paper of John B. Scarlett dated March 17, 1913, is that the letter? A. Yes, sir; it is.

Q. Is the letter in the handwriting of John B. Scarlett? A. Yes, sir.

Q. And the signature? A. The signature is Mr. Scarlett's.

Mr. Guild: I offer it in evidence.

Mr. Schotland: No objection.

20 Marked Exhibit S44.

Mr. Schotland: I have an objection as to that. I didn't know that that was the letter accompanying that check to which I have interposed the objection on the ground that it had already been tried. I will state my ground in full on the record. My objection to any testimony in this case regarding the securing of the certification or the procuring of money or the doing of any act in connection with Exhibit
30 S14 is based upon this ground, that the defendant here has already been tried on an indictment charging him with violating another section of the Crimes Act in having this check certified and has been convicted on that charge.

40 The Court: I think you are amply protected, as far as the letter is concerned, on that point by your previous objection and

Raymond E. Smith—Direct

exception covering the check, and if there is any merit in your objection it will be protected by your previous objection.

Q. Now, Mr. Smith, in Scarlett's letter of February 19, being Exhibit S42, and in his letter of March 17th, being Exhibit S44 he spoke of sending up a statement. What was that statement? A. It was a statement of his financial condition that the Roseville Trust Company had asked him for showing his worth—showing his holdings in real estate, assets and liabilities, and so forth. 10

Q. You say the Roseville Trust Company had asked for it. Who were the Roseville Trust Company? A. I had asked for it for the institution. The directors had mentioned it in a previous meeting and I had asked it from him at their request. 20

Q. Did he send up the statement? A. Yes, sir; he did.

Q. Was it signed? A. It was.

Q. The first time it was sent? A. Not the first time, no, sir; finally signed.

Q. Did you return it to him? A. Yes, I returned it to him for signature.

Q. And that is the statement referred to in both of these letters? A. Yes, sir. 30

Q. I show you a letter bearing the date March 15, 1913, headed, "Statement of John B. Scarlett." Is that the paper that he sent? A. I think it is—I am not sure that it is the statement that he sent at that time; it is a statement that he received some time after March 15, 1913, and shows his financial condition at that time in March. 40

Raymond E. Smith—Direct

Q. Or at lease purports to show it? A. Yes.

Q. That was received by you? A. It was in our files in the institution, the Roseville Trust Company.

Mr. Guild: I offer it in evidence.

10

Mr. Schotland: I object to the statement on the ground that it is incompetent and immaterial, and there appear to be three sheets offered on different dates altogether, and that it is irrelevant to the issue.

By the Court: Q. Did this statement which you say you received contain the list of these three sheets? A. I think so, your Honor.

20

The Court: There seems to be a reference in the first sheet to the other two.

Mr. Schotland: My objection is that it is immaterial. I can't see on what theory that statement could be material to the issue being tried under this indictment.

0

30

The Court: This indictment is for conspiracy to defraud the bank, the conspiracy being alleged between the secretary and treasurer of the bank and two others and the defendant. The directors had asked, so the witness says, for a statement of this defendant's worth, and the witness says he asked the defendant for it, and this it it. It may well be a part of that conspiracy that this statement was arranged for the purpose of deceiving the responsible authorities in the bank. It would certainly be competent from that point of view.

40

Mr. Schotland: I submit from that point of view that it might be competent if the

Raymond E. Smith—Direct

defendant was charged with obtaining the money from the bank under false pretenses, by putting in a false statement, but there is not any allegation here of that.

The Court: There may be other aspects of the matter which the presecutor has not indicated. I assume, in reply to your objections, he will state that as one of the reasons that it is inadmissible. The prosecutor may have other ideas on the subject. 10

Mr. Schotland: When a document is offered it must be connected with the issues in the case.

Mr. Guild: It will appear.

The Court: I will admit it. If it does not appear you may move to strike it out. 20

Defendant's counsel prays an exception to this ruling of the Court. and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE.

(Seal)

Judge.

By Mr. Guild: Q. Did you show this statement to the board of directors or any officer of the trust company other than yourself? A. Yes, sir; I showed it to the board of directors—or, rather, the executive committee, I think. 30

Q. I show you Exhibit S2, being Scarlett's check of September 13th, nineteen, with no further figures on the face of the check, but bearing the certification mark of September 13, 1912, being a check for \$1247.76 payable to the order of H. J. Stanley, tax collector. Did you have any talk with Mr. Scarlett, any particular conversa- 40

Raymond E. Smith—Direct

tion with him concerning that check, of the use that he desired to make of the money? A. Mr. Scarlett called me up on the telephone, I think, in regard to this matter, and told me that he had to meet his taxes and had to give a certified check for the amount of the taxes, which was \$1247.76, and he had no funds to meet the check; he suggested sending up a note.

10 Q. Who suggested sending up a note? A. Mr. Scarlett, and he sent up a note by Mr. Spinoza signed by Mr. Sica—

Q. You mean endorsed by Sica? A. Endorsed by Sica, I mean to say, for the same amount as the check.

Q. Did you know Mr. Spinoza? A. No, sir.

20 Q. Had you ever heard of him before? A. No, sir. I didn't know who he was.

Q. Did he tell you whose note he would send up? A. I think he said he would send up a note with Mr. Sica's name on; I don't remember the name of Spinoza at all in the conversation.

30 Q. Is there any requirement, or was there any rule or requirement of a trust company requiring more than one name on a note? A. Why, there wasn't any rule, but we didn't like to take single name paper from anybody.

Q. Did Mr. Scarlett send up a note? A. Yes, sir; sent up a note signed by Spinoza and endorsed by Sica for \$1247.76 payable ten days after date.

Q. Did the note bear even date with the check? A. I think it did.

Q. You say it was a ten day note? A. Yes, sir.

40 Q. Was the note paid at maturity? A. No, sir, it was not.

Raymond E. Smith—Direct

Q. What would have been the date of the original note? A. December 13, 1912.

Q. Was the note renewed? A. The note was renewed.

Q. The same names? A. The same names; the same time; ten days.

Q. And was it continued to be renewed after that? A. Yes, sir; it was renewed several times until the spring of 1913. 10

Q. Were the older notes returned when the renewals came in? A. I think they were.

Q. To whom? A. Mr. Scarlett.

Q. I show you a note dated Newark, N. J., May 12, 1913, for \$1247.76, payable to the order of N. R. Sica signed "Andy Spinoza." Is that the last note given in renewal of the original note? A. Yes, sir; that is the last note I have seen of this description. 20

Q. When the original note came in showing the name of Andy Spinoza as maker, did you make any inquiry of Scarlett as to the responsibility of Spinoza? A. No, sir.

Q. Did you make any such inquiry when the renewal notes came in? A. No, sir; I did not.

Q. Then I understand that at the end of each ten days after the expiration of the ten days mentioned in the original note, the note was continued to be renewed for a further ten day period until it got down to this note of May 12, 1913? A. Yes, sir, as a rule. The note sometimes was past due two or three days before it was renewed, I think, but as a rule it was renewed around the due date. 30

Q. Was any interest paid to the trust company on any of those notes? A. No, sir. 40

Raymond E. Smith—Direct

Q. Was any interest charged to Mr. Scarlett's account on the note? A. No, sir, not that I remember at all.

Q. Has any part of the debt represented by this note Exhibit S46 been paid to the trust company? A. No, sir, it has not.

Q. Who suggested sending up the original Spinoza note? A. Mr. Scarlett suggested sending up a note endorsed by Mr. Sica; I don't remember his saying it was the Spinoza note.

Q. I didn't ask you that; that wasn't the point of the question. I asked who suggested sending up the original note, the Spinoza note, not necessarily that the name Spinoza was given to you or talked about; you have already said it was not. A. Mr. Scarlett.

Q. This was for his accomodation? A. It was given to take care of this check of his, yes, sir, it was for his accomodation.

Q. Was there any reason why he shouldn't have sent his own note or the note with his own name on it? A. Yes, sir.

Q. What reason, if any? A. There are two good reasons; one was that his loans were of a considerable amount in the institution already; the second reason is it was a rule in all trust companies—

Q. No, your trust company, the rule in your trust company? A. Well, it is a state law that any director requiring a loan from his institution, the institution of which he is a director, must put in writing his application for such loan and the same must be placed before the board of directors; the application must be placed before them.

Raymond E. Smith—Direct

By the Court: Q. Approved by them? A. Yes, sir.

By Mr. Guild: Q. That is the state law under which trust companies operate? A. Yes, sir.

Q. In this state? A. Yes, sir.

Q. Now, was it suggested or talked about between you and Scarlett that he should send his own notes, did you have any talk about that? A. I think there was a talk of it, but I don't know whether it was this particular time or not. It was at certain times talked over his giving his own note, and I told him I didn't want to take it. 10

Q. Did you tell him why? A. I told him for the reasons just mentioned.

Q. It was that he already had in the institution considerable of his own paper? A. Yes, sir. 20

Q. Did you tell him that his own note there, a note with his name on it, could not be handled by the institution without being submitted to the board of directors? A. Yes, sir.

Q. I show you a check book containing some check stubs which have writing on them and some unused checks of the Roseville Trust Company, and ask you whether you have seen that check book before? A. I have, yes, sir.

Q. Don't answer this question until it has been objected to. Did you see it here in Court on the former trial of Mr. Scarlett? A. I did. 30

Q. Did you hear him say anything when shown that book as to whether or not it was his check book that he used in connection with his account with the Roseville Trust Company?

Mr. Schotland: I object to that as incompetent. 40

Raymond E. Smith—Direct

The Court: Do you admit that that is his check book, Mr. Scarlett's check book?

Mr. Schotland: I don't see how the check book is tied up with the case.

10 Mr. Guild: If it is not it can be stricken out.

The Court: It is quite apparent that this evidence may be competent, and that being the case, I would feel constrained to admit the evidence rather than interrupt the examination of the witness to connect it up. The only question now is whether that is Mr. Scarlett's check book. They are laying a foundation for offering the check book.

20 Mr. Guild: I offer it now.

Mr. Schotland: I object to it, if the Court please. In the first place, they haven't shown that it is Mr. Scarlett's check book and in the second place—

The Court: The witness is asked whether he heard Mr. Scarlett admit it was his check book.

30 Mr. Schotland: Whether he was in Court at a previous trial. I submit that that is not proper evidence, nor the way to prove what occurred at a previous trial. It might be competent in rebuttal, but it is not on direct. Another thing, I insist that they show how they got possession of this check book, if they claim it is Mr. Scarlett's check book. He is testifying to a Court record, and not from his recollection.

40 The Court: The objection, as I understand it, is the best evidence of what took

Raymond E. Smith—Direct

place is the stenographer's minutes rather than what somebody said. I will admit the book. You may have an exception.

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

H. V. OSBORN, 10
Judge.

(Seal)

Question read.

A. I heard his testimony, yes, sir.

Mr. Schotland: I would like an exception noted on the record to these particular questions.

Exception allowed; let it be sealed, and it was signed and sealed accordingly. 20

H. V. OSBORN,
Judge.

(Seal)

Witness: I heard the testimony of Mr. Scarlett to that effect.

Q. To what effect? A. That it was his check book.

Q. Used in connection with what account? A. Used in connection with the Roseville Trust Com- 30
pany account.

Mr. Guild: I offer it in evidence.

Mr. Schotland: I object to it and call upon the State to show how they got possession of that check book for this reason: I maintain that this check book was received by the State from a source where it could not possibly be used, under the law, against this defendant. There was a peti- 40

Raymond E. Smith—Direct

10 tion in bankruptcy filed against the defendant and a receiver appointed. The receiver in bankruptcy took possession of that check book, and the papers of the defendant, and as I understand the rules in bankruptcy all of the evidence and the testimony cannot be used against the defendant—that is against the bankrupt in any other proceeding, and I submit that they cannot take the check book from the receiver and use it against him in another proceeding.

20 The Court: Do you mean to say that an investigation in a bankruptcy case, no matter how irresponsible it may be pursued by any one connected with the proceedings, would preclude any criminal prosecution or its use in any criminal prosecution in any manner brought out in the bankruptcy proceeding or any exhibits used in connection with bankruptcy proceedings?

30 Mr. Schotland: My contention is that any evidence of the bankrupt himself, any statement he makes, of any statements that he makes orally or documentary, cannot be used in any proceeding there.

 The Court: How do you claim that this particular exhibit that is offered comes within that provision?

 Mr. Schotland: I claim that this particular exhibit is his own evidence in the bankruptcy case.

 The Court: Offered by himself there.

40 Mr. Schotland: Offered by himself there, indirectly, yes, and that it cannot be taken

Raymond E. Smith—Cross

away from there and used against him in some other proceeding.

The Court: The objection is overruled.

Defendant's counsel prays for an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly. 10

H. V. OSBORN,
Judge.

Marked Exhibit S-47.

Q. Did you have occasion to go to Mr. Scarlett's office in connection with his transactions with the Roseville Trust Company? A. Once or twice, I think.

CROSS-EXAMINATION by Mr. Schotland: 20

Q. Mr. Smith, you pleaded guilty to this indictment or *non vult*? A. *Non vult*.

Q. How many indictments did you plead *non vult* to? A. Quite a number; I don't remember just the number.

Q. Did you stand trial on any? A. No, sir

Q. Did you plead guilty to any? A. No, sir.

Q. You pleaded *non vult* to all of them? A. I did. 30

Q. And the sentence that has been imposed upon you runs concurrently in all the indictments? A. Not in all the indictments, no, sir.

Q. Outside of this? A. I couldn't say.

Q. You don't know? A. I do not.

Q. Mr. Smith, did you ever arrange with Mr. Scarlett to cheat the Roseville Trust Company out of any of its funds? A. No, sir. 40

Raymond E. Smith—Cross

Q. Did you ever suspect that the Roseville Trust Company would be cheated out of its funds by Mr. Scarlett? A. No, sir; I never did.

Q. You had quite a large number of personal transactions with Mr. Scarlett didn't you? A. I think not.

10 Q. You now call those transactions with the bank? A. Which transactions do you mean?

Q. The transactions that you had with Mr. Scarlett? A. Yes, sir, most all of them.

Q. Did you claim to Mr. Scarlett that they were with the bank? A. Which transactions are you talking about?

Q. All of these transactions where Scarlett's checks were certified and made good and moneys
20 were advanced to him. A. Yes, sir.

Q. Mr. Smith, I show you an agreement and ask you whether you recognize your signature on it? A. I do.

Q. Will you look at that agreement; is that made with the bank or you personally? A. That is made with me personally—that is, it reads so.

Q. What do you mean by that remark, that it reads so? A. I mean it is drawn up that way.

Q. It is signed that way, too, isn't it? A. Yes,
30 sir.

Q. I show you Exhibit S-1, dated July 23d, certified check for \$500, and Exhibit S-2, dated September 13th, certified check for \$1247.76. Did you get any security for those two checks? A. At the time they were drawn?

Q. Subsequently. A. I received a note from Mr. Scarlett to pay this one check of \$1247.76.

Q. I mean security in addition to the note? A. I
40 later got security for the note.

Raymond E. Smith—Cross

Q. What security did you get? A. There was an agreement drawn up on the 25th of October.

Q. I show you D-1 for identification, and is that the agreement you refer to? A. No, sir.

Q. Read that through and see the date of it. A. This is not the agreement that I have in mind, on a small piece of paper. 10

Q. Will you see how much that is for, how much is that agreement security for? A. \$9700, I think it is.

Q. Can you tell me what items make up the \$9700? A. Yes, sir; I think so.

Q. What items? A. There are several notes—

Q. Let me see if I can refresh your recollection.

Mr. Guild: Allow him to answer the question. 20

Mr. Schotland: I am within my rights. I withdraw the previous question.

The Court: He started to answer that question and you interrupted him, and you cannot withdraw that question. He is asked a question and he should be permitted to answer it.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and signed and sealed accordingly? 30

H. V. OSBORN,
Judge.

(Seal)

Answer read as follows: "There are several notes—"

A. (Continuing) Included in this agreement—I mean covered by this agreement; there is a note 40

Raymond E. Smith—Cross

of John H. Long, endorsed by John H. Long, rather, and made by Mr. Reynolds; there are two notes signed by Zuccarrelli \$750 and \$500, I think endorsed by Mr. Sica; there is another note of Mr. Spinoza's to Mr. Sica for \$1247.76 and
 10 there is a \$4200 loan to Mr. Scarlett, and the \$500 check.

Q. Isn't that \$500 check and that \$1247 check the two items that you mentioned as making up part of this \$9700? A. The \$500 check is the check, I believe.

Q. And the \$1247 check? A. There is no \$1247 check mentioned.

Q. No. Mr. Smith, I ask you if you had other securities besides that note of Spinoza's, en-
 20 dorsed by Sica, for that \$1247.76 check, and you said yes, and I asked you whether this was this agreement D-1 for identification, and you said no. A. I said yes, pardon me, I had securities for the note to pay the check.

By the Court: Q. The check was paid by note?
 A. Yes.

Q. And the note secured, is that right? A. Yes, sir, that is right.

By Mr. Schotland: Q. Didn't you say you had
 30 other security for that debt besides that note?
 A. No, sir.

Q. What you mean, that if the security secures the note it would secure the debt; is that what you mean? A. Which debt do you mean?

Q. The \$1247.76 debt. A. Certified check?

Q. Yes. A. No, sir; I don't mean that.

Q. Have you any other security for that debt besides the note made by Spinoza and endorsed
 40 by Sica? A. You mean the note or the check?

Raymond E. Smith—Cross

Q. I mean the debt. A. The debt? I was given security for a \$1247.76 note, given by Mr. Spinoza and signed by Mr. Sica.

Q. Is that security in this D-1 for identification? A. Yes, sir.

Q. Then you were mistaken when you said a moment ago that it was not? A. I didn't say that. 10

Q. You didn't say it was in a smaller agreement, just one sheet, that secured that note? A. That is an agreement given later, but was originally covered by another agreement made on October 25, 1912.

Q. Isn't this agreement made October 25, 1912? A. It purports to be.

Q. Wasn't it? A. I don't think it was; I know it wasn't. 20

Q. When? A. Later.

Q. How much later? A. Two weeks.

Q. October 25th? A. Yes, sir.

Q. And this agreement is made with you personally? A. It was made with me.

Q. And secures you personally for \$9700; that is right, isn't it? A. That is the way it reads, yes, sir.

Q. And part of that \$9700 was the check S-1 and the check S-2? A. No, sir, check S-1 for \$500 is included in that agreement. 30

Q. And is the check S-2? A. No, sir.

Q. Isn't the money which was advanced to make that check S-2 good secured in this agreement? A. Perhaps so.

Q. The debt—don't you know? A. The check.

Q. The debt represented by that check, is that secured in this agreement? A. Yes, sir.

Q. Do you still say, Mr. Smith, that those loans 40

Raymond E. Smith—Cross

were made by Mr. Scarlett from the bank and not from you personally? A. I do.

Q. Did you tell that to Mr. Scarlett? A. Yes, sir.

10 Q. You are sure of that? A. I gave Mr. Scarlett to understand, yes, sir, that this was a bank transaction entirely.

Q. You were not advancing your personal funds? A. No, sir.

Q. Why did you enter into an agreement, taking personal security and reciting the debt as a personal debt? A. I didn't draw that agreement up, in the first place.

20 The Court: I think the statement of counsel that the agreement recites that it is a personal debt is a conclusion possibly not justified by the language of the agreement.

Mr. Schotland: If the Court please, I submit that on cross-examination I am justified in making that inference from the language of the agreement, and if it is not so it is up to the witness to say.

30 The Court: You are justified in propounding leading questions, but you are not justified in stating facts.

Mr. Schotland: If the Court please, I will withdraw that question temporarily and go back to it later.

Q. Mr. Smith, did you or did you not treat that \$9700 of indebtedness as a personal indebtedness to you on the part of Mr. Scarlett? A. I did not.

Q. Will you look at this paper and tell me in whose handwriting that is? A. That is in my handwriting.

40 Marked Exhibit D-2 for identification.

Raymond E. Smith—Cross

Q. Did you ever Mr. Smith, in your own handwriting, referring to the items which make up the indebtedness of \$9700, state "in consideration of a certain sum of money amounting to \$9700 and odd dollars, having been turned over to me from time to time by Raymond E. Smith, I hereby agree to reimburse said Raymond E. Smith"—
 did you? A. I have lost the question. 10

Q. (Question read.) Yes, I stated in the agreement that way, I believe.

Q. In your own handwriting? A. Yes, sir.

Q. And you asked Mr. Scarlett to sign such a paper? A. Yes, sir.

Q. And he did sign it? A. Yes, sir.

Q. And you had that paper? A. I had it.

Q. Didn't you, in making that agreement hold
 yourself out as having personally loaned this
 money to Mr. Scarlett? A. No, sir; it wasn't
 meant that way at all. 20

Q. It wasn't meant that way? A. Not as a personal matter, no, sir.

Q. Did you do all the business of the bank in your own name personally? A. I did not, no, sir.

Q. Did you make all contracts for the bank in your own name personally? A. No, sir. 30

Q. Did you take security for money advanced by the bank in your name personally? A. No, sir, not as a rule.

Q. Didn't you tell Mr. Scarlett that you were loaning him this money personally? A. I did not.

Q. And isn't that the reason he entered into the agreement to secure you personally? A. No, sir.

Mr. Schotland: I offer for identification
 agreement dated October 25, 1912, in the 40

Raymond E. Smith—Cross

handwriting of Mr. Smith appearing to be signed by Mr. Scarlett. May I have the original marked D-2 for identification instead of my unsigned copy?

Mr. Guild: No objection.

10 Marked Exhibit D-2 for identification.

Q. I show you Exhibit S-19 that is the check for \$1200, dated July 3, 1913? A. July 2, 1913.

Q. Do you recall the circumstances regarding the certifying of that check? A. I recall certain circumstances, yes, sir.

20 Q. What circumstances do you recall? A. I recall that Mr. Scarlett called me up and told me that there was a certain judgment against the Middlesex Hat Company, I think it was, for \$1200, that had to be met, and that is what that check is given for. It was understood, I believe, that the assignment of the judgment was to be given to me as protection, to protect that check or to the institution, I have forgotten which.

Q. Did anybody besides Mr. Scarlett talk to you about arranging for that \$1200 loan? A. Yes, sir.

30 Q. Who? A. It wasn't a loan at the time; it wasn't called a loan; it was simply a matter of getting \$1200 in some way or another, getting a check certified for \$1200.

Q. Do you remember Mr. Dotto? A. I remember Mr. Dotto.

Q. Talking to you about that? A. Yes, sir.

40 Q. Do you remember Mr. Dotto and Mr. Scarlett asking you if you could advance Mr. Scarlett \$1200 with which to take up that judgment, and to secure yourself for that \$1200 you were to take an assignment of the judgment? A. I remember

Raymond E. Smith—Cross

such a conversation, but that is part of such a conversation. I don't remember that entire conversation. I remember this: that this was a pressing matter and Mr. Scarlett had to have a certified check to meet that judgment, and I agreed to certify his check.

Q. Didn't you say you would let him have the money? A. No, sir, if I had said I would let him have the money I probably would not have certified his own check. 10

Q. Do you remember that a day or two before that check was certified Mr. Scarlett and Mr. Dotto came up to your office and talked about it? A. I remember that Mr. Dotto was up; I can't remember whether Mr. Scarlett was with him or not; I remember his being in the office, Mr. Dotto. 20

Q. And didn't Mr. Dotto and Mr. Scarlett speak to you about a loan of \$1200? A. No, sir.

Q. And offer to give you a note for it? A. I don't remember any such agreement.

Q. Didn't you say that you didn't want a note and didn't you suggest that you would take an assignment of the judgment instead of a note for that \$1200? A. There was an assignment of the judgment to be given, I believe, as collateral for this check or as security for this check. I never remember receiving that collateral. 30

Q. You don't remember receiving it? A. No.

Q. You instructed Mr. Dotto to have that assignment drawn and recorded, didn't you? A. I left that part of it with Mr. Scarlett.

Q. Didn't you personally instruct Mr. Dotto to do that? A. No, sir.

Q. And don't you remember some time later 40

Raymond E. Smith—Cross

Mr. Dotto calling you up on the telephone, telling you that he had received the assignment after it had been recorded and asking you where you wanted it delivered? A. I don't remember that part of it, no.

10 Q. Do you remember telling Mr. Dotto to mail it to the bank, addressed to you, and marked personal on the envelope? A. No, sir; I do not.

Q. You don't remember that? A. No, sir; I don't believe I ever said such a thing at all.

Q. How was that assignment to be made out, to whom? A. I have forgotten.

Q. Don't you know that was to be made to you personally? A. No, I don't; I have forgotten whether it was to be drawn to me or to the bank; 20 I can't remember that at all.

Q. And don't you remember when that check of \$1200 was to be certified that Mr. Scarlett asked for you to give your check? A. No, sir.

Q. And you said, "No, it will be all right, I will deposit the money to your account and make this check good"? A. No, sir; I never said that.

Q. Never said that? A. No, sir.

Q. Did you ever deposit any money to Mr. Scarlett's account? A. I think I did.

30 Q. Your own money? A. Yes, sir.

Q. And wasn't that pursuant to a promise you made Mr. Scarlett? A. Absolutely no.

Q. You mean to say then that you deposited your own personal money to the credit of Mr. Scarlett without having promised him to do that? A. Without his knowledge at all.

Q. And without his knowledge? A. Yes, sir.

Q. You are sure of that? A. I am sure of that.

Q. How did you come to do such a thing? A. 40 I did it to protect the institution.

Raymond E. Smith—Cross

Q. How much did you deposit? A. \$300 at one time.

Q. Did you deposit any more than that? A. A thousand dollar deposit at another time; I don't say that it was my own money; I say it was a deposit made by me of a thousand dollars on the 26th of January, 1913, to the credit of Mr. Scarlett. 10

Q. To the credit of Mr. Scarlett's account? A. Yes, sir.

Q. To make good checks that you had cashed? A. Which deposit do you mean? A. The deposit of \$1000 which you say you made to the credit of Mr. Scarlett's account? A. No, sir, that was given to boost his account at that time, make it look a little better. 20

Q. How did you get that thousand dollars back? A. Charged it back again.

Q. Without him drawing any checks? A. Yes, sir.

Q. Without his knowing anything about it? A. Without his drawing it out.

Q. Without his knowing that it had been there to his credit? A. Yes, sir.

Q. You had quite a scheme of your own about keeping depositors' accounts. A. I had to do that 30 in this one case.

Q. That wasn't done with any understanding with Mr. Scarlett? A. Not the \$1000; the \$300 was given for a different purpose. \$300 was put in Mr. Scarlett's account after a certain check had been cashed. It was the only way to keep the ledged straight.

Q. You didn't want the overdraft to appear? A. No, sir. 40

Raymond E. Smith—Cross

Q. Was that done with Mr. Scarlett's knowledge? A. I don't remember; I may have told him afterwards about it; I don't think so.

10 Q. Did you keep an account of all you advanced for Mr. Scarlett? A. That is the only time I ever advanced any money to my knowledge.

Q. What did you advance when you certified and paid out the checks he drew? A. I didn't advance anything to Mr. Scarlett's account.

Q. What did you advance? A. These checks were paid in different ways, charged the different accounts, taken out of the cash, in that way.

20 Q. Whenever you took a check away from the paying teller you substituted a charge? A. A charge ticket sometimes.

Q. Did Mr. Scarlet ask you to do that? A. No, sir.

Q. Did you and he ever talk about that being done that way? A. I mentioned it to Mr. Scarlett at one time.

Q. When? A. In the early spring of 1913.

30 Q. What did you tell him? A. I told him that I was doing all I could to protect his checks, that I had paid them by charging the different accounts.

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

Q. Did you keep any account of how much you were advancing to him in that way? A. No, sir; we had the checks.

Q. You had those checks? A. Yes, sir.

Q. And you saved those checks in box 55? A. Most of them, yes, sir.

Q. What was box 55? A. Safe deposit box.

40 Q. Used by whom? A. Used by me as an officer of the institution.

Raymond E. Smith—Cross

Q. Didn't you use that for all your personal papers? A. No; no, sir.

Q. What did you use it for? A. For the bank papers entirely.

Q. Did you ever show the contents of that box to anybody connected with the bank? A. I don't know that I ever showed it to them; the key was in the box a good deal of the time, the key was in the lock all the time and accessible to anybody in the institution if they wanted to go there. 10

Q. Was it in the box at the time when the bank examiners came in there, when the bank was closed? A. I think it was not.

Q. You took the key with you when you went away, didn't you? A. I believe so; I am not positive of that; I think the key was in my possession. 20

Q. And in that box you saved all these checks which showed how much had been advanced to Scarlett? A. They were there; most of them were there.

Q. Did you hear the testimony of Mr. Mayham at this trial yesterday? A. Yes, sir.

Q. And you heard him then testify as to which checks were in your desk and which were in box 55? A. Yes, sir. 30

Q. I believe you yourself gave testimony on that source? A. Yes, sir.

Q. Now, S-1, \$500 check, and S-2, the \$1247.76 check, were both in your desk, were they not? A. Yes, sir; they were found there.

Q. And both of those checks that is the debt contracted by the cashing of both of those checks, was secured by that agreement D-1 for identification, wasn't it? A. You mean by contracted—you 40

Raymond E. Smith—Cross

mean the note, don't you? I don't care what paper represented the debt, I mean the debt contracted, the indebtedness was secured by your agreement, wasn't it? A. The note that paid that check was secured by that agreement.

10 Q. Didn't the note represent the indebtedness incurred by the paying of that check? A. Well, it paid the check, but whether it represented it or not—the note had different individuals on it than the check did different names, different names entirely.

Q. Did you discount that note? A. That note was purchased by the Roseville Trust Company.

Q. Was that credited to Scarlett's account? A. No, sir.

20 Q. Was the \$1247.76 check charged to Scarlett's account? A. No, sir.

Q. Why didn't you credit the proceeds of the note to Scarlett's account and charge him with the check? A. I couldn't do that; Scarlett's name did not appear on the note, and even if it had, I couldn't have done it without an application having been placed before the board of directors first, or the executive committee, of the institution.

30 Q. Did you pay Mr. Sica the \$1247.76 represented by that note? A. No, sir.

Q. Couldn't you have given the check for that note and had the cash deposited to Mr. Scarlett's account? A. It might have been done; it is possible.

Q. Isn't that the way it should have been done? A. It would be a very roundabout way to do it; it would have been just as well to do it that way perhaps, but the way it was done here was perfectly legitimate.

40

Raymond E. Smith—Cross

Q. What do you mean, perfectly legitimate? A. I mean, the note paid the check when the check came in; the check took the place of it; it was charged to bills purchased account on our book and regularly filed with the papers of the bank.

Q. And the bank purchased that note in the regular course of business? A. Yes, sir. 10

Q. And that note paid ths \$1247 check? A. Yes, sir.

Q. Why did you testify on your direct-examination that that check was never charged to Scarlett's account because his account wasn't good for it, his balance was only \$1.30, and that it had never been paid or repaid to the bank? A. The check has never been charged to Mr. Scarlett's account, the ledger shows that. 20

The Court: He still contends that his testimony in that respect is correct. This check has never been charged to Mr. Scarlett's account. Your question embraces several items.

Witness: I also testified, I believe, that it had never been paid by Mr. Scarlett, this check had never been paid by Mr. Scarlett, and it never has been.

Q. No but the check was paid? A. The check was honored by the Roseville Trust Company. 30

Q. The check was paid by the Roseville Trust Company purchasing the Sica note, wasn't it, as far as the Roseville Trust Company was concerned? A. Yes, sir.

Q. Why didn't you then say that the system that you employed was the reason for not charging that check to Mr. Scarlett's account instead of giving as the reason the fact that his account 40

Raymond E. Smith—Cross

was not good? A. If Mr. Smith's account had been credited with the note this check no doubt would have been charged against his account.

Q. Exactly. And the only reason that the check was not charged to his account was because
10 you adopted a shorter method of bookkeeping?
A. No, sir; there was a different reason. If Mr. Scarlett had given me the cash for this check it would have been paid.

By Mr. Guild: Q. Do you mean the check? A. I am talking about the check now.

By the Court: Q. What is the date of that check? A. September 13, 1912.

Q. What is the date of the note? A. The same date.

20 Q. Did you get the note on the same day that the check came in? A. I can't tell whether the note came in at the same time or a little later; it didn't go through until the day the check came in for final payment.

Q. Is this a certified check? A. Yes, sir.

Q. Did you have the note on the day the note was certified? A. I think the note was sent by letter after the check was certified; I am not positive about that.

30 Q. Did the check come in the same day it was certified? A. No, sir.

Q. What course did the check take as indicated by the endorsement? A. It went to Mr. Stanley, collector of taxes, Irvington, and the Irvington National Bank and Merchants National Bank in this city.

Q. In the ordinary course of business how long would it take after the check was certified before
40 it came back to the bank? A. Three days.

Raymond E. Smith—Cross

Q. So that when it was certified you say you didn't have the note? A. I am not positive, your Honor, whether I had the note or not at that time; the note is dated the same time as the check, I think.

By Mr. Schotland: Q. Have you any books here that may refresh your recollection as to the date of the note? A. Yes, the bills purchased book. 10

Mr. Giuld: There is no objection to that.

By the Court: Q. If he had the note on the same day there might have been a reason for the course he pursued; if he didn't have the note, of course, the account would have been good; the account not having been good, he would hold the check until something took its place, either a charge in the cash or what not. A. (After examining book.) Yes, sir; the note was dated the same day as the check. 20

Q. Then instead of charging the check to his account, which would have shown an overdraft, you held the check and used the note to take its place, charged both on the same day? Assuming that he had both on the same day, he could have pursued one of two methods, could have charged that check to the account, which was the proper method, assuming that the account had been good for it, but in this case he didn't charge it to the account, he says, because that would have shown an overdraft, so instead of pursuing that course he pursues this other course and uses the note to take the place of the check, and endorses it as a note purchased transaction. Now, I want to know why you, instead of handling this in that manner, did not credit Mr. Scarlett's account 30 40

Raymond E. Smith—Cross

with the proceeds of the note and then charge his account with the check, so that the whole thing would have appeared. I know myself, but I want you, for the benefit of the record, if you can explain, why it was not done in that way? A. The
 10 note did not go to Mr. Scarlett's account because his name was not on the note.

Q. And that is the reason why you handled it in that way? A. Yes, sir.

Q. That is the reason you handled it in the way you did? A. Yes, sir.

By Mr. Schotland: Q. Mr. Smith, when the bank purchased that note the bank owed somebody the cash proceeds of that note, didn't it? A. Somebody owed the bank.

20 Q. When the bank purchased that note the bank owed somebody the proceeds of that note, didn't it? A. Somebody owed the bank.

Q. When the bank purchased that note it owed somebody the purchase price that it was paying for the note, didn't it? A. Before it was purchased, you mean?

By the Court: Q. When the bank purchased the note it had to pay somebody for it? A. Yes, sir; it didn't owe them, though.

30 By Mr. Schotland: Q. You knew that Mr. Scarlett sent up that note and that he was to get the benefit of the cash proceeds of that note, didn't you? A. Yes, sir.

Q. Why didn't you then, when the bank purchased that note, take the cash and deposit that to Mr. Scarlett's account and charge the check against him? A. Because such a course was not thought of, in the first place; in the second place,
 40 the books would show that Mr. Scarlett's account had the benefit of that note.

Raymond E. Smith—Cross

Q. How would they show that? A. Well, the same amount, naturally, take a note and endorsed by people who are interested in the same business with Mr. Scarlett, being the same amount to his credit, being the two together, would show conclusively what the note was given for that Mr. Scarlett got the benefit of it and to get that benefit he has to make a written application. 10

Q. Now, then, the only reason that you didn't do that, or one of the reasons that you didn't follow the methods I suggested, is because you didn't want it to appear that Mr. Scarlett got the benefit of that note? A. I didn' want it to appear to the directors yes, that he got the benefit of that note.

Q. And yet you put certified checks which represented the debt secured by their note, in your desk, you say, as bank property, subject to the inspection of the directors and everybody else connected with the bank? A. The check wouldn't mean anything by being on my desk, lying on my desk, it wouldn't mean anything to anybody. 20

Q. It would not? A. Not necessarily, unless they knew the history of the check.

Q. Without knowing the history of the check, that check, instead of being in its proper place and no entry on the individual ledger showing any charge, wouldn't mean anything to them? A. No, sir; if they came along and saw it on my desk it wouldn't mean anything. It is a perfectly proper thing for a bank official to have checks on his desk. 30

Q. I show you Exhibit S-18 the \$1,000 check, to the order of David Goldsmith. You promised to make that check good for Mr. Scarlett when he 40

Raymond E. Smith—Cross

drew it? A. I promised to honor the check when it came in.

Q. That is the exact language you used? A. Words to that effect. I can't tell you exactly what I said.

10 Q. And you know what that check was given for, don't you? A. Yes, sir.

Q. The \$9700 security that you had was represented by a piece of real estate, wasn't it? A. Yes, sir.

Q. Mortgaged by a first mortgage of \$12,000 and a second mortgage of \$4,000.

20 Mr. Guild: We might have objected to all the examination as to this so-called declaration of trust, I presume, as not being cross-examination, but there is a limit to it. If they want to prove their case they ought to prove it by their own witnesses.

30 Mr. Schotland: I submit, if your Honor please, it is cross-examination of this witness' testimony on direct regarding the transaction, and I submit that it is proper cross-examination to call his attention to some written document which he signed which might have provided differently than he testified on direct.

The Court: All the matters you are bringing out were brought out on cross-examination and are merely amplifications of your cross-examination and are matters of defense. The objection to this question is sustained.

40 Defendant's counsel prays an exception to this ruling of the Court and the same

Raymond E. Smith—Cross

is allowed and signed and sealed accordingly.

H. V. OSBORN,
Judge.

(Seal)

Q. Mr. Smith, do you remember the entire conversation that preceded your honoring this \$1,000 check? A. I remember a conversation regarding this check. 10

Q. Do you remember the entire conversation, everything that was said by you and by Mr. Scarlett? A. I think so, practically.

Q. Do you remember Mr. Scarlett calling your attention to the fact that Mr. Goldsmith, who held the mortgage for \$4,000, which was a second mortgage on the Johnson Avenue property which was given as security for the \$9,700 indebtedness, wanted \$1,000 paid off on the principal of his mortgage? A. That is what I understood it was for a second mortgage on that property. 20

Q. And that the payment of this \$1,000 enhanced that security to the same extent? A. Nothing said about that at all.

Q. Didn't Mr. Scarlett urge that on you? A. No, sir.

Q. Didn't he show you that the equity increased in that property a thousand dollars? A. Certainly, I understood that. 30

Q. Didn't you agree to finance this thousand dollars to Mr. Scarlett because it enhanced the value of the security that you had to the very same extent? A. No, sir—I don't quite get your question; it is a little technical. Just ask it again. 40

Raymond E. Smith—Cross

Q. (Question read.) A. Didn't I agree to do it because it made the collateral that much more?

Q. To the same extent that— A. That wasn't the reason I gave it to him.

10 Q. Was it because you wanted to save the collateral from foreclosure? A. It was because I wanted to help Mr. Scarlett and wanted to save his property.

Q. Wasn't it because you wanted to save that very property from foreclosure because you held it as collateral for the \$9,700 indebtedness? A. Partially, perhaps, but principally to help Mr. Scarlett that I honored that check for Mr. Scarlett.

20 Q. Did he get personal benefit from this? A. Who?

Q. Mr. Scarlett? A. Not just at that time, probably; it meant benefit to him in the end some, future time.

Q. After you would get back that \$9,700 out of that property, if there was any surplus? A. After the institution got it back.

Q. If there was any surplus? A. Yes.

30 Q. You say after the institution got it back—it was after you got it back? A. Well, put it that way—after the indebtedness was paid off.

Q. Did you advance that \$1,000 in order to protect that property? A. Partially.

Q. What is that? A. That is part of the reason.

Q. You didn't agree to let Mr. Scarlett have this money intending to cheat the bank out of it, did you? A. No, sir; I didn't intend to cheat the bank out of it, no, sir.

40 Q. And did Mr. Scarlett, as far as you know? A. I don't think so.

Raymond E. Smith—Cross

Q. Now, Mr. Smith, on every occasion during this period from July, 1912, to July, 1913, that you took up, as you say, one of these checks drawn by Mr. Scarlett, or certified checks for him, you had a specific request, didn't you, for the particular transactions? A. I think so. 10

Q. He didn't make any request to you at all which you refused to grant? A. Yes, sir.

Q. Then he would sometimes ask you to certify a check or honor a check which you would refuse? A. There were a few that I refused, yes, sir.

Q. Then those checks were not issued or didn't come to the bank? A. Yes, sometimes they came to the bank and I returned them.

Q. That also happened during this period between July, 1912, and July, 1913? A. All those that came to me that were returned were given to me without any note—any letter I mean, or any message at all previous to giving the check, and they came to me as a surprise; I didn't look for them at all; I refused to honor the checks. 20

Q. You refused to honor then any check drawn by Mr. Scarlett which you had not previously promised to honor for him? A. I didn't mean that, not exactly, but all returned to him were given that way. 30

Q. Do you remember Mr. Sica coming to you on one occasion during this period and asking you to cash a check for \$125 or \$150?

Mr. Guild: Whose check?

Mr. Schotland: Mr. Scarlett's check.

A. I remember there was a check for that amount cashed with Mr. Sica's endorsement.

Q. Do you remember his coming on one occasion and asking you to cash a check and your refusing to do it? A. No, sir. 40

Raymond E. Smith—Cross

Q. Do you remember telling Mr. Sica, "What does Mr. Scarlett think I am made of, money?" I haven't any more money to advance for him and I won't cash it." Do you remember saying that?

A. No, sir; I don't remember that.

10 Q. Do you remember saying anything to that effect to Mr. Sica? A. Not to that effect, no, sir.

Q. Do you remember saying anything like it, anything of that nature? A. No, I do not.

Q. Will you say positively that you never did?

A. That I never did what?

Q. Say any such words or words to that effect or of that character or nature to Mr. Sica? A. That I had no more money to spare, you mean?

20 Q. That you were not made of money and that you had no more money to spare for Scarlett? A. I never said that; I never remember saying that at all.

Q. Do you remember saying you were not made of money and you wouldn't advance any more for Scarlett? A. I never said any such thing.

Q. You are sure of that? A. I am positive.

30 Q. I show you Exhibit S-11, check dated March 4, 1913, for \$500; you testified, I believe, that that check came with this letter Exhibit S-44; is that right? A. Yes, sir.

Q. When that check came up with this letter Mr. Scarlett states in that letter, "That N. Y. matter"—I suppose you know he meant New York matter? A. I suppose that is what it means.

40 Q. "That New York matter is not through yet and there is quite a serious matter needing immediate attention." What New York matter was that? A. I think Mr. Scarlett had an offer to sell

Raymond E. Smith—Cross

his holdings in one of the companies he was interested in.

Q. Stevenson, Rye & Company? A. Yes, and I think that was what he referred to at that time.

Q. Why did he refer to that in the letter? Had he had any conversations with you by means of which you were informed that as soon as he realized on his holdings there he would repay the money that you advanced for him or honor all the checks that had been taken up? A. Yes, I think there had been such a conversation; he told me that he expected to get a price for his holdings in the Stevenson, Rye Company. 10

Q. And as soon as he got it he was going to liquidate this indebtedness? A. That was the understanding—at least he was going to apply it on whatever he owed to the institution. 20

Q. To the institution? A. Yes, sir.

Q. But the papers were all with you personally? A. Not these checks, no, sir.

Q. The papers regarding the indebtedness were with you personally, weren't they? A. They were drawn that way.

Q. Drawn by you that way also? A. The original agreement was drawn by me; it was just a temporary matter.

Q. But it was drawn by you personally, in your own name? A. Yes, it was. I have already said that. 30

Q. And his request was, would you be good enough to assist him once more, wasn't it? A. That is the way the letter reads; it is addressed to me.

Q. It is addressed to you and asking you to be good enough to assist him? A. That letter came to an acting officer personally. 40

Raymond E. Smith—Cross

Q. When you honored the check which accompanied this letter Exhibit S-43 did you believe that the bank was going to be cheated out of that \$500? A. No, sir.

10 Q. You had no such suspicion? A. I didn't think the bank would be cheated out of it, no, sir.

Q. Did you believe that as soon as Mr. Scarlett realized on his holdings in the Stevenson, Rye Company he would pay the money back? A. I believed he would pay it back, yes, sir.

20 Q. And is that or is it not the only reason that you took up these two checks for him, because you believed he would pay all the money back? A. That is one reason. I certainly would not have made him any loan or agreed to take care of any of his checks as an acting officer of the trust company if I had had any idea that they were not going to be taken care of eventually. That is one reason. There are other reasons.

30 Q. Your friendship with Scarlett or willingness to help him were other reasons? A. That is another reason, perhaps. There are more probable reasons than that. Mr. Scarlett was already indebted to the bank considerably, and a great many of those checks that have been paid were given to settle matters which were pending against him, which would involve him seriously, and would probably as he told me one time, put him in bankruptcy, ruin him in other words, financially, and I helped Mr. Scarlett as treasurer of the trust company.

40 Q. Then as a banker representing the trust company you considered it good judgment to help him tide over his troublous times for the benefit of the bank? A. I did; I considered it so.

Raymond E. Smith—Cross

Q. And that was the primary reason, you say?
A. That was the real reason.

Q. That is the primary reason, I understand it, in the interest of the bank and aside from any feeling of friendship for Scarlett? A. That is one of the reasons. It is perhaps the best reason. 10

Q. If you had had any idea that he would not be able to eventually repay this money would you have advanced it? A. If I had had any idea he would not, no I wouldn't, that is, if I was pretty sure he would not, I suppose you mean.

Q. I mean if you thought— A. There was a chance.

Q. There was a chance the bank was going to lose on this? A. That is a little difference, I think. I am not talking of chance on that very thing because I knew Mr. Scarlett's condition as well as anybody. 20

Q. Then the chance you were taking was that if you would, by giving this assistance, tide him over until such a time as he realized on his holdings with Stevenson, Rye & Company, and what did he also tell you about the Middlesex Hat Company? A. I knew about it, yes.

Q. And in the Middlesex Hat Company? A. Yes, sir. 30

Q. That he would be able to take up these advances as well as his previous indebtedness to the bank? A. All his indebtedness to the bank.

Q. And you took that chance of making these advances for the purpose of bringing about the repayment of all the indebtedness if it could be done? A. Yes, sir.

Q. Why then did you plead *non vult* to this indictment? A. There are several reasons. This 40

Raymond E. Smith—Cross

was one of many indictments that were against me; there are many indictments against me that I believe I could have fought and beaten, but I didn't consider it good policy. *Non vult*, as I plead, meant that I didn't wish to go against the State.

10 Q. Then you don't mean to say to the Court and jury that you admit the charge made against you in this indictment that you conspired with Scarlett to cheat the Roseville Trust Company?

Mr. Mott: I object. It is not for this witness to characterize his conduct.

Mr. Schotland: I consider the question competent for these reasons, the prosecutor in his opening said that Mr. Smith had plead guilty to this indictment, but according to the testimony that is not true because he says he plead *non vult*.

20 The Court: The Supreme Court has held that a plea of *non vult* is tantamount to a plea of guilty.

Mr. Schotland: Mr. Smith did correct the prosecutor when he asked him if he had pleaded guilty and he said he had pleaded *non vult*. The plea of *non vult*, as I understand it, may be interposed, meaning that a man feels himself absolutely innocent of the charge in the indictment, but cannot be sure he can prove his innocence, and enters a plea of *non vult*.

30 The Court: I do not understand that plea of *non vult* indicates anything as to his feeling of guilt or innocence; all I understand it means is that he does not contend against the State, that he does not

40

Raymond E. Smith—Cross

chose to contend for whatever reason, because he thinks he is innocent or because he thinks he is guilty.

Mr. Schotland: It does not admit his guilt.

The Court: It does not admit anything except that he doesn't contend. 10

Mr. Schotland: The prosecutor having considered it material and having put it into evidence, not by form of the record, but by the oral testimony of the testimony, the fact that he did interpose that plea seems to me that I have a right to cross-examine him to have him explain.

The Court: Explain away the effect of a plea? 20

Mr. Schotland: I have a right to cross-examine him on what he stated on direct. if his explanation, after it is given, would in effect be to explain away the plea, that becomes another matter and can be taken up and ruled upon for proper explanation.

The Court: The question is overruled.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and signed and sealed accordingly. 30

H. V. OSBORN,
Judge.

(Seal)

Q. Mr. Smith, in connection with check S-9, dated February 19th, you said you received a letter asking you to certify that. Is this the letter Exhibit S-42 that you received? A. Yes, sir. 40

Raymond E. Smith—Cross

Q. Did you certify that check because of the contents of this letter or for any other reason? A. I certified it for the same reason that I certified a good many others, and that is to help Mr. Scarlett—that is, to help him.

10 Q. To help him as you have explained it a little while ago; is that what you mean? A. Yes, sir.

Q. I notice in this letter he informed you in this language: "I will start in shortly after March 1st to liquidate all these items independent of the building and loan. If it was not absolutely necessary I would not ask you to help me further." Did you rely upon those promises too?

A. In certifying the check, you mean?

Q. Yes. A. No, not particularly.

20 Q. To any extent? A. I had heard this same story before several times.

Q. And it was all pending and never closed? A. Yes, sir.

Q. Can you, out of this series of checks, S-1 to 19, pick out a single check that you either honored or caused to be certified without having been previously requested by Mr. Scarlett to do that and without your having promised to do it? A. Yes, sir; I think there are a very few here.

30 Q. Which one? A. There is a little check of \$26 on the 21st of January, 1913, to the building and loan association and I think these checks that have been cashed over the counter were done without any previous arrangement.

Q. Except the arrangement made at the time? A. Perhaps there was a telephone message or something like that, but I am quite sure there was none for that check, a small check like that.

40 Q. But you think all the checks there was either

Raymond E. Smith—Cross

a telephone message or a letter or a verbal conversation, simultaneously with the cashing of the check, arranging at the time? A. I think so.

Q. And you kept these checks themselves as the account of Scarlett's indebtedness to be liquidated as soon as he realized on his holdings in the corporations? A. No, sir. 10

Q. What other account did you keep? A. There are loans that he had that went regularly to his account also an indebtedness to the company.

Q. I mean for these moneys? A. Which moneys, represented by checks—

Q. That were advanced to him by reason of the checks? A. I kept them in a different place.

Q. The only record you kept of this money advanced was the checks themselves; is that so? A. Yes, most instances, except perhaps two instances. 20

Q. Did you keep any other account of the money advanced? A. No, sir, not as to the two deposits I spoke of before, we didn't keep any account of them, except as they appear on the ledger.

Q. But you took one of those deposits back again? A. Yes, sir.

Q. So there was no reason for continuing an account for that? A. No, sir. 30

Q. And the \$300 was just the one item, and you remembered that? A. Yes, sir.

Q. There wasn't any difficulty then about your being able to ascertain at a moment's notice exactly what Scarlett's indebtedness was? A. Yes, it took a little time to figure it out because this was Mr. Scarlett's total indebtedness to the bank. 40

Raymond E. Smith—Cross

Q. The rest of it was charged up in the regular way on the books of the bank? A. I guess most of it was, yes; sometimes loans would go through, perhaps, without showing on his account—that is, the whole transaction, I mean.

10 Q. But the amount of his indebtedness would be charged up to him? A. Not exactly. What I mean is this, if a man has a note due for \$1,000 and he renews it for \$900, it doesn't necessarily have to go through his account and show on the ledger; he can pay the difference in cash and take the old note with him and leave the new note.

Q. You know that his indebtedness is \$900? A. Yes, but you don't know that from the ledger; you know that from the bills purchased book or some other book.

20 Q. What I want to know is was there difficulty to ascertain at any time all of Scarlett's indebtedness? A. No, I think not.

Q. If you took the ledger account and took whatever note the bank had and took these checks in the vault and in the safe and totalled them together it would show his indebtedness, wouldn't it? A. I think so.

30 Q. You made no attempt to hide then what his indebtedness was, did you? A. From whom?

Q. Well, I don't know from whom, assuming any attempt to hide his indebtedness? A. Part of it.

Q. Which part of it? A. Represented by these checks.

Q. But the checks themselves and the letter which you saved were evidence of the debts, weren't they? A. Yes, sir.

40 Q. They didn't hide the indebtedness then did

Raymond E. Smith—Cross

they? A. Not necessarily, no, sir. A check is a little different kind of indebtedness from a note. If these were all notes it would appear by any one picking them up as an indebtedness; it wouldn't necessarily follow that way with a check a voucher, to one outside who didn't know the transactions, the history of those checks. 10

Q. But any accountant going over the books of the bank and being presented with these checks could readily ascertain from Scarlett's account that these checks were not charged to him and that it had paid that money? A. Certainly, he could ascertain that they had not been charged to his account on the ledger.

Q. If these checks had been destroyed would there have been any means of ascertaining that that money had been taken from the bank? A. Yes, sir, there would. 20

Q. In what way? A. From the return item book. I also remember yesterday saying the course the checks took.

Q. What did they show, the name of that party? A. In some instances, not all.

Q. Did any of the return item books show any charge to Scarlett? A. They show they are checks of Scarlett's, not in all places where they are certified; sometimes the name is not given. 30

Q. Will you refer to those books and show me where they show it? A. I have here July 3, Scarlett, \$1,200.

Q. What year? A. 1913.

Q. That is the loan which was secured by the assignment? A. That is a check that was not good and was held out in the exchanges.

Q. Isn't that a check of Manning Freeman & 40

Raymond E. Smith—Cross

Sons for \$1,200, which was secured by the assignment of the judgment?

Mr. Guild: I object. It assumes something that is not true. Mr. Smith said it was not so and never saw it.

10 Mr. Schotland: He didn't say anything of the kind. He said the arrangement was made to have that judgment assigned for security for that money and he says he doesn't recall ever seeing the assignment, but he says that is the arrangement that was made.

The Court: That does not state the evidence correctly.

Q. I will amend the question and say which
20 was to be secured by the assignment of the judgment which that check went to pay? A. Which was supposed to be, yes, sir.

Q. Will you state positively that that judgment was never assigned to you? A. I never saw the judgment.

Q. You never saw the assignment? A. Never saw the assignment, I mean to say.

Q. But you don't know whether it actually was assigned to you? A. I never got it and never
30 knew it was assigned.

Q. Is there any other check entered here by name? A. I think so, probably by another name. (Examines book.)

Q. That is the only check on May 2d, is that it?
A. I have here in July an item in the return item book, J. B. Scarlett, \$1,000, which is the same check that you spoke of a minute ago.

Q. That is entered with his name? A. Yes, sir.

40 Q. How is that accounted for in the books of

Raymond E. Smith—Cross

the bank? A. The check is held out in the cash of the receiving teller that night and turned over to the paying teller; the paying teller gets it the next morning, after which it is taken out of the cash and put in box 55, or some place in my desk.

Q. What was put in the paying teller's box instead of that check? A. I don't know that. 10

Q. Well, that couldn't be taken out without cash or its equivalent substituted? A. No, sir; it is a charge of some kind or cash.

Q. You don't recall what was substituted for it? A. No, sir, I don't.

Q. It probably was cash? A. Probably not.

Q. What was it probably, then? A. It was probably some charge to some account.

Q. For an equal amount? A. Very likely. 20

Q. And then you took that out and put it in—
A. Box 55, either there or on my desk, I don't know which.

Q. How did the books of the bank then show that that money was not turned in? A. Turned in by whom?

Q. By somebody for those checks? A. The check would have been surrendered if it had been turned in if the money had been turned in.

Q. You have lost the purpose of my inquiry, Mr. Smith. I wanted to find out from you whether if those checks which you preserved in your desk and in the private box had been destroyed, the money that was drawn by means of those checks could be traced to Scarlett? A. Through these various books that I have just been reading from. 30

Q. How could it be traced? A. The check came in and never was charged.

By the Court: Q. If you didn't have the check 40

Raymond E. Smith—Cross

as the starting point how could you identify certain items figures representing amounts and dates, in those return item books and other books that you have mentioned? A. By the name in the book.

10 Q. Did they all have their names? A. No, sir, not all of them.

Q. Now, supposing a case where you had not entered a name? A. Couldn't trace them.

The Court: That is what you want to know?

By Mr. Schotland: Q. Suppose the name wasn't entered, say, for instance, for that \$1,000 check when it was at the paying teller's cage, if that morning Mr. Scarlett had come up and said, 20 "Mr. Smith, I just got in a thousand dollars, here is the thousand dollars to make good this check to Mr. Goldsmith," and he handed you the thousand dollars in cash and said, "Let me have the check back," and you took the thousand dollars and put it into the paying teller's drawer and took out this check instead of it, would there be any record as to how that check was ever disposed of? A. No, sir, if it was taken care of in that way. I never heard of a check being paid 30 over the counter that way. It would naturally go through a man's account if it was made good, he would want a record to appear on the bank book as well, as having been paid, the checks would be returned in his vouchers, cancelled by the bank, showing the transaction.

Q. But if the check had been taken care of as it was in this way when there was no money credited to his account, and as you say, you 40 wouldn't then charge up the check because you

Raymond E. Smith—Cross

didn't want to show an over draft, and it was taken care of in that way, would there be anything to show that the check was not taken care of? A. You mean if the check had been paid over the counter by Mr. Scarlett?

Q. Yes. A. He would have the check; we would not have the check in our possession. 10

Q. Suppose it had been destroyed after it had been paid, suppose he didn't save the check—I will put it as straight and simple as I can—I mean this; could even you have gone through these books of the Roseville Trust Company and show by the books that Scarlett was indebted to the bank, if he was indebted to the bank, for the amount represented by these checks S-1 to 19, if those checks had been destroyed? A. Not in every case, no, sir. 20

Q. You could only in those cases where the name appeared on the return book? A. Yes, sir.

Q. How could you in those cases? A. By tracing the check as far as it goes in the institution, that is, when it is taken out of cash it goes from the receiving teller to the paying teller, the record is on the return item book; it also appears in the teller's proof book in bulk, and it shows conclusively that the check was not returned from the institution or honored by the institution, and therefore is returned by the institution. 30

Q. But the paying teller has parted with the check and has turned over its equivalent, making his account balance, hasn't he? A. Yes, if it has been taken out of his cash, yes.

Q. Wouldn't that be a record that it had been delivered by the institution to somebody else? A. No, sir, not necessarily, no. 40

Raymond E. Smith—Cross

Q. I don't know what you mean by necessarily?

A. It would not unless it was some check of Mr. Scarlett's or something of that kind or some individual, I mean, which showed the transaction, the transaction itself; the entry itself would speak
10 for itself, that is what I mean.

Q. You would have the entry on the return item book showing that you received a check from the Union National Bank drawn by Scarlett on this date for so much money and you would have the further entry of that check on the paying teller's account, wouldn't you? A. First of all, on the return item book.

Q. That is what I just described, and then the next would be on the paying teller's account? A.
20 Yes.

Q. If the paying teller in proving his account turns over the proper amount of cash and does not turn over this check, what would the records further show? A. As far as the records are concerned, it would show that it was taken out, it wasn't there any more.

Q. It wasn't there any more, taken out, and could not have been taken out unless it was paid, wouldn't that be the record? A. Certainly not.
30 Something would have been put in its place for this; necessarily so; the check has been paid, cancelled.

Q. What could have been in its place to make the paying teller's account straight without the natural inference being that the check had been paid? A. Be charged to some other account or cash, as I said before; more likely it would be a charge.

40 Q. If it were a charge to some other account it

Raymond E. Smith—Cross

would eliminate this check from consideration of the paying teller's account, wouldn't it? A. Yes, sir.

Q. As soon as that check is eliminated from the paying teller's account then there is nothing further on the institution's record to have a charge against the maker of that check on, is there? A. Yes, sir. 10

Q. What? A. Perhaps not the record, the books, but the fact that they have possession of the check, they retain the check.

Q. You have forgotten where we started from. We started out with the proposition that all these checks were destroyed? A. There is nothing on the record, no.

Q. If you and Mr. Scarlett had entered into an agreement to cheat the bank out of these moneys, would you have preserved those checks? 20

Mr. Mott: I object to that as incompetent, what he would have done if he had done something else. The transaction speaks for itself—I mean the facts are before the jury. If counsel says there is an inference to be drawn from the fact that the checks were not destroyed all good and well, but this witness cannot give any testimony on that point. 30

The Court: I do not think he can at this time say what he would have done under certain circumstances for the purpose of affecting the result of this action.

Mr. Schotland: The point is this, the defendant is being tried for what the intention of the parties was at the time of these transactions. 40

Raymond E. Smith—Cross

10 The Court: Do you think they can now make evidence for themselves by coming in and declaring their intentions and take from the jury the determination of the question of what their intentions were by declarations?

Mr. Schotland: I am not asking him to make evidence; I am asking him to testify as to the intention at that time, based on the physical existence of things that could not be changed for the purpose of making evidence at this time.

20 The Court: You are asking him to testify what he would have done in the light of subsequent events if certain conditions were true. It is for the jury to say what the result of that situation is. Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,
Judge.

(Seal)

30 At 1 o'clock p. m., the Court took a recess until 2:15 p. m.

After recess.

RAYMOND E. SMITH, resumes the stand:

40 Cross-examination (continued) by Mr. Schotland:

Raymond E. Smith—Cross

Q. Mr. Smith, you testified on direct-examination that there were no interest charges made on that \$1247.76 note? A. There were none, to my knowledge.

Q. How is that there were no interest charges made? A. The note went through without interest at the time it was renewed; I don't know just why. I might be able to tell by looking at the ledger. 10

Q. Will you look at the ledger and see why? A. I may be able to tell from the ledger.

Q. You mean the individual ledger? A. Yes, sir. (After examining book.) Most of the time that that note was—most of the time when that note was renewed there wasn't money enough in Mr. Scarlett's account to pay for the interest. 20

Q. That note was never charged to Mr. Scarlett's account? A. No, sir.

Q. On the books of the bank? A. No, sir.

Q. And his name never entered into the transaction on the books of the bank? A. No, sir, not in the note transaction.

Q. As far as the books of the bank showed, it was a note purchased from Mr. Sica, wasn't it? A. Yes.

Q. He being the endorser on the note? A. As far as the books show, either purchased from Mr. Sica or else Mr. Spinoza, I don't know which. 30

Q. And that note was regularly entered in the note purchased account? A. Yes, sir.

Q. And when it was due and renewed, the renewal was regularly entered? A. Yes, sir.

Q. How, in the balance of your book, did you account for the interest? A. The books wouldn't have balanced if there had been interest charged; 40

Raymond E. Smith—Cross

that is the reason it went through without any interest.

Q. The books wouldn't have balanced if there had been interest charged? A. No, sir.

Q. Don't you charge interest on all notes? A.
10 As a rule, yes, sir.

Q. How do you enter the interest? A. The interest is taken off the face of the note, as a rule.

Q. That is, discount? A. That is discount, practically.

Q. In this case you didn't take any discount in? A. I did not.

Q. Wasn't that because this note was part of the loan apparently made by you personally and the interests on it was secured by the trust agree-
20 ment? A. No, sir.

Q. Isn't that the reason no interest was charged? A. No, sir.

Q. You are sure of that? A. I am sure that was not the reason.

Q. Do you know whether or not the provision for the interest on the items which make up that \$9,700 indebtedness mentioned in the trust agreement is in? A. Is in what, the agreement?

Q. Yes. A. I don't know that, no, on the various
30 items in bulk, you mean?

Q. Collectively, by securities made for the \$9,700, together with the interest that might accrue thereon until the interest is paid? A. I think the interest is specified, yes, sir.

Q. Doesn't that account for the fact that you didn't collect interest at the time of the renewals? A. No, sir.

Q. Why didn't you collect interest then? A. I
40 never did.

Raymond E. Smith—Cross

Q. What is that? A. We never did on that item.

Q. Why didn't you collect the interest at the time of the renewal, why didn't you ask for it?

A. Interest is not given; it is usually paid in a case like that; it would be paid in cash; it was never paid.

Q. Did you ask for it? A. I don't remember. As a rule, the renewals went through the paying teller, the paying teller's department.

Q. Did the renewal of this note go through the paying teller? A. He handles the note.

Q. This particular note, this \$1,247.76 note, I am asking about. A. He handled most of the renewals.

Q. Of this particular note? A. Yes, sir.

Q. Wouldn't he, in the usual course, refuse to surrender the old note unless the interest was paid? A. Yes, naturally would.

Q. How do you account for that not being done in this case? A. I don't account for it at all, except the interest wasn't paid by the man who brought the note up; it was not though without interest.

Q. Don't you account for it because it was a personal transaction of yours and there was an agreement existing at that time? A. No, sir.

Q. You don't account for it that way? A. No, sir; I never thought of it at all.

Q. Did you ever represent to Mr. Scarlett, or did you ever tell him, rather, that the automobile business in which you were engaged was very, very profitable? A. No, sir.

Q. Did you ever tell him that the ice business in which you had a controlling interest was very, very profitable? A. No, sir.

Raymond E. Smith—Cross

Q. Did you ever tell him that you made in those business ventures upwards of \$30,000 a year profit? A. No, sir, never did.

Q. Did you ever tell that to Mr. Munroe? A. \$30,000 profit?

10 Q. Well, did you ever tell him that you made upwards of \$30,000 profit, yes. A. No, sir.

Q. Did you ever tell him that you made very, very good profits out of those two business ventures? A. I might have told Mr. Munroe about a certain transaction that had something to do with my automobile business at that time, and which was a sale of a piece of property in which I made a little money; I may have spoken to Mr. Munroe about that, and probably did. That is the
20 only time I ever remembered speaking of any transaction at all, either to Mr. Munroe or to Mr. Scarlett relating to my personal business.

Q. But you never made the statement that you were making very handsome profits out of the automobile business? A. No, sir.

Q. Or out of the ice business? A. No, sir.

Q. You never told that to Scarlett? A. No, sir.

Q. You had \$30,000 worth of stock in the Roseville Trust Company, didn't you? A. Yes, sir,
30 about.

Q. Mr. Smith, a part of the \$9700 of the Scarlett indebtedness, which was secured by that trust agreement, is represented by a personal check of yours for \$4200, is it not? A. A check drawn by me for \$4200, yes, sir.

Q. Is this the check?

Objected to as not cross-examination.

40 The Court: I will admit the question.

Raymond E. Smith—Cross

Q. Is that the check? A. This is the check, yes, sir.

Marked Ex. D3 for identification.

Q. Then you did make a personal loan to Mr. Scarlett of \$4200 which was part of that \$9700?

Objected to as not cross-examination.

The Court: (After discussion.) I will permit the question, although it seems to be a dual question. 10

Mr. Mott. I do object on that ground, that it is a compound question.

The Court: Your question embraces two statements, first whether he loaned the \$4,200; secondly, whether that \$4200, if he says he loaned it, was a part of the agreement. The first part of that question is unobjectionable. 20

Q. Did you make a personal loan to Mr. Scarlett of \$4200? A. No, sir.

Q. You saw D3 for identification? A. Yes, sir.

Q. That is your personal check? A. It is.

Q. Drawn against your account? A. Yes, sir.

Q. To the order of John B. Scarlett? A. I think so.

The Court: You may refer to it and refresh your memory. 30

Witness: Yes, sir; it is drawn to Mr. Scarlett's order.

Q. What was it if it wasn't a loan to Mr. Scarlett? A. It was a check for \$4200.

Q. Was that check paid? A. Paid by the Roseville Trust Company.

Q. And wasn't that a loan to Mr. Scarlett? A. It was a loan to Mr. Scarlett, yes, sir. 40

Raymond E. Smith—Cross

Q. Made by you by your check? A. It was not a personal loan.

Q. What was it if it was not a personal loan? A. This check was given to Mr. Scarlett one afternoon, I think, on October 25, 1912, after hours, around four o'clock, a little after, I think, at the time that original agreement was drawn up between Mr. Scarlett and myself whereby he was to turn over \$9700 in cash which was due, which was just a transaction for a day or so, it was intended so in the start when that check was given, and had the bank been open, the vaults of the bank been open and the safe, I would not have given him a treasurer's check. At that time the treasurer's check book was locked up under time lock and couldn't get it until the next morning. I knew nothing of that transaction until Mr. Scarlett came into my office in the afternoon.

The Court: Isn't the real point of inquiry, whose money paid that check? Isn't that what you want to know from the witness? A mere piece of paper may or may not indicate something.

By the Court: Q. It would seem that you gave Mr. Scarlett this check for \$4200; you drew up in your own handwriting that agreement D2 for identification which Mr. Scarlett signed? A. Yes, sir.

Q. Didn't you recite in that that the \$9700 was money advanced by you, in your own handwriting? A. Yes, sir; I said as having been turned over by me. That is the way it reads.

The Court Just read what the paper says.

Raymond E. Smith—Cross

Mr. Schotland: (Reading) "In consideration of certain sums of money amounting to \$9700 and odd dollars having been turned over to me from time to time by Raymond E. Smith, I hereby agree to reimburse said Raymond E. Smith with such sums of money which are to be paid to me in the near future from the Mutual B & L of Newark, N. J., and the Central B & L Association of Belleville, N. J., from property owned by the Ridgewood Land Company, part of Greylock Manor." 10

By Mr. Schotland: Q. Mr. Smith, you insist that you did not make a personal loan to Mr. Scarlett, do you? A. I do, yes, sir.

Q. Didn't you in Exhibit D2 for identification 20 in your own handwriting get Mr. Scarlett to sign an agreement that he agreed to reimburse you for such sums of money? A. I think it reads that way, yes.

Q. If you didn't make those loans personally why were you the one to be reimbursed? A. I was acting for the trust company in this matter.

Q. How many years had you been in the banking business at the time this letter was written, October 25, 1912? A. I don' know—perhaps ten 30 years.

Q. Were you in the habit, in transacting business for the bank or the trust company, to have the agreements made in your own individual name? A. Not as a rule, no, sir.

Q. When a loan was made by the bank with the bank funds and an agreement to repay it was made, it was made to repay it in the name of the bank? A. As a rule, yes, when it went through 40 regularly.

Raymond E. Smith—Cross

By the Court: Q. Would that depend upon the nature of the collateral? A. Somewhat, yes, sir.

Q. Is there any banking practice with regard to the kind of collateral that a bank takes? You don't take anything anybody offers you, do you?

10 A. No we usually want something of value, of course.

Q. Stocks and bonds you recognize as collateral? A. We usually loaned at eighty per cent.

Q. Do you ordinarily take real estate? A. Not as a rule; we take it as contingent collateral.

Q. What is your practice when you take real estate as to your collateral? What do you do, do you take a deed directly to the bank or do you take it to a trustee or do you take it to a stranger, or what, if there is any practice that you know of? If you don't know of any practice, say so. A. This particular trust company never made a business of taking over anybody's real estate in their own name.

Q. I don't suppose anybody makes it a business? A. I mean as a collateral or a loan. I was simply acting as trustee in the matter for the Roseville Trust Company.

By Mr. Schotland: Q. As a matter of fact, in 30 accepting collateral or making a loan you used your judgment without following any fixed set of rules? A. As a rule, yes, sir.

Q. You took the moral risk in consideration as well as any others? A. Always take the moral risk to a certain extent, always.

Q. Mr. Smith, do you remember Mr. Scarlett and Mr. Dotto visiting you at the Essex County 40 jail? A. Yes, sir.

Raymond E. Smith—Cross

Q. Talking to you? A. Yes, sir.

Mr. Guild: Fix the time.

Q. Do you recall when it was? A. I should say it was about a year ago.

Q. Do you remember the subject of the conversation? A. I certainly do.

Q. Do you remember Mr. Scarlett telling you that there were rumors or claims made that he had used the bank's money? A. No, sir.

Q. And do you remember Mr. Scarlett asking you whether you had not always told him you were loaning him your personal money? A. I remember his asking me that question.

Q. And did you say yes to that? A. I said absolutely no, and I thought he had an awful nerve to come up to the jail and ask me that question, especially with two witnesses.

Q. Didn't you say—answer yes or no—to Mr. Scarlett, in the presence of Mr. Dotto, "Yes, I told you that, but it really wasn't my money"? A. No, sir.

Q. Did you say anything to that effect? A. No, sir.

Q. Or anything on that order? A. No, sir.

Q. Was Mr. Sica present at the time they visited you in the jail? A. Yes, sir.

Q. Was he close enough to hear you? A. They were all three of them close enough.

Q. Was there anybody else there? A. With Mr. Scarlett?

Q. Besides Mr. Scarlett and Mr. Dotto and yourself and Mr. Sica, was there anybody else close enough to hear the conversation? A. Yes, sir.

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Raymond E. Smith—Cross

Q. Who was that? A. Mr. Lyons, center keeper up in the jail.

Q. When you drew that agreement D-2 for identification on October 25, 1912, was all the indebtedness of Mr. Scarlett figured up at the time and amount to that figure? A. Which is D-2?

Q. The \$9,700 agreement, preliminary agreement. A. All we could think of at that time that had come through irregularly.

Q. All that you could think of? A. Yes, sir.

Q. Have you discovered anything else that had come through up to that time? A. I think there were two or three checks that were not included in that agreement.

Q. Where are those checks? A. I think they are in the hands of the prosecutor.

Q. Do you know the amount of them? A. There is one of \$125 and there is another for, I think, \$350; I am not sure about that one, but there are two or three other checks, I think one for \$150 and another for \$500 that had not been paid up to that time.

Q. Where were those checks kept? A. They were drawn on outside institutions. They were kept in box 55. The vault was closed that night; I couldn't get at them; I couldn't remember the amount.

(Witness addresses the Court.)

The Court: The witness desires to correct an answer which he has already made.

You may do so, Mr. Smith.

Witness: I said at the jail there were present Mr. Lyons; there was also present a Mr. Malloy, who was at that time one of the day keepers in the Essex county jail.

Raymond E. Smith—Cross

By Mr. Guild: Q. Who was Mr. Lyons? A. Center keeper.

By the Court: Q. Mr. Lyons and Mr. Malloy were both keepers at the jail? A. Yes, sir; they were both within hearing.

By Mr. Schotland: Q. On direct-examination you were continually looking at the individual ledger account of Mr. Scarlett and kept repeating that there was that balance of \$1.30 there. As a matter of fact, that account of Mr. Scarlett's was the inactive account for over a year, wasn't it? A. For some time. 10

Q. There were no deposits made to it and no charges made against it during the last year of the existence of the bank? A. I don't remember it was a whole year, but it was quite a long time. 20

Q. Will you just look at it and just see when the last deposit was made by Mr. Scarlett to that account. A. The last deposit was made on December 23, 1912, of \$300.

Q. That is the one that you made without Mr. Scarlett's knowledge? A. Yes, sir.

Q. I mean the last deposit made by Mr. Scarlett? A. The last deposit was in July, 1912.

Q. Then during this whole period covered by this series of Checks S-1 to S-19, from July, 1912, to July, 1913, Mr. Scarlett made no deposit and did not draw directly against his account? A. He made no deposit; he drew against his account, but the check— 30

Q. By an arrangement made with you?

Mr. Guild: Allow him to answer the question.

Witness: The checks were not charged against his account. 40

Raymond E. Smith—Cross

Q. By special arrangement with you? A. No, not special arrangement. It was understood that I should take care of the checks, honor them, rather, as they came in. It might be called a special arrangement.

10 Mr. Guild: I should think so, if I had made that arrangement with the bank.

Witness: A special arrangement, yes, sir.

Q. A special arrangement with regard to the \$26 check? A. I think so.

Q. Then his account with the bank was practically a dead account, wasn't it, during that time?

A. So far as his deposits were concerned, yes, sir.

20 Q. So far as the bank knew, or the bank was concerned, and so far as his drawing against it was concerned. What was there for you to talk to him about in his account? You say you had several times talked to him about his account being in bad shape? A. It was with reference to these checks that he had drawn that had not been made good.

30 Q. These advances that he was procuring and had promised to reimburse you for, that is what you talked to him about, wasn't it? A. I talked about the checks that had been paid by the bank and never charged up to his account and paid irregularly.

Q. Did you tell him that? A. Certainly.

Q. What did you tell him? A. I told him in February, I think it was, some time early in 1913, that I had paid, was taking care of his checks the best I knew how, and I had to charge them to different accounts in order to get them out of the way, out of the cash.

40 Q. Is that all you said to him? A. I told him it put me in a mean position.

Raymond E. Smith—Re-direct

Q. Did you tell him anything else? A. I may have, probably; I don't remember now.

Q. All you told him was that you had to charge them to other accounts to get them out of the way, and it put you in a mean position? A. I remember telling him that, yes, sir.

Q. And asking him to get the money as soon as he could and pay back? A. Yes, sir. 10

Q. And he was making every effort to get the money, so far as you knew? A. I can't tell you that.

Q. Do you know, or from talks with him, did he inform you who he was meeting and whom he was negotiating with and things of that kind? A. I thought at the time Scarlett was doing all he could to make good, but I don't know how far that went, but that is the way I felt about it, I thought of it. 20

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. You have said under cross-examination that the check of \$4,200, Exhibit D-3 for identification, was signed by you to Mr. Scarlett's order, was given to him after the bank had closed in the afternoon? A. Yes, sir.

Q. And that the time lock had been set on the vault and the vault could not be opened until the next morning? A. Yes, sir. 30

Q. Why didn't you wait until the next morning and give a treasurer's check instead of your own check? A. Mr. Scarlett wanted the money right away; he wanted to fix it that afternoon.

Q. Was the check certified the same afternoon? A. Yes, sir.

Q. Certified by you? A. No, sir, certified by Mr. Thompson. 40

Raymond E. Smith—Re-direct

Q. Being your check you preferred him to have him certify? A. I wouldn't certify my own check.

Q. Did you at that time say anything to Mr. Scarlett as to whether this was or was not your money that he was getting on this check or represented by this check? A. I gave Mr. Scarlett to understand that I had no money to loan personally, told him I would be glad to help him out personally.

Mr. Schotland: I object to this witness testifying as to a conclusion.

The Court: Objection sustained.

Q. What did you say to him, Mr. Smith? A. I remember telling him that money was tight, that we really didn't have any money to loan in the institution, that I would be glad to help him out if I could, but I couldn't.

Q. When you say "I" you mean yourself personally? A. Yes, sir; personally; I didn't have any money to loan; I wasn't loaning money for a living.

By the Court: Q. Had he said anything to you about loaning him money personally? A. No, sir, that was the first I heard about it.

Q. You volunteered all this? A. Yes, sir.

By Mr. Guild: Q. The question is whether you said to him, at the time you gave this check, as to whose money the check represented? A. I don't think anything was said; I think it was understood.

Q. How could it be understood unless something was said about it? A. There wasn't anything said that I was loaning him the money; I told him I couldn't loan him the money.

Q. Did you offer him any explanation for giving

Raymond E. Smith—Re-direct

your individual check instead of the treasurer's check? A. Yes, sir.

Q. What did you say to him? A. I told him it was too late to give him a treasurer's check because the bank was closed and the safe was locked for the night, and I gave him my own check in place of the treasurer's check. 10

Q. Did you tell him that you would give him your own check? A. Yes, sir; I did.

Q. Was your account good for this check, the amount of this check? A. No, sir, it was not.

Q. You have spoken about taking care of Scarlett's check by means of making charges against other accounts, or the accounts of other people; what do you mean by that or what did you mean by that? A. Why, oftentimes there were checks in the cash which had been paid irregularly, that is, that were not good on the ledger for that— 20

Q. You mean Scarlett's checks? A. Scarlett's and sometimes others.

Q. Checks that he had put through the bank? A. That he had used in other institutions on us, that had come to us for payment, the checks were honored and held in the cash, as I testified yesterday, and then taken out of the paying teller's department by charging some other account with the amount of those checks. 30

Q. Do you mean that you would charge the account of another depositor? A. Sometimes.

By the Court: Q. How did you get that straightened out afterwards, did you keep a record of it or did you try to remember it? A. I didn't keep a record of it; I kept sort of a record.

Q. But you had to straighten that out some time? A. I kept a good deal in my memory most of the time. 40

Raymond E. Smith—Re-direct

Q. And as soon as you got chance you credited the account? A. Reimbursed the account, yes, sir.

By Mr. Guild: Q. You said on cross-examination that this so-called trust agreement, though made in your name, was not given to secure an indebtedness to you personally. What indebtedness was it given to secure? A. The trust agreement was given to protect a note of—

Q. I don't mean the item of it; I mean generally, for whose protection was it given? A. For Mr. Scarlett's.

Q. No, for whose protection was it given? A. For the bank's protection which had advanced the money in these different items.

Q. It has been named in this agreement as \$9,700. Did that represent any money advanced by you personally to Scarlett? A. No, sir.

Q. Advanced by whom? A. The Roseville Trust Company.

Q. Why was the declaration of trust not taken in the name of the trust company? A. I didn't want it to appear, being a public matter, at all that the trust company had some of Mr. Scarlett's money. The mere knowing of it by the directors would show that there were transactions there that they knew nothing of; it would reveal them.

Q. You mean irregular transactions? A. Yes, sir.

Q. And is that why the declaration of trust was taken in your name? A. That is why the declaration was put in my name, yes, sir.

Q. At the time the declaration of trust was talked of did you say anything to Mr. Scarlett about any assets to be taken in the name of the trust company? A. Yes, sir.

Raymond E. Smith—Re-direct

Q. Did you tell him why? A. Yes, sir.

Q. The same reason that you have told us now?

A. Exactly, yes, sir.

Q. You said on cross-examination that you made a deposit of \$1,000, or had credited Scarlett's account with \$1,000? A. Yes, sir; I said that. 10

Q. Which had not been deposited by him? A. Yes, sir.

Q. Why did you do that? A. I did that to boost Mr. Scarlett's account at that time.

Q. There must have been some reason for it? A. The reason I boosted the account was the fact that the examiners were at the bank at that time and I wanted it to appear that Mr. Scarlett's balance was sufficient in per cent, for his loans that were held by the institution, given to him by the institution, there was \$10,000 or \$12,000 loans that we had of Mr. Scarlett, and the rule in all institutions is that every borrower should keep at least 20 per cent of his loan in the bank balance, a balance on his ledger account. 20

Q. And without that \$1,000 deposit what would the balance be, what would the books have shown as his balance? A. (After examining book). At that time there would have been a balance of about \$1,089. 30

Q. Without the credits you gave him? A. Yes, sir.

Q. I may have made a misstatement when I said you made a deposit of that \$1000 for him. Did you make a deposit or was it merely a credit entered on his ledger account? A. It was a regular deposit made out—they were funds represented by the ticket. 40

Raymond E. Smith—Re-cross

Q. Was it your own money? A. No, sir.

Q. Whose money was it? A. It was money taken from another account.

Q. Mr. Smith, have you footed up the amount of Scarlett's checks, being Exhibits 1 to 19 inclusive, to get the total amount of them? A. Yes, sir; I believe I have.

Q. And what is the total? A. \$6642.63.

RE-CROSS-EXAMINATION by Mr. Schotland:

Q. When it came to preparing the declaration of trust Mr. Scarlett offered to convey that property direct to you, didn't he? A. He did at one time.

20 Q. You say you didn't want it in your name because you were having trouble with your wife and there would be trouble in conveying it? A. I didn't want the deed of trust in my name.

Q. You told him that? A. I told him that.

Q. And you told him to select any trustee he wanted? A. I think he spoke about who it should be.

Q. Mr. Sica? A. I think we decided on Mr. Sica.

30 Q. Mr. Sica was to hold it for the benefit of you? A. Well, for the benefit of the Roseville Trust Company.

Q. Was that mentioned at all? A. That was my understanding of it.

Q. In connection—was there anything said about the trust company? A. I don't know, in this case I don't know.

40 Q. Just try to think and see if you can recall whether there was anything said about the trust

Raymond E. Smith—Re-cross

company at all? A. I couldn't say yes or no to that because I don't know; I thought there was.

Q. How much did you say, according to the bank ledger, Mr. Scarlett's balance was at the time when you made the \$1000 deposit to his credit? A. I think it was a thousand and some odd dollars, some thousand and eighty-nine dollars and ninety-eight cents. 10

Q. Wasn't it \$2091.50? A. The balance was \$2091.50 just before that deposit was made.

Q. When you deposited a thousand to his credit it made his balance \$3091.50? A. Yes, sir; it did, that is right; that is on the \$2000 check.

Q. That is when you make the deposit to his credit? A. I was looking on a day later. \$1089 on the 31st; that was five days later. 20

Q. At the time when you made the deposit of \$1000 to Mr. Scarlett's credit his actual balance was \$2091.50. What was the occasion for depositing anything to his credit then? A. At that time there was some checks out that Mr. Scarlett had put in, had not been returned yet—that is, that had not been collected; there were \$4000 worth of checks which he had deposited on the 18th of January that had never been heard from—that is, that had never been collected. 30

By the Court: Q. Where were those checks then? A. They were in the course of collection at that time.

Q. You didn't know then whether those deposits would come back collected or not. You wanted to make sure that he showed a good balance? A. We didn't know whether the checks would be paid or not when presented for collection. 40

Raymond E. Smith—Re-cross

Q. Do you know whether Mr. Scarlett knew that you made that deposit? A. I don't think so.

Q. He never knew it? A. I don't think he did.

By Mr. Guild: Q. You say at the time that you made that \$1000 deposit that there were some
10 checks which had been credited to his account which were in process of collection? A. Yes, sir.

Q. And you were apprehensive that they might not be paid and so you put in this \$1000 to his credit? A. Yes, I was afraid they might be returned in the meantime, one of them, or both of them.

Q. What did in fact happen?

Objected to.

Objection sustained.

20 Mr. Guild: I don't wonder that he did not want it brought out.

Mr. Schotland: I withdraw my objection, in view of the remark of the prosecutor.

A. The two checks were returned two days later.

Q. Returned good or bad? A. They were returned with a protest.

Q. How much? A. \$4000 each.

By Mr. Schotland: Q. And they were subse-
30 quently made good, weren't they? A. Yes, sir, finally I believe they were.

By Mr. Guild: Q. How long afterwards? A. Quite a long time afterwards new checks were substituted.

Q. Were the checks paid? A. No, sir.

By Mr. Schotland: Q. How long did it take until they were paid? A. I think May, April, or
40 May following the matter was finally cleaned up.

Raymond E. Smith—Re-cross

By the Court: Q. When was that? A. That was in January, I think, your Honor, and four months later I think the matter was cleaned up.

By Mr. Guild: Q. And in the meantime Mr. Scarlett had had the use of the bank's money?
A. Yes, sir.

Q. Without interest? A. Yes, sir. 10

By Mr. Schotland: Q. These checks were not his personal checks, were they? A. No, they were checks that bore his endorsement.

Q. They were checks of other people? A. Checks of one of his companies.

Q. And when these checks were finally made good was it also by check of the same companies?
A. No, sir.

Q. Are you sure of that? A. Yes, sir. 20

Q. What checks were used to make them good?
A. Why, there was one check of his own on the National State Bank.

Q. One check, what— A. One check of Mr. Scarlett's for \$3000, I think, that helped pay those checks.

Q. Any other? A. I don't remember just what the other was because I know we had several checks come back after that of Mr. Scarlett's or of his companies, bearing his signatures. 30

Q. These things happen every day in the banking business.

The Court: Which things?

Q. People deposit things of other people and those checks come back? A. It happens quite often, but not in large amounts like that, as a rule.

Q. Why not? A. It is very seldom a check goes to protest of a large amount like that unless the check—that is, a check given in good faith, I mean 40

Raymond E. Smith—Re-cross

—a check for the payment of a bill for the amount of \$3000, given in good faith, would not be apt to come back protested, as a rule; there might be a \$3 check come back or a check of \$30, but a check of \$1000, \$2000 or \$3000 comes back very seldom.

10 Q. But it does happen in the ordinary course of business? A. Not ordinarily, not for a big amount; at least it didn't happen in the Roseville Trust Company, only in this case.

Q. But it did happen in the Roseville Trust Company? A. Only in this case.

By the Court: Q. Do you mean in this instance or do you mean in regard to this account? A. I mean in regard to this account.

By Mr. Schotland: Q. Did it happen in other
20 accounts? A. Yes, sir, there were some checks returned protested in other accounts, yes, sir, but not regularly as these were.

By Mr. Guild: Q. It got to be habitual, didn't it?

Objected to.

Q. What was the answer? A. Not regularly like this account.

By Mr. Schotland: Q. What do you mean by not regularly? A. I mean the checks did not go
30 out regularly once or twice a week, perhaps two or three times a month, something like that, and were returned regularly under protest.

Q. It was these same checks, it was that one all the time, wasn't it? A. No, sir.

Q. What then was it? A. It was the checks of a similar character made by the same people.

Q. For the same amount? A. Yes, sir.

40 Q. Representing the very same item, wasn't it?

Augustus R. Jennings—Direct

A. Representing the same item, perhaps, in some cases so, and in some cases not.

Q. What other cases are you talking about except this case of those two \$2000 checks? A. There are quite a few of those checks.

Mr. Guild: Tell him. He is asking you. 10

Q. I have only questioned you about these two \$2000 checks. What are you talking about, that you bring in other cases? A. I am talking about this same account, which dealt with many of these checks made out similarly by the same maker and endorsed in the same way.

Q. What was the date of those checks? A. They ran from November 16, 1910, up to February, March, April, May.

Q. Of what year? A. 1911, the following year. 20

AUGUSTUS R. JENNINGS, sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. Mr. Jennings, you were formerly connected with the Roseville Trust Company? A. Yes, sir.

Q. In what capacity? A. Receiving and paying teller. 30

Q. In February and March, 1913, what was your position? A. Paying teller.

Q. I show you Exhibit S-7, being check of John B. Scarlett of February 13, 1913, and ask you whether you have seen that check before? A. I can't say that I seen that check before.

Q. Is there anything about a notation or a memorandum on the back of the check that would 40

Augustus R. Jennings—Cross

help you refresh your recollection in answer to that question?

The Court: You examine the check and there is nothing about it that refreshes your memory that enables you to say whether you have seen it before?

10 Q. Is there anything on it to refresh your memory that you paid it as paying teller? A. No, sir.

Q. Or that it went through your hands as paying teller? A. I can't say that it went through the paying teller's department.

Q. Is it a deposit check or a cash check? A. A cash check.

Q. I show you check of John B. Scarlett, dated March 11, 1913, for \$125, payable to his own order, and apparently endorsed by him, Exhibit No. S-12; are you able to say whether or not that was a cashed check? A. Yes, sir; I think it was.

20 Q. When you say that the \$125 was a cashed check, you think that the \$100 check was a cashed check, what do you mean by that—do you say that is a cashed check? A. I say I think it was a cashed check, that it went through the paying teller's department.

Q. What do you mean by a cashed check? A. A check on which some money was paid.

30 Q. Through the window? A. I wouldn't say whether it went through the window.

Q. Well, cashed in the bank? A. Yes, sir.

CROSS-EXAMINATION by Mr. Schotland:

Q. Do you know whether you ever handled one of those checks? A. No, sir.

40 Q. Do you recall ever handling them? A. No, sir

John H. Long—Direct

Q. As a matter of fact, you don't know that you did not handle those checks? A. No, sir; I don't know that I didn't handle them.

Q. You don't remember either way? A. Not that I remember.

Q. Did Mr. Smith ever go in there and substitute checks? 10

Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,
Judge.

(Seal)

20

JOHN H. LONG, sworn in behalf of State:

Direct-examination by Mr. Mott:

Q. Mr. Long, where do you reside? A. 157 Garside Street.

Q. City of Newark? A. Yes, sir.

Q. Do you know John B. Scarlett, the defendant? A. I do. 30

Q. Did you formerly work for him or any one of his company? A. For the Middlesex Hat Company.

Q. What capacity were you working for the Middlesex Hat Company? A. As manager for him.

Q. What do you mean by that when you say 40

John H. Long—Direct

as manager? A. Looking after the manufacture of hats in the factory.

Q. Their plant was where? A. Metuchen, New Jersey.

10 Q. What relation did Mr. Scarlett bear to that company? A. He was the president and I guess he was the whole business.

Q. Where was Mr. Scarlett's personal office? A. 754 Broad Street.

Q. Newark, New Jersey? A. Yes, sir.

Q. Did you ever see Mr. Raymond Smith in Mr. Scarlet's personal office? A. I think twice, to my knowledge.

20 Q. Can you fix the time? A. I think in the year of 1912, and it may have been July or August, about that time.

Q. Where did you see Mr. Scarlett, whereabouts were they? A. I first met him in Mr. Scarlett's rear office; I was introduced to him by Mr. Scarlett.

Q. And do you remember one occasion when Mr. Smith made some remark to Mr. Scarlett—I don't ask you what the remark was. A. I do.

Q. Where had they been just before you heard that remark? A. Closeted in the back room.

30 Q. How long had they been in there? A. Maybe half an hour, three quarters; quite a little while.

Q. You couldn't hear what was said? A. Not a word.

Q. Could you see them? A. No, sir.

40 Q. When they came out did you hear Mr. Smith say anything to Mr. Scarlett? A. I heard a remark.

Frank C. Ferguson—Direct

Q. What did you hear him say? A. It would look better to have somebody else's name on the note rather than—put somebody else's name on the note.

Q. You said "rather than." A. Rather than have his own name, or something like that, on the note. 10

Q. Than his own name? A. Yes, something like that. That is what I understood by it.

CROSS-EXAMINATION by Mr. Schotland:

Q. When was that? A. 1912, July or August, 1912, about that, as near as I can recollect.

Q. That is all you heard, rather than have his own name on the note he should have somebody else? A. Rather have somebody else's name on the paper, yes. 20

FRANK C. FERGUSON, sworn in behalf of the State:

Direct-examination by Mr. Guild:

Q. Mr. Ferguson, what is your business? A. One of the state bank examiners of New Jersey. 30

Q. How long have you been connected with that department? A. About six and a half years.

Q. Prior to that what had been your business? A. Banking.

Q. How long? A. About eight years prior to that.

Q. On the failure of the Roseville Trust Company were you assigned by your department to examine the affairs of the trust company? A. 40

Frank C. Ferguson—Direct

Yes, sir; I was appointed assistant to the special assistant deputy commissioner's in charge.

Q. And did you examine the affairs of that trust company? A. Yes, sir.

10 Q. In that examination did you go into any examination of the individual accounts of the depositors? A. Yes, sir.

Q. Did you look into the accounts of a John B. Scarlett? A. I did.

Q. For what purpose?

Mr. Schotland: I object. What they had in mind is what he is asked to testify.

The Court: Objection sustained.

20 Q. As a result of the examination of John B. Scarlett's account did you ascertain whether or not he was indebted to the Roseville Trust Company?

Mr. Schotland: I object. The books of the trust company are in evidence. They have already been testified from and this question simply asks for this witness's conclusion as to what those books show. I don't think it is competent.

30 The Court: The witness's attention should be called to any particular matters in evidence—at least the question should be framed so that the witness's attention will be directed to something in particular, and an order to give counsel on the other side an opportunity to say whether or not the particular matter referred to is subject to objection, because it is not in evidence, and so forth.

40 Mr. Guild: I think the point is well taken.

Frank C. Ferguson—Direct

Q. As a result of your examination did you make up a statement of the account? A. Yes, sir.

Q. Now, what books and papers and records did you examine? A. All books and papers and records of the Roseville Trust Company.

Q. Are you able to say now what they were? 10
A. Yes; I used practically all the books and records covering the period during which the account runs.

Q. Can you name what they are? A. The individual ledger, the debit and credit books, the outgoing letters, copies of outgoing letters, the return item book, receiving teller's proof book, the paying teller's proof book and the exchange slips. I guess that will cover it—the general cash book and the general ledger. I don't recall I had to use 20
the general ledger.

Q. Did you name the individual ledger? A. I named that first, yes, sir.

Q. You examined all those books? A. Yes, sir.

Mr. Guild: We have got all the records and papers here that Mr. Ferguson mentioned. They are all in the building. We would have to produce them here and have them properly identified.

Mr. Schotland: I object to this testimony. As I undertsand, they are going to put in a summary of those books. This witness may be ever so expert and yet his summary is not evidence. I submit that if they think this evidence is so important as to put it in that the only proper way, in justice to the defendant, is to have the witness testify from the books. 30

Frank C. Ferguson—Direct

The Court: I will hold the matter until tomorrow morning.

Adjourned to Friday, February 9, 1915, at 10 o'clock, a. m.

10

THIRD DAY.

Essex Oyer and Terminer.

Friday, February 9, 1915.

Met pursuant to adjournment.

Present, counsel as before stated.

20

Mr. Guild: The matter before the Court yesterday involving Mr. Ferguson's examination, inasmuch as it would open a very lengthy and intricate inquiry, we have decided not to go into that branch of the case.

FRANK C. FERGUSON, resumes the stand:

Direct-examination (continued) by Mr. Guild:

30 Q. Mr. Ferguson, I show you a check book that has been proved to be the check book used in connection with his account in the Roseville Trust Company. Have you gone over that check book?

A. Yes, sir.

Q. I ask you to turn to the stub 34. Do you find that stub? A. Yes, sir.

40 Q. What was the date on that stub? A. July 23, 1912.

Frank C. Ferguson—Direct

Mr. Schotland: I object to the testimony as to the contents of the book, on the same grounds on which I objected to the admission of the book itself in evidence.

The Court: Obejection overruled.

Defendant's counsel prays an exception 10
to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,

(Seal)

Judge.

Q. What is the stub number? A. Thirty-four, and the date is July 23, 1912.

Q. Opposite that date, in the check book, on the stub, is there a balance struck? A. Yes, sir.

Q. What is it? A. One thousand four hundred ninety-nine dollars and thirty cents. 20

Q. Have you made an account of the drafts against that balance as shown by the check book itself for the purpose of showing the condition of the account on July 3, 1913? A. I have, yes, sir.

Q. Have you given us the last date? A. You spoke about July 3, 1913?

Q. Between those two dates does the book show any deposits? A. The book shows a deposit of cash on July 22, 1912, of \$250—

Q. Mr. Ferguson, from the page where you 30
started to the last date, July 23, 1913, does the book show any deposit? A. One of \$300.

Q. You say on the page back of where the \$1,499.30 balance appears opposite check stub 34 there is a deposit shown under date of July 22, 1912, of cash, \$250? A. Yes, sir.

Q. But you have to go back a page in order to get that? A. Yes, sir. 40

Raymond E. Smith—Direct

Q. Now, between the date in that book that I have called your attention to have you taken off the figures for the purpose of showing what the condition of the account was on July 3, 1913? A. Yes, sir.

10 Q. And what does it show?

Mr. Schotland: I object, unless it be shown that all the entries are in the handwriting of the defendant or made by somebody with his knowledge, under his direction, and that this witness knows that every entry on the stub shows that the check was actually used.

(After discussion.)

20 Mr. Guild: I will withdraw the question and withdraw the witness for the present.

RAYMOND E. SMITH, re-called in behalf of State:

Direct-examination by Mr. Guild:

30 Q. In Mr. Scarlett's letter to you under date of February 19, 1913, being Exhibit S-42, he says, "inc.", which I presume means "inclosed" "Zuccarrelli note \$750." Did he send up the Zuccarrelli note for that amount? A. Yes, sir.

Q. Did the trust company discount or purchase that note? A. That was a renewal of a preceding note, I believe.

Q. Which the trust company had purchased?
A. Yes, sir.

40 Q. For whom, for whose benefit? A. For Mr. Scarlett's benefit.

Raymond E. Smith—Direct

Q. Was the original Zuccarrelli note \$750? A. There were two notes of Mr. Zuccarrelli, one for \$750 and one for \$500.

Q. How did they get to the trust company? A. Mr. Scarlett sent them up by his messenger.

Q. Had he asked you to do anything about purchasing them or discounting them? A. Yes, sir; he had asked me to— 10

Mr. Schotland: May I interrupt for the purpose of ascertaining the time when this transaction is supposed to have taken place, place, if it took place, at one time? I should think it would be immaterial and incompetent to the issue in this case.

The Court: Has the time been fixed?

Mr. Guild: The time has not been fixed. 20

Q. Mr. Smith, take the time to find the original note. A. The time, I think, was in July or August, 1912; I can't give you the exact date.

Q. Nothing here to show it? A. Yes, there is something here. We can tell from the bills purchased book.

By the Court: Q. You say to the best of your recollection it was July or August, 1912? A. Yes, sir.

The Court: Isn't that sufficient? The witness says he can remember without the book that it was July or August, 1912. 30

By Mr. Guild: Q. Had Mr. Scarlett talked with you about sending up a Zuccarrelli note? A. Yes, sir.

Q. Did he tell you anything about Zuccarrelli's responsibility? A. No, sir, I think not.

Q. Did you know anything about it? A. I didn't know him, no, sir. 40

Raymond E. Smith—Direct

Q. Do you know anything more about his responsibility now? A. No, sir; I do not.

Q. Was there an endorser on the note? A. Yes, sir, Mr. Zuccarrelli was the endorser.

Q. That note was renewed from time to time?

10 A. Yes, sir.

Q. Has the note ever been paid?

Mr. Schotland: I object, unless they show that this witness has knowledge.

By the Court: Q. Do you know whether or not it has been? A. The \$750 note?

Q. Yes. A. No, it has not.

Q. You are asked whether you know. Do you know whether it has been paid or not? A. Yes, sir; I know.

20 Q. He says he knows. Has it? A. The note has not been paid.

By Mr. Guild: Q. I show you a note dated February 15 or 13, 1913, for \$750, payable to the order of Nicholas R. Sica, payable three months after date, payable at the Roseville Trust Company, signed "Rev. James Zuccarrelli." Is that the note that came up with the letter of February 19th? A. Yes, sir; I believe it is.

Mr. Guild: I offer it in evidence.

30 Mr. Schotland: I object to this note at this time, if your Honor please. The exact time of the original note has not been shown and it has not been shown that in any way Mr. Scarlett had anything to do with that note; his name does not appear on it; it is made by a party and endorsed by another party and purchased by the trust company.

40 Mr. Guild: The testimony is that this

Raymond E. Smith—Direct

note was sent up by Scarlett and that he got the money on it.

The Court: You have not connected that up yet.

Q. Is this note of February 13th or 15th—I can't tell the date—a renewal of the Zuccarrelli note? A. Yes, sir. 10

Mr. Guild: Now I offer it in evidence.

Mr. Schotland: I object. It has not been shown that the original note was made since the time the conspiracy is alleged.

Mr. Guild: It makes no difference, so far as the dates are concerned.

The Court: If the renewals are the result of that conspiracy they would be competent as indicative of that conspiracy, if there was any evidence of a conspiracy. It is from all the evidence in the case for the jury to say whether there was a conspiracy. The Court is not in a position to say that and does not say that. I say that anything that might indicate it is competent as a basis from which the jury can draw its conclusion in reaching its determination in this case, and therefore if there is anything about this transaction which would be in connection with other transactions evidential of a conspiracy then it would be competent. Objection overruled. 20 30

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,

(Seal)

Judge.

Marked Exhibit S-49.

40

Raymond E. Smith—Direct

Q. I show you a note dated May 13, 1913, for \$750 for three months, signed by Rev. James Zuccarrelli, to the order of N. R. Sica, and ask you whether this note is the renewal of S-49? A. Yes, sir; it is.

10 Q. Is that the last renewal? A. That is the last one we received, I believe.

Q. Has it been paid? A. No, sir.

Mr. Schotland: I make the same objection to the renewal note as I made to the other one.

The Court: Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

20

H. V. OSBORN,

(Seal)

Judge.

Marked Exhibit S-50.

Q. You said there was another Zuccarrelli note of \$1200? A. Yes, sir, there was.

Q. When was that given, the original note? A. Given in July or August, 1912.

30 Q. And who sent that up to you? A. Mr. Scarlett.

Q. For what reason? A. He got the money on it.

Q. Did he get the money on it? A. I think so.

Q. Did he get the money on the \$750 note? A. Yes, sir; I believe so.

40 Q. I show you a note dated February 13, 1913, for three months, signed Rev. James Zuccarrelli, payable to the order of Nicholas R. Sica, and ask

Raymond E. Smith—Direct

you whether that is a renewal of the original Zuccarrelli \$500 note? A. Yes, sir.

Q. Did I understand you that these notes were sent up together? A. They came together, the original notes.

Q. And you say you made no inquiry about the financial responsibility of Mr. Zuccarrelli? A. No, sir. 10

Q. And Mr. Scarlett gave you no information about his financial responsibility? A. No, sir.

Mr. Schotland: I make the same objection.

The Court: Same ruling.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly. 20

H. V. OSBORN,
Judge.

(Seal)

Marked S-51.

Q. Has the \$500 note been paid? A. No, sir; it has not.

Q. Was it paid at the time the bank closed? A. No, sir.

Q. Is this the last renewal? A. That is the last one I have ever seen. 30

Q. When did it mature? A. May 13, 1913.

Q. Was any renewal sent up? A. Not to my knowledge, no, sir.

Q. In the letter of February 19, 1913, being Exhibit S-42, Mr. Scarlett writes, "I will send up J. H. Long note to-morrow with my statement." I show you a note dated February 20, 1913, for \$2500, payable three months after date, to the or- 40

Raymond E. Smith—Direct

der of John H. Long, Roseville Trust Company, and signed by Nicholas R. Sica. Is that the note that was sent up with the letter of February 19, 1913? A. Yes, sir, that is the note that is referred to in the letter of the 19th.

10 Q. Is that an original note? A. No, sir, this is a renewal note.

Q. When was the original note given? A. I think it was in August, or July, I don't know which, in 1912.

Q. Was Long on the original note? A. Yes, sir; he was the endorser of the original note.

Q. And who was the maker?

Mr. Schotland: I object. Can't you produce the original note or account for it in some way? I object to this witness testifying from memory as to the contents of a written document.

20

Mr. Guild: I ask you to produce the original note.

The Court: If it was paid it would be returned.

Mr. Schotland: Yes, and a good many people destroy returned notes.

By the Court: Q. Can you produce the original note? A. No, sir.

30

By Mr. Guild: Q. What became of the original note? A. The original note was cancelled and returned to Mr. Scarlett at the time the renewal was given.

Q. Who was the maker of the original note?

Mr. Schotland: I object on the ground that the state has not laid the foundation for introducing secondary evidence as to the contents of that original note.

40

Raymond E. Smith—Direct

The Court: They have shown that the note was cancelled and returned to Mr. Scarlett, the defendant, and they have asked you to produce this and you say you can't.

Mr. Schoiland: They should have served a notice to produce before the trial and not asked here in open Court. 10

Mr. Mott: We cannot subpoena a defendant to produce documents against him in Court.

Mr. Schotland: I refuse to produce it. I haven't got it here.

The Court: The objection is overruled.

Defendant's counsel prays an exception to this ruling of the Court and the same is allowed and signed and sealed accordingly. 20

H. V. OSBORN,

Judge.

(Seal)

A. Mr. Reynolds was the maker of the original note.

Q. Who was Mr. Reynolds? A. Mr. Reynolds was clerk, I believe, or a man employed by Mr. Scarlett in his office.

Q. Did you know anything about his financial responsibility? A. I did not. 30

Q. Did Mr. Scarlett make any representation to you as to Reynolds' responsibility? A. No, sir.

Q. Did you make any inquiry? A. I did not.

Q. By whom was the original note endorsed? A. Mr. Long, John H. Long.

Q. I understand that Mr. Reynolds died after making the original note? A. Yes, I believe so.

Q. And was Sica's name substituted as maker? 40
A. Yes, sir.

Raymond E. Smith—Direct

Q. The original note you say was sent up by Mr. Scarlett? A. Yes, sir.

Q. With what request, if any? A. With a request that I give him the money on it.

10 Q. Did you give him the money? A. I gave his representative the money on it, yes, sir.

Q. You say you or the trust company? A. The trust company.

Q. Who actually received the actual proceeds of the note? A. His representative received the cash for it, yes, sir.

Q. What was issued, if anything, by the trust company for the purchase of the note? A. A treasurer's check was given for the proceeds of the note.

20 Q. How much was it? A. Two thousand four hundred seventy-five dollars.

Mr. Guild: I will produce the note a little later.

Q. John H. Long was the endorser on the original note? A. Yes, sir.

Q. Was the original note paid? A. No, sir; it was renewed for the same amount.

30 Q. I show you a note dated Newark, N. J., February 20, 1913, for \$2500 at three months, signed by Nicholas R. Sica, to the order of John H. Long, and bearing endorsement John H. Long, and ask you whether that was a renewal of the original note? A. Yes, sir.

Q. Is it the last renewal? A. Yes, sir.

Q. Has the renewal been paid? A. No, sir, it has not.

40 Q. John H. Long was the endorser on the original note and continued to be on the renewals? A. Yes, sir.

Raymond E. Smith—Direct

Q. Who was he? A. Mr. Long—

Q. That is, with relation to his connection, if any, with Mr. Scarlett? A. He was connected with Mr. Scarlett in some way; I don't know exactly how, but I understood he was employed by Mr. Scarlett.

Q. Did Mr. Scarlett make any representation to you as to Long's financial responsibility? A. No, sir. 10

Q. Did you make any inquiry yourself? A. I did not.

Mr. Guild: I offer it in evidence.

Mr. Schotland: I object to it. That note has not been connected with Mr. Scarrlett; it has not been shown that he ever got the proceeds of it in any way.

The Court: The witness says it was discounted at his request. 20

Mr. Schotland: What difference does that make?

The Court: Do you not think that if that is done in pursuance of an agreement that it makes a great deal of difference?

Mr. Schotland: But no agreement has been proven here.

The Court: That is for the jury to say, whether there was an agreement. That is what we are trying, and these notes are the notes which the prosecutor says constitutes the unlawful conspiracy. 30

Mr. Schotland: If your Honor please, as I understand the statute and the decisions regarding the law of conspiracy, you cannot have the alleged fellow conspirator testify and bind the other conspirator un- 40

Raymond E. Smith—Direct

less you can show the conspiracy. If they don't show any agreement, don't show any actual conspiracy, they cannot have all this testimony of the alleged fellow conspirator.

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The Court: They can have all that is competent for the purpose of showing what the facts were and after having established their conspiracy, then the act of each conspirator is binding upon the other. They are now offering testimony to show, I assume—because it would have no other relevancy that I can see—that as a result of this unlawful agreement he took without question pieces of paper with somebody's name on them and gave Mr. Scarlett financial benefit of those pieces of paper; that he made no inquiry as to whether the names on those papers were worth anything or not; that Mr. Scarlett made no representation as to their value; that they were some evidences, not of actual worth, but something to satisfy the letter of the banking law, and the requirements of good banking, was the only purpose for which they were given. To go a step further, because of the fact that Mr. Scarlett handed Mr. Smith a worthless piece of paper, that that is an indication that there was a conspiracy to get something for nothing from the bank. If the paper had been good, if Mr. Scarlett had assured Mr. Smith of the financial worth of the maker and the endorser, or Mr. Smith had taken the trouble to find out, as he ordinarily would as a banker of one who offers a piece of paper, and he had

Raymond E. Smith—Direct

ascertained that the paper was good commercial paper and then lost the money on it in good faith, that would put a different aspect on it, and the jury would then be justified in saying that that evidence did not present a conspiracy; but when a worthless piece of paper is sent there to get the money from the bank, the prosecutor says that is evidence from which the jury, taken together with other facts and circumstances in the case, can infer a conspiracy. 10

Mr. Schotland: That may be possible, from the facts, that may be the inference, but before that they have got to show that the makers and endorsers were worthless and that they were worthless pieces of paper, otherwise no such inference can be gathered. 20

The Court: They say it is the fact that there was no inquiry made coupled with the fact that they were never paid, unless you meet it and say that it is not true, that those circumstances, standing alone, would justify the jury in saying that they were mere pieces of paper.

Mr. Schotland: I submit that they have got to show that they were worthless pieces of paper. 30

The Court: I will admit them.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,

(Seal)

Judge.

Marked Exhibit S-52.

40

Raymond E. Smith—Direct

Q. Prior to the original Reynolds and Long note being sent up, had you had any talk with Mr. Scarlett about his intention of sending up such notes?

A. I think there was a conversation to such effect.

10 Q. Can you recall any part of it? A. I think that Mr. Scarlett had applied for a loan—that is, he wanted to get a loan, and I told him I couldn't taken any more of his paper in the institution, and it was suggested by him, I believe, that he get notes of other people, other endorsers and other makers, so that his name would not appear on the note.

Q. And that was for the reason that you stated yesterday, you told him the bank couldn't give him any more accommodation? A. Yes, sir.

20 Q. Did he in that conversation say whose name he would procure? A. I don't think so; I don't remember any names being mentioned.

Q. Was the amount named that he wanted at that time? A. I think not.

Q. And in pursuance of that conversation was there a note sent up? A. Yes, sir.

Q. Was there any message before it came? A. I believe he telephoned before the note was sent up.

30 Q. That is, the Reynolds and Long note? A. Yes, sir; I think he said he was sending up a note endorsed by Mr. Long and made by Mr. Reynolds; that is as I remember it.

Q. And such a note did come? A. Yes, sir.

Q. Do you know how it came? A. It came by hand, by Mr. Long personally.

Q. And at that time did you know who Reynolds and Long were? A. I don't think so; I knew them only by name, that is all, as being with Mr.
40 Scarlett.

Raymond E. Smith—Direct

Q. You did know that Reynolds and Long were both associated with him in business? A. Yes, sir; I understood so.

Q. Did you know that Reynolds was his office clerk? A. Yes, I knew that he was in the office with him.

Q. I show you a paper which is marked treasurer's check dated Newark, N. J., July 22, 1912, Roseville Trust Company, bearing the stamp Roseville Trust Company, payable to the order of John H. Long for \$2475, signed R. E. Smith, treasurer, and bearing the endorsement of John H. Long. Is that the check, the treasurer's check of the Roseville Trust Company, that was given for the proceeds of the original Reynolds and Long note? A. Yes, sir. 10

Q. And the difference between \$2500 and the amount of this check is discount? A. Interest. 20

Q. Interest or discount? A. We call it interest in the trust company.

Q. Are you able to say to whom the money represented by that check was given? A. Yes, sir, the money was given to Mr. Long.

Q. Where? A. At the Roseville Trust Company.

Q. When you say the money, you mean the actual bills? A. Yes, sir, actual cash. 30

Q. And was it handed to him openly or enclosed? A. I think it was given to him in an envelope.

Q. Sealed envelope? A. Yes, sir.

Q. One of the trust company envelopes? A. I think so.

Q. Is that check signed by you as treasurer of the Roseville Trust Company? A. Yes, sir; it is.

Mr. Guild: I offer it in evidence. 40

Raymond E. Smith—Direct

10 Mr. Schotland: I think this check and the subsequent testimony of the witness proves that the notes regarding this transaction should not have been offered in evidence. It shows it was a note endorsed by Mr. Long and he received the cash on it.

The Court: As the result of a conversation with Scarlett, Long being associated with Scarlett. I think it is connected up sufficiently to be put in evidence.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,

(Seal)

Judge.

20

Checked Marked S-53.

Q. Prior to the Reynolds and Long note coming to the bank had you received a telephone message at the bank saying that he would send a note?

A. Yes, sir, there was a telephone message.

Q. Did he say who he would send? A. I think he said he would send Mr. Long; I am not positive about that.

30 Q. You say you turned over the proceeds of that note and the treasurer's check to Mr. Long? A. Yes, sir.

Q. And Mr. Scarlett asked you to send the money back by Long? A. Yes, sir; that is the way I remember it.

Q. Now, after Long had left the bank with the money that same day did you receive a telephone message from Mr. Scarlett?

Objected to as leading.

40

Objection sustained.

Raymond E. Smith—Cross

Q. After Mr. Long left the bank, as you say, with the money, when next did you hear from Mr. Scarlett? A. Mr. Scarlett called me up at that time, I believe, stated—

Q. Called you up in what way? A. Telephoned, stating that the amount of money I sent him was short \$100, I think that was it at this time—in this connection, I mean, that this check was short, and I explained to him that I had taken \$25 off for interest, which represented two months interest on \$2500 at six per cent, and that accounted for the reason that there was only twenty-four hundred and odd. 10

Q. Has the \$2500 note been paid? A. No, sir; it has not.

CROSS-EXAMINATION by Mr. Schotland: 20

Q. When you say that this \$2500 note, or any of those other notes that you testified about, have not been paid, do you mean to say that you have actual knowledge whether they have been paid or not since the time the bank was closed? A. No.

Q. When you answer that way you simply mean up to the time that the bank was closed, they had not been paid? A. Yes, sir.

Q. That is the way you want to be understood? A. Yes, sir. 30

Q. Will you turn to the bills purchased book and tell me when you got that Zuccarrelli note? A. August 13, 1912.

Q. That is the \$500 or the \$750? A. Both of them.

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

Q. Those are the notes made by Rev. James Zuccarrelli? A. Yes, sir. 40

Raymond E. Smith—Cross

Q. You know who he is? A. No, I may know of him now; I didn't know of him at the time the note was made; I have faint recollection of who he is; I don't know anything about his financial responsibility.

10 Q. Didn't you know that he owned real estate?

A. No, I didn't know that, no, sir.

Mr. Guild: Do you know that he does?

Mr. Dotto: I do, yes.

Mr. Schotland: I know that he did about six months ago when I had a transaction with him.

Q. Mr. Smith, how did you give Mr. Scarlett the benefit of those two Zuccarrelli notes? A. By giving a check to Mr. Sica, the endorser of the note.

20 Q. Where is the check? A. The check ought to be among the checks of the Roseville Trust Company, the treasurer's check.

Q. Have you any books here which will show just exactly what you did with the proceeds of those two notes? A. Yes, treasurer's check book. (After examining book.) The check is not here in the book. The stub is here, but not the check.

Q. What does the stub say? A. It shows August 13, 1912, by the date, treasurer's check drawn to Nicholas R. Sica for \$1275.50.

30 Q. You gave that check to Mr. Sica yourself?

A. Yes, sir.

Q. Do you know whether Mr. Sica is good or not? A. I don't know much about Mr. Sica's general standing; I didn't know at that time.

Q. Do you know that Mr. Sica owns real estate in his own name? A. Yes, I know it now.

40 Q. Mr. Smith, this \$1250 represented by the Zuccarrelli, note which is the \$2500 represented

Raymond E. Smith—Cross

by the Reynolds, Long and then the Sica, Long note, isn't that all secured in that trust agreement? A. They were later secured by that trust agreement.

Q. They are secured in that trust agreement by the Johnson Avenue property, aren't they? A. Yes, sir. 10

Q. They form part of that \$9700 to be secured? A. Yes, sir.

Q. You know that trust agreement gives the Johnson Avenue property as security? A. Yes, sir.

Q. You know that the property is 98 feet front by 150 feet deep? A. I don't remember the dimensions.

Q. You know that it is a good sized property? A. I know it is a good sized property. 20

Q. You have seen it, haven't you? A. I have, yes, sir.

Q. Have you any idea as to the value of the property? A. No, I haven't a personal idea, but I have heard it given by men who do know, supposed to know.

Q. When was it you heard it given by people who are supposed to know? A. I heard it given here a short time ago, in the last case. 30

Q. Did you hear it given, or was the value of that property the basis of any representation to you by Mr. Scarlett at the time when it was arranged to put that in as security? A. I think the value given at that time was about the same as it is now.

Q. Did Mr. Scarlett represent the value of that property to you at the time when the arrangement was made to put that in as security, do you re- 40

Raymond E. Smith—Cross

member a representation? A. I don't remember the figure; I think he did.

Q. I want to know the fact, did he or didn't he make a representation? A. Yes, he did.

Q. And didn't he say it was worth \$35,000? A. I don't think so; I think he quoted it about \$30,000; I wouldn't say that as absolutely correct, but that is the way I remember it.

Q. That is the representation made at the time when it was arranged to have that security for the obligations? A. Yes, sir.

Q. That left at that time an equity in the property of \$14,000? A. Yes, sir.

Q. And that equity has been increased \$1000 by this loan made to Scarlett?

20 Mr. Guild: We have been all over this.

The Court: There was some testimony yesterday about a loan of \$1000 to be applied to the property. Unless that was so applied I don't see how it is competent.

Q. Do you know that? A. I understand it was to be applied on that mortgage, but it wasn't a loan; it was a check of \$1000.

Q. The honoring part came in when you honored Mr. Scarlett's check? A. I wouldn't call it a loan; the check wasn't paid by me; by the bank.

30 By the Court: Q. What would you call it in banking parlance? A. I would call it an irregular transaction.

Q. You would call it an overdraft? A. It was practically an overdraft, yes, sir.

By Mr. Schotland: Q. You would call it an overdraft? A. Yes, sir.

Q. What is an overdraft? A. An overdraft, as far as I know, is a debit on a man's ledger ac-

40

Raymond E. Smith—Cross

count which shows all his transactions, credits and debits, and leaves him with a debit; that is one overdraft. An overdraft can be brought about also by any check that happens to be paid by the institution against a certain man's account and is not charged against his account in the ledger, or is carried in the cash, or has been paid by the institution and taken care of it, it is practically an overdraft, providing he has no credit to meet it. 10

Q. An overdraft is, as I understand you, when a bank pays a check when the drawer of the check has not the funds in the bank to meet it? A. Yes, sir.

By Mr. Schotland: Q. When they do that it is simply a case of extending credit to the depositor temporarily, as a rule, isn't it? A. As a rule, yes. 20

Q. And that happens quite frequently, doesn't it? A. It happens very often in some instances.

Q. You testified as to a conversation you had with Mr. Scarlett prior to purchasing the Long note? A. Yes, sir.

Q. Where was that conversation? A. I think Mr. Scarlett and I had a conversation in his office at that time.

Q. Is that the time that Long saw you there, or had you seen Mr. Long there? A. I don't remember whether I saw Mr. Long there at that time or not. 30

Q. What was that conversation? A. It was relating to money matters of Mr. Scarlett.

Q. What did he say and what did you say? A. I can't remember the exact conversation, but the idea we had in mind was to raise the money for Mr. Scarlett's account, that is, to take care of some of his obligations. 40

Raymond E. Smith—Cross

Q. And he was asking for a loan? A. He did ask for a loan at one time.

Q. When was that conversation in Mr. Scarlett's office, when did that take place? A. I think it was in the summer of 1912; I can't tell just
10 when.

Q. Can you tell us whether it was before or after these transactions that you call irregular transactions took place? A. Which transactions do you mean?

Q. Your honoring the checks and certifying them if the money wasn't there to the credit of Mr. Scarlett's account. A. I think it was before these transactions that we have been talking about.

20 Q. How long before? A. I think it was in the summer of 1912; the first transaction, I think, we are talking about was in the summer of 1912.

Q. And this conversation was some time before that? A. I think so.

Q. When did any of the irregular transactions begin, when was the first irregular transaction? A. Mentioned in this indictment, you mean?

The Court: No, any irregular transaction.

Witness: The irregular transaction started in
30 1910.

Q. By whom? A. By Mr. Scarlett. I would call them irregular.

Q. What was the transaction that you call irregular as having started in 1912? A. Kiting checks.

Q. Doing what? A. Kiting checks.

Q. Those checks were all made good, weren't they? A. They were finally taken up, I believe,
40 later on.

Raymond E. Smith—Cross

Q. You are now referring, are you, to the thousand dollar check that you testified to yesterday as having been drawn by the Middlesex Hat Company? A. There were some for \$1000 and \$2000 and others for \$2800 and \$2700 and paid.

Q. When did the first irregular transaction take place on which the bank was not reimbursed? A. 10
You mean subsequently was not reimbursed?

Q. Yes. A. I don't know that I can tell you that.

Mr. Guild: Do you know any date to answer that question?

Witness: I think the first original—the first transaction that has never been taken care of, that has never been paid, I mean, is the check named in the indictment of \$500.

Q. That is the first, that is in July, 1912? A. I 20
think so.

Q. What is that? A. I think that is the first.

Q. And other transactions were in the case of Mr. Scarlett depositing checks which came back, depositing checks of other people, is that it? A. Of his own companies.

Q. Corporations or other people? A. Yes, sir.

Q. And those checks were finally redeemed? A. I believe they were all wound up finally.

Q. So that the first transaction on which the 30
bank lost any money is the \$500 check of July, 1912? A. That is the first I remember, yes, from memory.

Q. And even that is secured by that property described in the trust agreement? A. That is supposed to be secured by that agreement. May I make one statement? The question of Middlesex Hat Company check, may I hear it again? I 40

Raymond E. Smith—Re-direct

don't think I finished the question. You mentioned the fact that checks on Metuchen that Scarlett put in for deposit and finally paid, deposited or cashed, I meant to say.

Q. But they were all subsequently redeemed?

10 A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. You say that all the Middlesex Hat Company checks were either cashed or deposited in the Roseville Trust Company for Mr. Scarlett for his account, and some of which were returned protested were subsequently made good? A. I meant by that checks that were in that kiting transaction.

20 Q. What do you mean by kiting? A. Checks that were given for deposit or to be cashed on other banks that were not good and were returned regularly and sent out again and sent out again, and so on, substituted by other checks not paid—in other words, checks drawn on banks where the money wasn't there to meet them.

By the Court: Q. Do you refer to the incidents prior to July, 1912, or all such checks? A. I was referring to checks prior to 1912 at that time.

30 By Mr. Guild: Q. I show you a check dated August 15, 1912, for \$350 bearing the name of Middlesex Hat Company, N. R. Sica, treasurer, payable to the order of John B. Scarlett, and his name appearing on the back of the check. Do you say that that check has been taken care of? A. No, sir; this check is dated since that time.

40 Q. Is the endorsement on that check the signature of John B. Scarlett? A. Yes, sir; it is.

Raymond E. Smith—Re-direct

Q. Did it go through the Roseville Trust Company? A. Yes, sir.

Q. How, as a deposit or cash item? A. It was cashed.

Q. Was it paid? A. No, sir.

Q. Was it protested? A. It was.

Q. Is the protest attached to the check? A. The protest wrapper is attached to the check. 10

Q. Has it ever been paid? A. Not to my knowledge, no, sir.

Mr. Guild: I offer it in evidence.

Mr. Schotland: I object to it as incompetent, irrelevant and immaterial. I don't see how a protested check, protested in the regular way and returned in the regular way, has any connection with the conspiracy. 20

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,

(Seal)

Judge.

Q. What was Mr. Scarlett's relation with the Middlesex Hat Company, if any? A. I think he was treasurer at one time, president and treasurer, I think. 30

By Mr. Schotland: Q. You don't really know as a matter of fact? A. I think I heard him say so and I remember seeing his signature, I think in connection with the Middlesex Hat Company.

The Court: There was some evidence yesterday in the case that he was connected with it. 40

Raymond E. Smith—Re-direct

Mr. Guild: I think Mr. Long testified that he was the president.

The Court: Mr. Long was formerly one of the employees or officers.

By Mr. Guild: Q. I show you check dated
10 March 21, 1912, for \$150, signed John B. Scarlett, made to the order of John B. Scarlett and bearing his name on the back, the check being drawn on the Broad and Market National Bank of Newark. Do you recognize the signature to that check? A. Yes, sir.

Q. Whose is it? A. J. B. Scarlett's.

Q. Do you recognize the endorsement? A. Yes, sir.

Q. Whose is it? A. Mr. Scarlett's writing.

20 Q. Did that check pass through the Roseville Trust Company? A. It did.

Q. Was it deposited or cashed? A. Cashed.

Q. Was it paid on presentation at the bank upon which it was drawn? A. No, sir; it was not.

Q. Has it ever been paid? A. No, sir; not to my knowledge.

Mr. Guild: I offer it in evidence.

Marked Exhibit S-55.

30 Q. As indicated by any endorsement of this check for \$150, can you say to whom the money was paid? A. Mr. Scarlett, I should say.

Q. I show you a check dated Hartford, Connecticut, September 19, 1911, drawn on the State Bank of Hartford, to the order of John B. Scarlett for \$500, signed Bras d'Or Land Company, signed John B. Scarlett, treasurer. Did that check go
40 through the Roseville Trust Company? A. Yes, sir; it did.

Raymond E. Smith—Re-direct

Q. Do you know the signature to that check?

A. Mr. Scarlett's signature as treasurer and his personal endorsement on the back.

Q. Did that check go through the Roseville Trust Company? A. It did, yes, sir.

Q. As a deposited check or cashed check? A. 10
Cashed.

Q. Was it protested? A. Yes, sir, and returned to the Roseville Trust Company.

Q. Has it ever been paid? A. No, sir, not to my knowledge.

By Mr. Schotland: Q. Did you cash this check yourself? A. No, sir, I didn't.

Q. How did you know it was cashed? A. My initial is on it.

Q. When you put your initial on it that was to 20
give the teller permission to cash it? A. Yes, sir.

Q. Did you know at the time that you put your initial on it that the check was not good? A. No, I didn't know that.

Mr. Schotland: I object to it going in evidence. I don't see how it is material, simply because a check is cashed. It takes two to make a conspiracy. This is a check drawn on the bank, O. K'd by the treasurer and he thought it was all right. 30

The Court: He didn't say that.

Q. Didn't you think it was all right when you put your initial on it? A. I didn't know.

Q. Did you know it was not good? A. No, I did not.

Q. Do you remember whether you thought at that time whether it was good or not? A. No.

Q. You don't remember? A. I can't remember that. 40

Raymond E. Smith—Re-direct

Mr. Schotland: I still insist on my objection.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

10

H. V. OSBORN,

(Seal)

Judge.

Marked Exhibit S-56.

By Mr. Guild: Q. You say your initials are on this check? A. My initial is on it, yes.

Q. Why did you put your initial there? A. Authorizing the paying teller to cash it.

20 Q. The Roseville Trust Company, you say, cashed the check for Mr. Scarlett? A. Yes, sir.

Q. When the check came back protested why wasn't it charged to his account? A. I don't think it was good on the ledger.

Q. Can you find out? A. (Examining book.) September?

Q. September 22d is the date of the protest. A. No, sir; there wasn't sufficient balance here to meet the check.

30 Mr. Schotland: I object to that as not being within the time laid in the indictment.

The Court: The witness has already said that the irregularity began away back in 1910.

40 Mr. Schotland: We are only here to meet the information embraced in the indictment.

Jesse L. Conger—Direct

At one o'clock, p. m., the Court took a recess of one hour.

After Recess.

Mr. Guild: I ask that Mr. Smith be withdrawn from the stand temporarily to introduce the testimony of a witness who is subpoenaed from a bank. 10

JESSE L. CONGER, sworn in behalf of state.

Direct-examination by Mr. Guild:

Q. Mr. Conger, what is your business? A. Banker. 20

Q. Connected with what bank? A. Mutual Bank, Roseville.

Q. Did that bank succeed, so to speak, the Roseville Trust Company? A. Yes, sir.

Q. Did it take over some of the Roseville Trust Company's assets? A. Yes, sir.

Q. What is your position in the bank? A. Cashier.

Q. In that position are you familiar with the assets that were taken over from the Roseville Trust Company? A. Yes, sir. 30

Q. I show you a note of \$1247.76 dated Newark, N. J., May 12, 1913, signed "Andy Spinoza," payable to the order of and endorsed N. R. Sica and marked Exhibit S-46, and ask you whether that is one of the assets that your bank took over from the Roseville Trust Company? A. Yes, sir.

Q. Has it been paid? A. No, sir. 40

Jesse L. Conger—Direct

10 Q. I show you note dated Newark, N. J., May 13, 1913, for \$750 at three months, signed "Rev. James Zuccarrelli" payable to the order of N. R. Sica, bearing the endorsement, N. R. Sica, and ask you if that is one of the assets taken over from the Roseville Trust Company; it is marked Exhibit S-50. Has it been paid? A. No, sir.

Q. I show you a note dated Newark, N. J., February 13, 1913, for \$500, payable three months after date, signed by N. R. Sica and endorsed N. R. Sica, and signed Rev. James Zuccarrelli, and marked Exhibit S-51, and ask you whether that is one of the notes taken over from the Roseville Trust Company? A. Yes, sir.

Q. Has it been paid? A. No, sir.

20 Q. I show you a note dated Newark, N. J., February 20, 1913, payable to the order of John H. Long, signed Nicholas R. Sica, bearing the endorsement John H. Long, being Exhibit S-52; was that among the assets taken over from the Roseville Trust Company by your bank? A. Yes, sir.

Q. Has it been paid? A. No, sir.

Not cross-examined.

30 The Court: There was pending the offer of a check, protested check, at recess. I will admit it.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,

(Seal.)

Judge.

Raymond E. Smith—Direct

RAYMOND E. SMITH resumes the stand.

Further direct-examination by Mr. Guild:

Q. I show you a check dated Fall River, Massachusetts, for \$600, drawn on B. M. C. Durfee Safe Deposit & Trust Co., to the order of John B. Scarlett, bearing the name John B. Scarlett, endorsed by Roseville Trust Company and something else there which I can't read, and signed John B. Scarlett. Has that check been through the Roseville Trust Company? A. Yes, sir. 10

Q. Presented there by whom? A. It was given to Roseville Trust Company by Mr. Scarlett.

Q. Was it deposited or cashed? A. I think this check was given in place of two others, one of \$500 and one of \$150, as I remember it. 20

Q. I show you two other checks, one of \$500 and one of \$150, and ask you if those are the checks referred to? A. Those are the checks, yes, sir.

Q. Both checks are drawn on what bank? A. State Bank of Hartford, drawn by the Bras d'Or Land Company.

Q. And you say that this check on the B. M. C. Durfee Safe Deposit & Trust Company represented those two checks? A. Yes, sir. 30

Q. I should like to break in the regular order of proof and show Mr. Smith a check dated September 19, 1911, dated Hartford, Connecticut, drawn on the State Bank of Hartford, pay to the order of Roseville Trust Company, signed Brasd'Or Land Company, signed by John B. Scarlett, treasurer, and ask you whether that check went through the Roseville Trust Company? A. Yes, sir. 40

Raymond E. Smith—Direct

Q. Was it a deposited or cashed check? A. It was neither deposited or cashed; the check was given for interest, quarterly interest, I believe, of \$150.

10 Q. Quarterly interest due who? A. On the demand loan to the Roseville Trust Company.

By the Court: Q. On what? A. On Mr. Scarlett's demand loan.

By Mr. Guild: Q. What was the amount of that loan? A. \$10,000.

Q. Are you acquainted with the signature of John B. Scarlett? A. Yes, sir.

Q. Is this signature following the words "Bras d'Or Land Company," his? A. I think it is.

20 Q. And he signed in what capacity? A. As treasurer.

Q. Was that check paid? A. No, sir; it was returned protested.

Q. Is the protest attached to the check? A. Yes, sir.

Mr. Guild: I offer it in evidence.

30 Mr. Schotland: I object to it. I don't see how that check is material, relevant or competent. In the first place, it is prior to the time laid in the indictment and it is not a check alleged in the indictment, that it is a check that Mr. Scarlett obtained anything on it.

The Court: Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

HI. V. OSBORN

Judge.

40 (Seal)

Marked S-57.

Raymond E. Smith—Direct

Q. Mr. Smith, I understand you to say that this check of \$650 on the B. M. C. Durfee Safe Deposit & Trust Company was given to take up this check of \$150 on the Bank of Hartford which you say was given for interest and also given to take up or make good the check of \$500 on the same bank, of the Bras d'Or Land Company, being Exhibit S56, which you have already testified went through the bank and came back protested? A. Yes, sir. 10

Q. I ask you if the signature on the B. M. C. Durfee Safe Deposit & Trust Company is his signature? A. Yes, sir.

Q. And the check is drawn to his order? A. Yes, sir.

Q. Will you look at the endorsement and see whether the check bears his endorsement? A. Yes, sir. 20

Q. What is the endorsement? A. Pay Roseville Trust Company or order, John B. Scarlett.

Q. Was that check paid? A. No, sir; it was not; returned protested.

Mr. Guild: That is the same check which has been marked S28 for identification.

Mr. Schotland: I make the same objection. Nothing is alleged to have been procured on it and it is a prior date. 30

The Court: Of course, the mere fact that Mr. Scarlett gave a check which was protested, standing alone, would not necessarily make that check evidential of a conspiracy with Smith and others. You see, he got nothing by reason of this, he got no benefit.

Mr. Mott: He got \$500 cash on one of them. 40

Raymond E. Smith—Direct

The Court: I understand that this was to pay interest to the bank.

Mr. Mott: The \$150 was to pay interest. The other, the \$500 check, was cashed.

10 The Court: Then the \$650 check took up them both?

Mr. Mott: The \$150 check is brought into this matter only because it shows how the \$650 was made up.

The Court: But does the evidence show that he got the \$500 cash on that?

Mr. Mott: Mr. Smith testified to that.

Witness: I don't remember testifying to that, your Honor. I don't remember I was asked that question on that check.

20 The Court: The point is this, that checks merely proven to be bad do not necessarily prove a conspiracy unless as the result of the transaction some benefit accrued to Mr. Scarlett which would indicate that it was a part of the conspiracy or that it was his own check. It does not appear that the Bras d'Or Land Company was in the same situation as the Middlesex Hat Company. It appears in the case that the Middlesex Hat Company was really John B. Scarlett.

30 Mr. Mott: May I ask your Honor to hold these matters in abeyance and suggest to the Court that this \$650 check is not the final check. The final check is a personal check of John B. Scarlett.

40 The Court: The \$650 check is his personal check drawn on the B. M. C. Durfee Company?

Raymond E. Smith—Direct

Mr. Mott: That is the check I had reference to. I thought the preceding items were put in to explain the \$650 personal check.

Mr. Schotland: My objection is at present to the \$650 check, because that check, as I understood the witness's testimony, it to the order of the Roseville Trust Company. 10

The Court: No, it is to the order of John B. Scarlett and signed by John B. Scarlett and made payable to the Roseville Company.

Mr. Schotland: And it is a check on which he received nothing.

The Court: He received those two bad checks. 20

By the Court: Q. Did he receive those two checks back? A. No.

Mr. Schotland: I don't see how the giving of the \$650 check in any way connects Mr. Scarlett with any conspiracy to do the bank. He gets absolutely nothing. He does not get the check or anything.

The Court: I will admit the \$650 check and I will not strike out those two checks, because I think they are competent in explanation of the \$650 check, not, standing alone, as evidential of a conspiracy, but as a part of the \$650 check transaction. 30

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN 40
Judge.

(Seal)

Raymond E. Smith—Direct

Mr. Guild: We concede that the check given for interest is not in any way, conclusive, and we do not pretend that it has anything to do with the conspiracy; it simply is put in by way of connection.

10 Checks are marked Exhibits S56, 57 and 58 respectively.

By Mr. Guild: Q. The check drawn on the Durfee Safe Deposit & Trust Company, I understand was to take up the check of \$2500 on the State Bank of Hartford, being Exhibit S56, and the interest check of \$150, being Exhibit S57; is that right? A. Yes, sir.

Q. Now, was this Exhibit S58, being a check on the Durfee Safe Deposit & Trust Company, paid?

20 A. No, sir, it was not.

Q. Was it paid? A. It was returned protested to us.

Q. I show you a check dated Torrington, Connecticut, October 23, 1911, on the Brooks National Bank for \$650, signed John B. Scarlett, to the order of John B. Scarlett, and bearing his name on the back and ask you, it being marked Exhibit S27 for identification, if that check came to the Roseville Trust Company and for what purpose? A. Yes, this check came to the Roseville Trust Company and was used, I think, to take up the other check of a like amount which preceded it.

30 Q. That is S58? A. Yes, sir.

Q. Was that check paid? A. No, sir, that check was returned protested.

Q. Has it ever been paid? A. No, sir.

Mr. Guild: I offer it in evidence.

40 Mr. Schotland: I object on the ground

Raymond E. Smith—Direct

that it is immaterial, that it in no way can prove the basis of an inference of conspiracy. The most that can be said of this check is that Scarlett, in his endeavor to make good the \$650, drew this check and turned it over to the bank; he received nothing at the time; he didn't receive back any of the old checks; he didn't receive back the interest check and didn't receive credit for anything. 10

The Court: I think when a man draws checks he knows whether they are good or not, and when an officer of the bank continues to receive checks which he knows are no good, it is certainly evidence of a conspiracy. The check will be admitted. 20

Marked Exhibit S59.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN

(Seal)

Judge.

By the Court: Q. Or any check given for that?

A. This last one?

Q. Yes. A. I don't think so; I don't remember it. 30

By Mr. Guild: Q. So there shall be no misunderstanding about it, I will take you back to check dated Hartford, Connecticut, December 19, 1911, drawn on the State Bank of Hartford, by the Bras d'Or Land Company, signed John B. Scarlett, being a check for \$500, and ask you whether that is the check that went through the Roseville Trust Company, whether as a cashed 40

Raymond E. Smith—Direct

or deposited check? A. Yes, sir; that check was cashed.

Q. For whom? A. For Mr. Scarlett.

By the Court: Q. Is that the \$500 one? A. Yes, sir.

10 By Mr. Guild: Q. And the \$650 worth of checks that have been offered in evidence concerning which you have given the histories, includes that \$500 which you now have in your hand, being Exhibit S56? A. Yes, sir; it includes that check.

Q. I show you a check dated December 20, 1912, drawn on the Roseville Trust Company for cash, for \$500, signed John B. Scarlett; the date is December 20, 1912, and its marked Exhibit S22 for identification; can you say whether that
20 check was paid by the Roseville Trust Company, and if so, to whom? A. The check was cashed, I believe, on the 20th of December.

Q. What year? A. 1912.

Q. By— A. Mr. Scarlett.

Q. By what institution? A. By the Roseville Trust Company.

Mr. Guild: I offer it in evidence.

By the Court: Q. Is that one of Mr. Scarlett's
30 personal checks? A. Yes, sir.

By Mr. Schotland: Q. Is this the check for which you deposited \$300 to Mr. Scarlett's credit to make it good? A. No, sir.

Mr. Guild: Bear in mind it is a \$500 check.

Witness: No, sir, it is not.

Marked Exhibit S60.

By Mr. Guild: Q. I show you a check drawn on
40 the Roseville Trust Company, payable to the cr-

Raymond E. Smith—Direct

der of John B. Scarlett, for \$300, and bearing the name of John B. Scarlett, there being no date on the check, but the check bearing the number 62 and is marked S21 for identification, and bears the endorsement John B. Scarlett. Can you say whether that check was cashed by the Roseville Trust Company? A. I believe it was. 10

Q. Are you able to say whether the check was good that bears no date? A. No, sir; the check couldn't have been good; it would have been charged up to his account if it had been good.

Q. Was it charged to his account? A. No, sir.

Q. Do you recognize the signature John B. Scarlett to that check—as his signature? A. Yes, sir; I do.

Q. As well as his endorsement? A. Yes, sir. 20

Q. I will ask you to look at Mr. Scarlett's check book and see if you find a check stub No. 62.

Mr. Schotland: I object to the reference to the check book, if your Honor please. The check book has not yet been connected up, so it can be used.

The Court: It has been offered in evidence.

Mr. Schotland: It was offered in evidence and conditionally received. 30

The Court: Its contents are in evidence and the witness is merely asked to read what he finds on the paper. I don't know what that says and the jury doesn't. Counsel can read it if he wishes to.

Mr. Schotland: The point of my objection is this, that before they can go into 40

Raymond E. Smith—Re-cross

detailed use of the contents of the check book the State ought to show that it is going to be connected up.

10 The Court: The check has no date and they refer to the stub in the book merely for the purpose of fixing the date. The witness can answer the question.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN

(Seal)

Judge.

Q. What date is on the stub under that check stub 62? A. June 7, 1913.

20 Q. Will you turn to his ledger account and see whether on that date his account was good for \$300? A. No, sir, the account was not good for it.

Mr. Guild: I offer it in evidence.

The Court: It will be admitted.

Marked Exhibit S61.

30 Q. I will ask you to look in the ledger under date of December 20, 1912, and see whether Mr. Scarlett's account was good for it, for a draft of \$500 being, the amount of the check Exhibit S60? A. No, sir, it was not.

RE-CROSS-EXAMINATION by Mr. Scotland:

Q. Does that ledger account that you have been referring to show all of the credits and all of the debits that Mr. Scarlett was entitled to? A. No, sir; it doesn't show all the debits, no, sir.

40 Q. Does it show all the credits? A. I think so.

Raymond E. Smith—Re-cross

Q. Are you sure? A. Yes, sir; I am quite sure, yes, sir.

Q. Why do you say "I think"—do you know? A. To the best of my knowledge it does.

Q. Do you recall the cashing of that \$500 check of December 20th? A. No, I cannot. 10

Q. Do you know how that came to be honored at the bank? A. No, I don't know; I can't remember; I haven't a personal recollection of it.

Q. Do you know whether it was honored or not? A. Which check do you mean?

Q. December 20th, Exhibit S60? A. Yes sir; I know that it has been honored.

Q. How do you know that? A. Because it was in the possession of the Roseville Trust Company in box 55; Mr. Scarlett's own check that was. 20

Q. Didn't you have any checks of Mr. Scarlett's that you had refused to honor? A. Not on the Roseville Trust Company that I remember. In our possession, you mean?

Q. Yes. A. No, sir; I don't remember of any.

Q. Are you positive? A. I don't know of one, that is all I know.

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

Q. The only thing that you are testifying from, I am saying, that that check was found at the Roseville Trust Company, is from information imparted to you by someone else that was found in box 55, isn't it? A. That is not the only reason, no, sir. 30

Q. Is there any mark on there of any kind which would refresh your recollection or which would make you identify that check as being one that you had cashed or ordered cashed? A. There is a mark of 55 on there that I would know that it came from box 55. 40

Raymond E. Smith—Re-cross

Q. Isn't that the mark that was put on by the bank examiner after the closing of the bank?

A. Yes, sir, but that is not the only reason that I think the check was cashed.

10 Q. What was the other reason? A. Because it is Mr. Scarlett's own check on the trust company, that he cashed for \$500; one would naturally think that the check was given in place of cash, that the check was cashed at the Roseville Trust Company.

Q. If the check had been cashed by the trust company in the regular way it would bear the punch mark and some teller's mark and all that?

A. If it had been good, yes; if it had been good on the ledger, yes, sir.

20 Q. If it hadn't been good on the ledger it would bear your mark or initial authorizing the teller to cash it? A. Not exactly, no, sir.

Q. Do you know who cashed that check? A. No, sir; I can't tell from memory who cashed it.

Q. You haven't any knowledge at all as to whether it was cashed, have you? A. That is all I know about the check, what I have told you.

30 Q. From the fact that it is so marked, that it was probably found in box 55 and the way it is made out you think it was cashed? A. Yes, sir.

Q. You have no recollection or know whether it was cashed or not? A. I can't remember that.

Q. You said anybody could have gone to box 55 while the bank was open, a good part of the day? A. They could have had access to the box all the time, yes, sir.

Q. You say the key used to be allowed to stick in the lock? A. Yes, sir.

40 Q. Did it ever happen that any of you in the

Raymond E. Smith—Re-cross

bank would put in a check and take out cash, a check on that order? A. A check that had not been used, you mean?

Q. Yes. A. No, sir.

Q. That never happened? A. I don't remember of any such item being there.

Q. Do you remember whether or not that check was cashed after Mr. Scarlett had asked you to help him out to the extent of this \$500? A. I don't remember that. 10

Q. Do you remember what you testified to yesterday? A. About what?

Q. About anything that you testified to? A. I don't know what you refer to.

Q. Do you remember what testimony you gave yesterday? 20

Mr. Mott: The witness was on the stand all day and he asks him now if he remembers the whole details of all he said, and it is not a fair question.

The Court: If there is any particular part of his testimony that you want to refer to and refresh his memory you should call his attention to it.

Mr. Schotland: I want to know if he remembers what he testified to yesterday regarding the cashing of checks. 30

Witness: Cashing of some checks, yes, sir.

Q. Do you remember testifying yesterday that where you didn't receive a telephone request or a personal request of Mr. Scarlett about cashing or taking up or honoring or certifying a check you didn't do it, you would send the check back in some instances; do you remember that? A. I remember saying something of that kind, yes, sir. 40

Raymond E. Smith—Re-cross

Q. If there was no conversation regarding this check wouldn't that come in in the category of those checks that you were testifying about yesterday that you refused to take up? A. No, sir, I wouldn't.

10 Q. If you had had some conversation with Mr. Scarlett as a result of which you honored that check do you remember it? A. I might and I might not.

Q. Your memory it not very good as to these transactions? A. As to some of them I can remember distinctly; not all of them.

Mr. Schotland: I move that this witness's testimony regarding the cashing of that check and the check itself be stricken out of evidence on the ground that it now
20 appears that he doesn't directly and of his own knowledge know whether or not that check was cashed.

The Court: He has not said that he did. All he said was that an examination of the check indicates certain things; he says that an examination of the check drawn on the Roseville Trust Company by John B. Scarlett, a depositor in that company, to the order of cash and in the possession
30 of the trust company indicates to him that the check had in fact been cashed. That is all he says. Motion denied.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN

Judge.

40 (Seal)

Raymond E. Smith—Re-cross

Q. Mr. Smith, the \$500 check Exhibit S56 dated September 29, 1911, which formed part of the subsequent \$650 check, do you remember cashing this check Exhibit S56? A. I didn't say I cashed it. (After examining paper.) I know that this is my signature or initial on the back, and it is the way I initialed checks for the teneur to cash. 10

Q. Was that \$500 ever made good? A. With a new check substituted for it.

Q. But finally was that taken care of? A. I don't think so.

Q. Was that put into the \$9700 that was secured by that trust agreement? A. No, sir.

Q. Didn't that form part of it? A. No, sir.

Q. Let us have the items that made up that \$9700. A. \$2500 Long note, we call it; \$750 and \$500 representing two notes of Zuccarrelli, \$1247.76, Spinoza note, \$500, check of Scarlett's that had been paid. 20

By Mr. Guild: Q. Paid by whom? A. The Roseville Trust Company; and the loan of \$4200.

By Mr. Schotland: Q. Are you sure that that agreement included that Zuccarrelli note? A. Yes, sir.

Q. Didn't that merely include \$1000 in loans? A. No, sir. 30

Q. Didn't that agreement include insurance premium of \$800 that had been advanced? A. No, sir.

Q. Now, just put these down, loans, \$1000, your check of \$4200, a note of \$1247 note of \$2500 and insurance premiums of \$800. Does that total \$9,700? A. \$9,747.

Q. Aren't those the items which made up the trust agreement? A. No sir. 40

Raymond E. Smith—Re-cross

Q. Have you totalled the items that you have given as being the ones that were secured by that trust agreement? A. I think they total up to \$9697.

10 Q. On October 25th, when you say you figured that up, didn't you in your own handwriting state that the indebtedness was \$9700 and odd dollars? A. It is so stated on this agreement.

Q. In your own handwriting? A. Yes, sir.

Q. And don't the figures that I give you make up \$9700 and odd dollars? A. Yes, sir.

Q. Are you still positive that the items you state are the ones that form the basis of this security rather than the ones I have given you?

20 A. Yes, sir; there was some talk at the time this agreement was given about two or three little checks that have not been included in this agreement that I couldn't get at at the time; they were locked up in the safe.

By Mr. Guild: Q. When you speak of the agreement, you mean the agreement that you wrote, being D2 for identification? A. Yes, sir; October 20th.

30 Q. Is there anything which fixes in your memory the item that made up that \$9700? A. I remember very distinctly the fact that the first thing that was considered to be covered were given by these different individuals, these three notes, and I remembered also a check of Mr. Scarlett's that had been cashed; it was the only one I could remember at that time, \$500, endorsed by Mr. McGee, and so we included that, and the loan that was made that day on the 25th of October for \$4200 was also included in that amount.

40

Raymond E. Smith—Cross

Adjourned until Monday, February 12,
1915, at ten o'clock, a. m.

Fourth day.

ESSEX COUNTY OYER AND TERMINER, 10
Monday, April 12, 1915.

Met pursuant to adjournment.

Present, counsel as before stated.

RAYMOND E. SMITH resumes the stand in
behalf of State. 20

Cross-examination (continued) by Mr. Schot-
land:

Q. Mr. Smith, I show you a copy of a letter.
Will you read that over and see if you can recall
ever having received a letter like that? A. I
don't remember receiving a letter like that.

Q. Will you try and look back and see if you
cannot recall whether the assignment came with
a letter like that? A. I don't remember it; I
cannot recall it. 30

Q. You have no recollection on the subject at
all? A. On the subject of the letter you mean?

Q. Yes. A. My only recollection is that there
was to have been an assignment in this Manning
Freeman matter an assignment of the judgment,
I mean to say.

Q. Then, what you recollect is this: By your
honoring the \$1200 check, \$19, you were to re- 40

Walter W. Ressler—Direct

ceive as credit for this repayment an assignment of the judgment which the proceeds of that check went to pay? A. There was to have been an assignment, yes, sir.

10 Q. You know the judgment was for a larger amount, and that Mr. Scarlett contributed the difference, don't you? A. I don't; I didn't know that.

Q. But you don't recall ever having received the assignment? A. I don't remember having received it, no, sir.

Q. Did you inquire for it? A. I don't remember inquiring for it.

20 Q. Your arrangement for receiving that assignment was made with Mr. Dotto, wasn't it? He was to attend to the proper preparation of that, wasn't he? A. I believe he was to look after it, yes, sir.

Mr. Mott: I desire to call Mr. Ressler as a witness and he is ill. I ask that this witness be allowed to step aside so that I may call Mr. Ressler now, as he is anxious to get home.

The Court: That may be done.

30

WALTER W. RESSLER, sworn in behalf of State.

Direct-examination by Mr. Mott:

Q. Mr. Ressler, you are one of the official stenographers of this court, are you? A. Yes, sir.

40 Q. Did you act as official stenographer in the

Walter W. Ressler—Direct

case recently tried in which John B. Scarlett was a party? A. Yes, sir; I did.

Q. Have you your notes, that is, the testimony of that trial, with you? A. Yes, sir.

Q. I show you Exhibit S47 and call your attention to the fact that there is some other writing there on the label. In whose handwriting is that? A. That is my handwriting. 10

Q. And what was the occasion of your writing that? A. When that was offered in evidence here—for identification, and later as an exhibit?

Q. At the former trial? A. Yes, sir.

Q. Will you turn to the notes of the former trial, the testimony of Mr. Scarlett with respect to that check book. A. What page is that?

Q. Have you made a note of it? A. Yes; just for convenience, yes, sir. 20

Q. Tell me whether or not Mr. Scarlett, at the former trial, testified as follows.

Mr. Schotland: I object if your Honor please, on the ground that it is incompetent and improper to admit or introduce Mr. Scarlett's evidence in this case in that manner. When he testifies, if he testifies any differently, he may be confronted with his testimony on the same subject matter in another case, in rebuttal; it may become competent to contradict him; but to take out of a mass of evidence and introduce from a former trial a paragraph or two is palpably unfair. 30

The Court: (After argument.) You may cross-examine the stenographer as to whether he was the stenographer, and whether he did take the notes that he is 40

Walter W. Ressler—Direct

asked to refer to, and whether he can testify, either from his own recollection or by reference to his notes for the purpose of refreshing his memory, whether certain things were said at the trial.

10

Mr. Schotland: I admit all except the last proposition you mentioned. What I ask leave to cross-examine him on is whether as to the part the prosecutor is calling his attention to is the entire statement made by Mr. Scarlett or whether it is only a part of the statement made by Mr. Scarlett.

The Court: I don't think the stenographer is competent to answer the question.

20

Mr. Schotland: May I have the benefit of offering that question?

The Court: What is the question? Ask the question, and let me see what it is.

Mr. Schotland: Is the part of the testimony of the previous trial to which the prosecutor has called your attention the record of the entire statement made by Mr. Scarlett in that case or not?

30

The Court: I do not think the prosecutor has actually come down to the point of reading. He says, "Did he testify as follows." There you interpose an objection. I cannot say how much he is going to read and the witness cannot answer your question until the question of the prosecutor is completed.

40

Mr. Schotland: Well, your Honor has indicated that the way to properly proceed would not be by asking the prosecu-

Walter W. Ressler—Direct

tor to read the testimony but by asking him (indicating witness) to read from his notes.

The Court: He has not been asked anything yet which would enable the witness to answer your question. I will overrule your objection to the question originally asked by the prosecutor. 10

Mr. Schotland: Does your Honor hold that the prosecutor may ask the question by reading from the record to the witness?

The Court: You will have the benefit of testing the witness on cross-examination.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly. 20

H. V. OSBORN

(Seal)

Judge.

Q. Mr. Ressler, at the former trial, did Mr. Scarlett testify as follows: "Q. I show you a check book and ask you whose check book that is and used in connection with what account of the bank? A. This was the check book of John B. Scarlett used in connection with the Roseville Trust Company."? A. Yes, sir. 30

Q. And, as follows: "Q. And from the beginning to the end of your account with that institution? A. I believe so." A. Yes sir.

Mr. Schotland: I make the same objection.

The Court: The same ruling.

Defendant's counsel prays an exception to this ruling of the Court, and the same 40

Walter W. Ressler—Direct

is allowed and signed and sealed accordingly.

H. V. OSBORN

(Seal)

Judge.

10 Q. "Q. So that you have no other check book that you used in connection with your account there? A. I think not."? A. Yes, sir.

Q. And thereupon what do your minutes show was done with reference to the check book about which he was testifying? A. That the book referred to was marked S26 for identification.

By the Court: Q. Now, you look at the book in question that has been handed to you by the prosecutor and tell me whether it contains that mark
20 made by you at that time? A. It does, yes, sir. "For indent." was crossed out by blue pencil, later on, when it was offered in evidence.

Q. That is the same book that is referred to there? A. Yes, sir.

Q. That book is now marked in this case "S47"? A. "S47."

By Mr. Mott: Q. Referring to your notes taken at the former trial I ask you whether or not, at that trial, Mr. Scarlett testified as follows?

30 Mr. Schotland: I object for the same reason.

The Court: The same ruling.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN

(Seal)

Judge.

Walter W. Ressler—Cross

Q. (Continuing.) "In March, 1913, where did you reside, in Newark? A. Same residence where I reside now." A. Pardon me just a moment. Yes, sir, I have it.

Q. Do you remember the question? "In March, 1913, where did you reside, in Newark? A. Same residence where I reside now"? A. Yes, sir. 10

Q. And thereupon did the Court say, "Give the address?" and the witness, answering, "The same address." "The Court: Can you tell us the address? Witness: Forty-seven Johnson Avenue"? A. Yes, sir.

CROSS-EXAMINATION by Mr. Schotland:

Q. Is the evidence that has been called to your attention regarding Exhibit S-47 the only evidence that was given on the former trial by Mr. Scarlett? A. No, sir. 20

Q. Can you turn to the rest of the evidence given by Mr. Scarlett at the former trial regarding that exhibit? A. Yes, sir; I can. It would take me some time to go through it. You mean to find other references as to that book?

Q. Yes. A. It would take me considerable time.

Mr. Mott: Do you mean as to that book, as regards its identity or its contents? 30

Mr. Schotland: I was not present at the other trial; I did not read the record and have not the benefit of a copy of it.

The Court: I can state for your benefit, Mr. Schotland, that there was a great deal of evidence regarding the contents of the book.

Mr. Schotland: What I am principally aiming at is this. Was there any evidence 40

Walter W. Ressler—Cross

regarding the person who kept that book, in whose handwriting the entries were made?

I submit if there was, then this scrap of evidence alone is incompetent.

10 The Court: This so called scrap of evidence does not go to the contents of the book. All this goes to is that this was a check book which Mr. Scarlett used in the Roseville Trust Company. As to who made the entries, there has been no question asked as to that at the present time.

20 (After argument.) You may ask this witness if that is the only testimony, as far as he recalls, pertaining to the question whether or not this was the only check book that Mr. Scarlett used; then you have met that situation.

Mr. Schotland: I do not think I am limited to that one question.

Q. Was this testimony which has been just called to your attention by the prosecutor, brought out on the direct or cross-examination of Mr. Scarlett? A. My recollection is that it was on cross. What page was that on, of the testimony?

30 Mr. Mott: Page 804, of notes. A. There is so much of this, Mr. Schotland, it is difficult—

By Mr. Mott: Q. Look at this entry on page 37 and follow on from there.

Mr. Schotland: Suppose you admit that was on cross-examination.

The Court: He says that that is his recollection.

A. If you want a positive answer—

Mr. Mott: I think the witness is correct.

40 By Mr. Schotland: Q. Now, did Mr. Scarlett

Walter W. Ressler—Cross

testify that that book had been kept by a bookkeeper who is now dead? A. Speaking from recollection he did.

Q. Did he testify that the entries in that book were in the handwriting of that bookkeeper and others? A. You still want me to speak from recollection, of course? 10

Q. Yes. A. My recollection is that he said it was kept by Mr. Reynolds. I don't remember whether he said that all the time. I do remember that he said there was some in his handwriting.

By Mr. Mott: Q. In whose? Scarlett's? A. Yes.

By the Court: Q. What is your recollection? A. That some of the stubs of this book were made by himself, personally. 20

By Mr. Schotland: Q. Some of them? A. Yes; only a few, as I recollect.

Q. But most of them were by Reynolds who is now dead? A. Yes.

By the Court: Q. Did he say who Reynolds was? A. Yes, sir; he said that Reynolds was there, well, as office hand or bookkeeper, and attended to that sort of work in his office up to the time of his death.

Mr. Schotland: To make sure that I have preserved my rights I want to make a motion to strike out the testimony of this witness, on the ground that it appears, on cross-examination, that that was not the only testimony regarding that subject matter. 30

The Court: Did he not testify that that was all he recalled? You did not ask him whether that was all he recalled. 40

Raymond E. Smith—Cross

Mr. Schotland: I did ask him if that was all the evidence there was and he said no.

10 The Court: You did not ask him the question that I suggested before, I say that it does not appear that there was no other evidence concerning this particular matter upon which he was interrogated by the prosecutor. Motion denied.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN

(Seal)

Judge.

20

RAYMOND E. SMITH, re-called in behalf of State:

Cross-examination (continued) by Mr. Schotland:

30 Q. Mr. Smith, on Friday there was some additional checks identified by you that appear to run as S Exhibits 57, 58, 59, 60, 56 and S-23, 24, and S-61. Will you look those over? A. (Witness examines checks.) Now, will you separate those exhibits into two piles, making one pile of those on which the Roseville Trust Company parted with any cash and another pile of those which were given to take up a previous check or note there or to pay a debt due the trust company? A. Yes, sir; I have done so.

Q. Now, let me have the pile, first, of the checks on which the bank parted with some money.

40 (Witness hands papers to Mr. Schotland.)

Raymond E. Smith—Cross

Q. You have handed me Exhibits S-54, 55, 56, 60 and 61. A. I think those are the numbers; I don't remember the numbers.

Q. I am identifying the numbers for the sake of keeping the record clear. Now, Mr. Smith, will you look at this and tell me whether you honored those checks for the same reasons that you gave us for honoring Exhibits S-1 to 19? A. Yes, sir. 10

Mr. Mott: One minute. The witness has answered the question over my objection inadvertently. The witness is shown a large number of checks which he says were honored by him, and he is asked whether he honored them for the same reason he honored checks 1 to 19. I don't know what the record shows with reference to 1 to 19 and I don't think the jury does. 20

The Court: I think the record shows that the reason was of the same general character as applied to all those checks. I will permit the question if he can answer it.

Q. You say yes? A. I started to answer it. I would like to hear the question once more.

The Court: You may finish.

Witness: Yes, I believe those checks were all cashed by Mr. Scarlett. 30

Mr. Schotland: I ask that that be stricken out as not responsive. The question is whether he honored them for the same reason. I will withdraw the question.

Q. Mr. Smith, you have testified that all of those exhibits that you now hold were honored by you at the time when Mr. Scarlett did not have money to his credit in the bank out of which those checks could be honored. Is that right? A. That was 40

Raymond E. Smith—Cross

true with 1 to 19, I believe, or the checks drawn on the Roseville Trust Company. Not these checks (indicating) I have in my hand.

Q. Those checks you have in your hand were not checks drawn on the Roseville Trust Company? A. Not all of them, no, sir.

Q. Suppose you separate these checks, again, into those which were drawn on the Roseville Trust Company and those which were not. A. There are two here.

Q. Two drawn on the Roseville Trust Company? A. Yes, sir.

Q. Those two checks drawn on the Roseville Trust Company have been marked Exhibits S-60 and S-61. You have testified regarding those two exhibits that you honored them at a time when Mr. Scarlett did not have that amount of money to his credit and did not charge them to his account for the same reason? A. Yes, sir.

Q. That is right, is it? A. I don't remember whether I testified just to that effect or not. I remember that I said we honored the checks and did not charge them up to Mr. Scarlett's account because the account was not good for them at the time.

Q. Now, then, did you honor them for the same reasons that you gave us for honoring the checks, Exhibits S-1 to 19, that series which you have testified total up over \$6,600? A. I honored them to help Mr. Scarlett.

Q. Answer yes or no.

The Court: Perhaps he cannot answer yes or no. You asked him a blanket question referring to an examination which cover a series of questions and answers.

Raymond E. Smith—Cross

(After further argument.) This witness is a very intelligent witness and has, apparently, a very clear perception of the things he admits testifying to and which he has any recollection of. I think until it appears that he cannot answer the question I will permit it to be asked, but I do not think he can be required to answer it yes or no. He may answer it in his own way, and if he cannot answer it he may say so. 10

A. I believe these checks were honored, or cashed, whichever you like, for the same reason in this one particular, that is, to help Mr. Scarlett.

Q. To help Mr. Scarlett? A. Yes.

Q. The reason, then, that you considered it good judgment on your part as a banker to help him so that he should not to go to the wall and the bank should not lose what he owed on other obligations, does not apply to these checks? A. Well, I cannot answer that question very well. 20

Q. Why not? A. I testified that I could not remember the history of this check for \$500. To the best of my knowledge they were cashed. Many of the checks that I testified about, last week, I could remember the circumstances of.

Q. You don't remember the circumstances about these checks? A. Not these two checks. 30

Q. The \$300 one and the \$500 one, S-60 and S-61? A. S-60 and S-61.

Q. Well, did you cash them for the purpose of aiding Mr. Scarlett to defraud the bank? A. No, sir.

Q. Did you expect to get this money back from the bank when you cashed these checks? A. I thought we would get it back, yes, sir. 40

Raymond E. Smith—Cross

Q. Now, let me see the other checks which were cashed. I show you Exhibit S-55. Do you remember that particular transaction? A. I have a recollection of it, yes, sir.

10 Q. What do you recall about it? A. I remember that the check was returned to us a number of times after presentation for payment.

Q. Do you know whether that was deposited or cashed? A. The check was cashed, I believe.

Q. Do you know? A. It was cashed. It went through the paying teller's window.

Q. You know that from the marks on the check? A. Yes, sir; that is one reason I know it.

20 Q. And was that check cashed as a result of any arrangement between you and Scarlett to defraud the Roseville Trust Company of that \$150? A. No, sir, not to my knowledge.

Q. Did you have any attention of assisting Scarlett to defraud to the extent of \$150 by cashing this check S-55? A. I did not.

Q. Do you remember who asked you to cash this check? A. Mr. Scarlett.

Q. You kept it in box 55, I suppose? A. I don't remember just where it was kept.

30 Q. Or in your desk? A. This check was found in my desk, eventually.

Q. You know that from the three "O's"? A. I know it.

Q. From the mark of the three "O's" put on by the bank examiner? A. Yes, sir.

Q. I show you Exhibit S-54 for \$350. Do you remember the circumstances surrounding that check? A. The check was cashed, I believe, by Mr. Sica.

40 Q. You know that from the appearance of the

Raymond E. Smith—Cross

check bearing Mr. Sica's endorsement? A. Yes, sir; I know it went through the paying teller's window, too.

Q. Also from the mark on the check? A. Yes, sir, the first teller's mark.

Q. This is the check of the Middlesex Hat Company, drawn by Sica, as treasurer? A. Yes, sir. 10

Q. To the order of Scarlett? A. Yes, sir.

Q. Endorsed by Scarlett and then by Sica? A. Yes, sir.

Q. You say that this check, drawn by Mr. Sica, was cashed by Mr. Sica? A. Drawn by the Middlesex Hat Company.

Q. Yes, drawn by the Middlesex Hat Company, but was cashed by Mr. Sica? A. Yes, sir; I think it was.

Q. Now then, in cashing this check for Mr. Sica, this check of the Middlesex Hat Company, drawn by Mr. Sica, did you do that as the result of an arrangement with Mr. Scarlett, to help Mr. Scarlett cheat the Roseville Trust Company out of this money? A. No, sir. 20

Q. As a matter of fact, so far as the appearance of the check goes, and so far as you have any personal knowledge, you don't know whether Mr. Scarlett ever got a penny of that money or not, do you? A. I don't know positively, no, sir. 30
I have my reasons for believing he did, because Mr. Sica was connected with it.

Q. Mr. Sica was treasurer of the Middlesex Hat Company, associated with Mr. Scarlett in business? A. Yes, sir.

Q. From that you suppose that Mr. Scarlett might have got some of this money? A. I think it was set up for Mr. Scarlett's benefit, and Mr. Sica endorsed it. 40

Raymond E. Smith—Cross

Q. But that is your suspicion? A. Yes.

Q. That is not your actual knowledge? A. That is not my actual knowledge, no, sir.

10 Q. You do know, however, that you didn't cash this for the purpose of enabling Scarlett to cheat the bank? A. No, I didn't do that; or rather, I know that, yes, sir.

Q. You know that you did not do that? A. Yes, sir.

Q. That there was no such intention at the time this check was cashed? A. No, sir.

20 Q. Now, I show you Exhibit S-56, a check for \$500, drawn by the Bras d'Or Land Company, John B. Scarlett, treasurer, by order of John B. Scarlett. Do you remember the circumstances surrounding that transaction? A. The check was cashed.

Q. By whom? A. By Mr. Scarlett or his representative.

Q. That was on September 19, 1911, the date of the check? A. Yes, sir.

By Mr. Guild: Q. Cashed by what institution? A. Cashed by the Roseville Trust Company.

By Mr. Schotland: Q. Who asked you to cash it? A. Mr. Scarlett, I believe.

30 Q. Did you cash that for the purpose of enabling Mr. Scarlett to cheat or defraud the Roseville Trust Company out of the \$500 represented by that check? A. No, sir; I did not.

Q. Why did you cash it? A. I cashed it because I wanted to help Mr. Scarlett.

Q. Any other reason? A. I cashed it at his request.

40 Q. Did you want to help him for any particular reason? A. No particular reason; I don't know

Raymond E. Smith—Cross

of any particular reason at that time; simply that I knew he was in need of funds and I wanted to help him all I could.

Q. You knew how he was situated so far as his business investments were concerned, didn't you?

A. Fairly well, yes, sir.

Q. And you knew that if he was able to sell the stock of the Stevenson, Rye Company he would have enough money to liquidate his indebtedness?

Mr. Guild: I object to that as not cross-examination.

The Court: It is probing into the basis of what we consider was his knowledge of Mr. Scarlett's condition. I think it is proper. Objection overruled.

A. I knew, if Mr. Scarlett sold the stock for the price that he said it was worth, he would be able to clean up his indebtedness. That was, providing he applied it that way.

Q. You had sufficient faith and confidence in him to believe he would apply it that way? A. I believed so at the time; this part of it, anyhow.

Q. And you cashed this check, then, to help him out until he got an opportunity to sell the stock, didn't you? A. I don't think that check was cashed on those conditions, that one check. I can't remember that.

Q. No; but that was the general line of thought in your mind as you were helping him, wasn't it?

A. Yes, sir; that was.

Q. Then, what I want to know—let me ask you once again. This was the thought in your mind in a general way, regarding all of those transactions, that if you helped Scarlett out by cashing checks that he presented and honoring some of the

Raymond E. Smith—Cross

checks that he drew on the Roseville Trust Company direct, as soon as he was able to sell the stock of the Stevenson, Rye Company he would be able to liquidate his indebtedness to the bank, not only on the checks that were cashed or honored when he didn't have funds, but also the indebtedness for which the bank held his notes? A. Why, yes, I felt that we would get our money back some day if Mr. Sarlett did sell some of his holdings in the Middlesex Hat Company.

10

Q. As well as the Stevenson, Rye & Company?

A. Yes.

Q. You knew that he had invested a very large sum of money in both of those companies, didn't you? A. I knew that he was said to have. I never have seen the proofs of the investment at all except his word for it, that is all.

20

Q. And you relied upon his statement as to what he had invested in this case? A. Yes, sir.

Q. Now, will you let me have those other checks on which he got anything? This check, S-57, for \$150, drawn on the City Bank of Hartford, to the Roseville Trust Company, you say, was in payment of interest on Scarlett's indebtedness to the bank in the regular way? A. It was payment of three months' interest, one-quarter of the year, on \$10,000.

30

Q. And when that check was not honored, then the interest that was due was not paid—was still owing? A. Yes, sir.

Q. That is why it appeared on the books of the bank, isn't it? A. I think so.

Q. Now, S-58, for \$650, you say, is an attempt made by Scarlett to take up the \$500 check, S-56, and this interest check of \$150? A. S-57? Yes,

40

Raymond E. Smith—Re-direct

sir. I believe this (indicating) check took the place of those (indicating) two.

Q. But you didn't return these two until you found out whether this S-58 would be honored or not, did you? A. No, sir.

Q. That is the reason it was kept and remained in your box 55? A. Yes, sir. 10

Q. You also say that S-59, also for \$650 is an attempt to take up that same indebtedness and replace the previous \$650 check, which had not proved to be good? A. That is another renewal of those two checks, yes, sir.

Q. Then the Exhibits S-59, S-58, S-57 and S-56, which amount to \$1950, represent, altogether, only \$500 drawn by Mr. Scarlett and \$150 as indebtedness for interest, is that right? A. And the costs of protest, yes, sir. 20

Q. Si~~7~~ hundred and fifty dollars, all told, plus protest fees? A. Yes, sir.

Q. Do you know whether or not the bank has claimed \$1,950 represented by these checks, from Scarlett? A. I do not.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. I will ask you to total the checks, Exhibits S-54, 55, 56, 60 and 61. A. One thousand eight hundred dollars. 30

Q. You say that Mr. Scarlett had the money on those checks? A. Yes, sir; I believe so.

Q. And he still owed that amount on those checks to the Roseville Trust Company at the close of the business? A. I think so, yes, sir.

Q. And that would make an additional indebtedness to the \$6,642.63, the total amount of checks mentioned in the indictment? A. Yes, sir. 40

Raymond E. Smith—Re-direct

Q. I show you Exhibits S-50 and S-51. Exhibit S-50 being James Zuccarrelli, \$750, dated May 13, 1913. That is the renewal of the original note payable to the order of Nicholas R. Sica, endorsed by him. I show you also Exhibit S-51, being a
 10 note made by James Zuccarrelli, a note payable to the order of Nicholas R. Sica, for \$500, dated February 13, 1913, and endorsed "Nicholas R. Sica." Now, I show you S-62, a treasurer's check of the Roseville Trust Company, dated August 13, 1912, for \$1,227.50, drawn to the order of Nicholas R. Sica, and bearing the endorsement of Nicholas R. Sica. What is that check? A. This is a treasurer's check of the Roseville Trust Company.

Q. Issued by you as treasurer? A. Yes, sir.

20 Q. What was it issued for? A. This check was issued for two original notes signed by Zuccarrelli and endorsed by Mr. Sica, \$750 and \$500, amounting to \$1,250.

Q. And the check is for less than the total of the two notes, is it not? A. Yes, sir. The check represents the proceeds of those two notes with the interest deducted.

Q. Was the check paid? A. It was, yes, sir.

Q. Is it so marked? A. Yes, sir.

30 Q. Is there any indication, as shown by the endorsement, that the check, was used by Mr. Sica? A. It was used by Mr. Sica, yes, sir.

Mr. Guild: I offer the check in evidence.

Mr. Schotland: No objection.

By the Court: Q. What is the amount? A. One thousand, two hundred twenty-seven dollars and fifty cents is the amount of the check.

Q. On what date? A. August 13, 1912.

Q. Made by whom? A. R. E. Smith, treasurer.

40 Marked Exhibit S-62.

Raymond E. Smith—Re-direct

By Mr. Guild: Q. I show you Exhibit D-1, for identification, being a so-called declaration of trust, or one of the copies which you identified the signature of, which you identified as your signature? A. Yes, sir; I did.

Q. I ask you when you signed that paper whether there were any dates in it? A. I don't think there were. 10

Q. I show you a paper and ask you what that is? A. This is supposed to be a copy of the same declaration of trust.

Q. Signed by whom? A. Signed by Nicholas R. Sica, John B. Scarlett and Raymond E. Smith.

Q. Was that left with you at the time when you signed the other copy? A. I think so.

Q. Are there any dates in this paper? A. No; none whatever. 20

Mr. Guild: I offer this paper in evidence.

Mr. Schotland: No objection.

Marked S-63.

Mr. Guild: If the Court please, I offer in evidence a certified copy of a deed from John B. Scarlett to Nicholas R. Sica, dated the 4th day of October, 1912, the deed, according to the register, having been recorded in the register's office, in the County of Essex, on the 4th day of October, 1912. 30

Mr. Schotland: I object to it on the ground that it is immaterial, irrelevant and incompetent. I cannot see the connection between that deed and the case.

The Court: It is referred to in the agreement, isn't it?

Mr. Guild: Yes, sir. 40

Raymond E. Smith—Re-direct

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

10

H. V. OSBORN,
Judge.

(Seal)

Marked Exhibit S-64.

Q. I ask you to look at this Exhibit S-64 and see what property it purports to convey, generally?

Mr. Schotland: I suppose the exhibit speaks for itself. It is in evidence.

20

The Court: The objection is sustained. Counsel may read it to the jury if they prefer.

Mr. Guild: I wanted merely to get it on record that this deed conveys property on Johnson Avenue, Newark.

Mr. Schotland: I will admit that it does.

Q. I show you again, Exhibit S-45, being the so-called financial statement of John B. Scarlett. At the time, you have said that you presented that
30 financial statement to either the Board of Directors of the Roseville Trust Company or the executive committee, is that so? A. Yes, sir.

Mr. Schotland: He testified that it was called for by them. He didn't say that he presented it to them.

The Court: My recollection is that he did so testify.

40

Mr. Guild: If there is any doubt about it I will ask him.

Raymond E. Smith—Re-direct

Q. Did you present that financial statement to either the Board of Directors of the Roseville Trust Company or the executive committee? A. The executive committee, I presented it to, I believe.

Q. At the time you presented that statement to the executive committee of the Roseville Trust Company did you know that Scarlett had conveyed the Johnson Avenue property to Sica? A. Yes, sir; I did know it. 10

Mr. Schotland: I suppose that this opening up of new matter has your Honor's consent?

The Court: It has or I would have stopped it. There are so many things coming up in this case that we are almost of necessity not confined to the matter of rebuttal and surrebuttal, and so on. That rule has been let down for the benefit of both sides. 20

Q. Mr. Smith, did you inform the executive committee that you knew Scarlett had conveyed the Johnson Avenue property to Sica or anyone else when you presented the financial statement to them?

Mr. Schotland: I object. If that were possibly competent on the theory that the State has shown that this witness and Mr. Scarlett were co-conspirators, that, therefore, Scarlett was responsible for every word and act of this witness, it would still be immaterial as to what he told them, because this witness's testimony—if the State intends to rely on it, as to the effect of the trust agreement to carry out the pro- 30 40

Raymond E. Smith—Re-direct

visions of which the conveyance was made, although made for this witness's personal benefit in name, was really for the bank. So I don't see how it is in any way material to help the case one way or the other to go into this inquiry.

10 The Court: (After argument) It does not indicate anything except the state of mind on the part of this witness to conceal something which ought not to have been concealed, and which would not have been concealed if there had not been a conspiracy. The only question now before the Court is whether he did or did not inform the executive committee of a certain situation.

20 Mr. Schotland: I will ask your Honor to look at these papers making the statement and ask permission to interpose a question as to whether Mr. Smith, when given that statement, was told as of what date that statement showed the situation.

The Court: I think you may ask that on cross-examination if you want to, but I don't think it has any bearing on the particular question now before the Court as to the admissibility or competency of this question. I will overrule the objection.

30 Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORN,
Judge.

Raymond E. Smith—Re-cross

Q. (Question read.) A. I did not inform them, at all, of that fact.

RE-CROSS-EXAMINATION by Mr. Schotland:

Q. Mr. Smith, do you know as of what date this statement was given to you? Do you know what I mean by the question "as of what date"? A. March 15, I believe, 1913. 10

Q. That is the date when you received it, isn't it? A. No, sir; we received it prior to that—or, after that time.

Q. When did you receive it? A. I don't know exactly when, but I think a few days later than the 15th.

By the Court: Q. Why do you say it was March 15th Mr. Smith? A. It is dated March 15th. 20

Q. Do you know in whose handwriting that date is? A. I think those are Mr. Scarlett's figures.

By Mr. Schotland: Q. You say that that is not the date on which you received it? A. I think it is a few days later than that, the 15th of March.

Q. When did you present it to any of the executive committee? A. At the meeting following after I received it. 30

Q. Was there any discussions about it or any questions asked, or anything said about it at all? A. No, sir; not especially, that I remember, except that the members were glad to have it. I don't remember what was said about it.

Q. Did you show that statement or simply tell them that you had received a financial statement? A. I showed it to them. 40

Raymond E. Smith—Re-cross

Q. Who were they? A. I don't remember who were present at that time. The members of the committee.

Q. Now, you say that this statement was received by you a few days after March 15, 1913?

10 A. I think so, yes, sir.

Q. And presented by you to the executive committee at the next meeting that you were at? A. I think that was, yes, sir; I am not positive about the next following meeting. I think it was; but it may have been a meeting or two later.

Q. Did Mr. Scarlett procure any loans after the making of this statement, from the board of directors of the bank? A. I think not.

20 Q. Did he procure any money from the executive committee or the directors of the bank after the making of that statement? A. From the directors?

Q. Yes, from the bank direct, based on that statement? A. No, sir.

The Court: You mean through the agency of the directors, do you, or through Mr. Smith, personally?

30 Mr. Schotland: I want to separate what Mr. Smith calls his personal or irregular transactions, which certainly were not based on this statement.

Q. Now, Mr. Smith, your personal transactions with Mr. Scarlett, when you were helping him out, honoring checks, certifying some of them, which you did after the date of this statement—were they based on this statement? A. No, sir. What personal transactions do you mean, checks that were paid or honored by being paid by the
40 Roseville Trust Company?

Raymond E. Smith—Re-cross

Q. They were honored by you. I don't know who paid them. You saw to it that they were honored? A. No, sir; they were not honored on the basis of that statement.

Q. Not on that statement at all? A. Not entirely, no, sir; not altogether. 10

Q. Well, the fact that this statement did not show that the Johnson Avenue property, which is listed as an asset here, had been conveyed to Sica, didn't hide any fact from you that you had no knowledge of, did it? A. I knew that he had conveyed the property to Sica.

Q. For your security? A. No, not for my security.

Q. That is the way the agreement read, didn't it? A. The agreement read that way. 20

Q. The agreement read for your security, but you knew that that conveyance was made to secure you and through you the bank? A. The conveyance to Sica?

Q. Yes. A. As I understand it the deed to Sica was made before this agreement was drawn up, or this declaration of trust was drawn up.

Q. It was arranged, though, between you and Scarlett, wasn't it, that that was to be done? A. What? The declaration of trust to be drawn up? 30

Q. Yes. A. That was arranged, yes, sir.

Q. Before it was actually done, wasn't it? A. And before it was given to them.

Q. You mean to say that it was given, but there was another arrangement between you that it should be given for that purpose? A. Yes, sir.

Q. How do you know that? A. I know it from the date.

Q. When did you and Scarlett first talk about 40

Raymond E. Smith—Re-cross

this arrangement? A. Not until after the 25th of October; some time after, about two weeks after.

Q. Two weeks after the 25th of October and this statement was given on the following March?

A. Yes, sir.

10 Q. When this statement was given in the following March you knew that that conveyance then stood for your protection, didn't you? A. I knew that the property stood in Sica's name, and was mentioned in this declaration of trust.

Q. Yes. A. Yes, sir; I knew that.

Q. You were familiar with the contents of the declaration of trust? A. Yes, sir; pretty much.

Q. I show you Exhibit S-62, your check, as treasurer, to the order of Nicholas R. Sica, 20 \$1227.50. Who did you cash that for? A. I didn't cash it.

Q. You said it was cashed, didn't you? A. I don't think I said that.

Q. Didn't you testify that that check was cashed? A. I said the check was given to Mr. Sica.

Q. Didn't you testify that it was cashed? A. I think I said that it was given for his benefit. I meant to say that; if I didn't say that I will 30 correct myself; I meant to say that.

Mr. Guild: He said it was paid.

Q. Did you say it was paid? A. Yes, sir.

Q. Could it be paid without being cashed? A. Why, certainly.

Q. How? A. There is a difference. A check that goes in through the exchange is not spoken of as cash. A check that passes in over the counter for the account of someone else is not 40 considered as cash at that time.

Raymond E. Smith—Re-cross

Q. You gave this check, then, to Nicholas R. Sica, and it came back to the Roseville Trust Company in the regular course of business, with Sica's endorsements on it? A. Yes, sir.

Q. This check that you gave to Sica, you say, was the proceeds of the purchase by the Roseville Trust Company of the two notes, one for \$500 and the other for \$750? A. Yes, sir. 10

Q. Both of those notes were endorsed by Sica? A. Made by Scarlett and endorsed by Sica, the \$750 and the \$500.

Q. S-50 and S-51—these notes (indicating)? A. The original notes for which these notes stand as renewals.

Q. Those notes enter into that \$9700 as security for that trust agreement, don't they? A. Yes, sir. 20

By Mr. Guild: Q. Neither of these notes have been paid? A. No, sir; they have not.

Q. You stated on your cross-examination that after the Scarlett financial statement of March 15, 1913, came in, that neither the directors nor the executive of the trust company made him any additional loans; that is, that the institution did not, through either the board of directors or the executive committee? A. They did not. 30

Q. You so testified? A. Yes, sir.

Q. At that time, did he have any loans with the trust company that went through the board of directors? A. He did, yes, sir.

Q. In what amounts? A. I think about between eleven and twelve thousand dollars.

Q. Were those loans continued after the receipt of the financial statement? A. They were, yes, sir. 40

Raymond E. Smith—Re-cross

By Mr. Schotland: Q. You mean to say that they were renewed after March 13, 1913? A. They were continued. One of them was a collateral demand loan—supposed to be a demand loan—\$10,000.

10 Q. By what was that secured? A. There was an abundance of collateral that they secured, a number of shares, a large number of shares of the land company stock. I cannot think of the name of the land company just at this minute. It is up on Washington Heights. At any rate, it was several hundred shares, I think, of this land company's stock that was put up as collateral.

Q. Was that note secured by anything else? A. Yes, sir, that note was secured by some life insurance also, as additional contingent collateral.

20 Q. And that security remained with the bank? A. Yes, sir.

Q. And the note was not due, was it? A. The note was drawn on demand.

Q. When was that note drawn? A. I think in the spring of 1910.

Q. The spring of 1910? A. I think so.

Q. It was kept by the bank all the time? A. Yes, sir.

30 Q. Now, by saying that they continued the loans you mean that they made no change in that loan which had been existing from 1910 until the time that the statement was given after receipt of that statement. Is that what you mean? A. The other demand note changed in that one amount of \$10,000.

Q. The entire loan? A. One of the loans. The note of Stevenson, Rye & Company was originally
40 \$2000, and had been reduced considerably, about,

Raymond E. Smith—Re-cross

I should say, around fifteen hundred or fourteen hundred dollars at that time; perhaps \$1200; reduced very materially, anyhow.

Q. Was that note due? A. It came due from time to time.

Q. Did it come due between the receipt of that statement and the closing of the bank? A I think so. 10

Q. Can you tell? A. I know it was a four months' note; as a rule the same four months, between March 13, and August, 1913.

Q. But you are not sure as to the date when you received or presented that statement to the executive committee? A. I testified it was received a few days after the date on the statement.

Q. Would you say that the Stevenson, Rye & Company note was renewed? A. I didn't say that. I said it came due before the bank closed, between that time, the date of the statement, and the time that the bank was closed it came due. It must have come due between those times. If it had not already come due. 20

Q. But was it renewed? A. I couldn't tell you that. It was not paid, I know.

Q. Do you know how much stock Scarlett had in the bank? A. At what time? 30

Q. About the time of that statement? A. I have forgotten just what his holdings were at that time.

Q. The statement, S-45, shows \$2000 stock on hand. Do you know whether that was security or not? A. Stock on hand?

Q. \$2000. A. That statement—the financial statement that he gave, you mean? 40

Raymond E. Smith—Re-cross

Q. Yes, showing that he held \$2000 of the stock? A. Does that mean that?

Mr. Guild: Let him see it.

Witness: (After examining paper.) The stock on hand—I wouldn't call that, in a statement of
10 this kind, as quoting any bank stock, or any other stock. I would say that was more like rolling stock or fixtures, or something like that; I don't know what it is.

Q. Does he say what bank stock he had in the statement? A. I don't see it here.

Q. You know that he did have stock in the bank, don't you? A. Yes, sir.

By the Court: Q. What is this (indicating)?
A. There are several investments here by way
20 of the Middlesex Hat Company and the Stevenson, Rye, for which, no doubt, stock is given.

The Court: It is not indicated on the statement we have by the designation of stock. The term investment is used here.

By Mr. Schotland: Q. But I am asking about his stock in the Roseville Trust Company. You knew that he was a stockholder there? You were secretary?

By the Court: Q. The question is whether this
30 statement shows any stock holdings in the Roseville Trust Company? A. No, sir; it does not.

By Mr. Schotland: Q. You know that he did have stock in the Roseville Trust Company, don't you? A. I know he was quite a large stockholder at one time.

Q. At this particular time do you know how much stock he had? A. I do not. I think perhaps it was twenty shares or twenty-five; I don't re-
40 member.

Raymond E. Smith—Re-cross

Q. You can't tell from the book, can you? A. The large book?

Q. The stock book. A. Yes, sir; I couldn't tell from the stock book.

Q. He had owned less than twenty shares, hadn't he? A. I don't think there were any less, at any time, than twenty shares of stock, in Mr. Scarlett's name. 10

Q. What was the largest number of shares he had held in that bank? A. I don't remember the amount. I know that there was at least seventy-five.

Q. Were those shares issued for par or for more than par? A. No more than par. The stock sold for \$150 at first; then sold for different prices, between 150 and 200, between the 1st of December, 1908, and August 13, 1913. 20

Q. It wasn't below 150 between those dates? A. No, sir; never.

Q. One hundred and fifty was paid into the bank for each \$100 share? A. Yes, sir.

By Mr. Guild: Q. You were asked about the Stevenson, Rye note as being one of the notes that the bank had purchased and held at the time the financial statement came in. You say that note had been reduced from \$2000 to a lower figure? A. Yes, sir; it had been. 30

Q. Do you know what amount? A. At what time?

Q. When the financial statement came in? A. No, sir. I think it was eleven hundred odd dollars at the close of the institution; but I don't know just what it was at that time.

Q. Did the note remain unpaid for that amount at the time that the institution closed? A. Yes, sir; it did. 40

John Long—Direct

Q. Do you know what Mr. Scarlett's connection with that company was? A. Stevenson, Rye & Company?

Q. Yes. A. He was an officer there. I think he was president, perhaps treasurer, too.

10 Q. To refresh your recollection about it I will show you a note of Stevenson, Rye & Company and ask you if that is the note that the institution held when it closed? A. Yes, sir; that is the note that the Roseville Trust Company held, I believe.

Q. Drawn by whom? A. Drawn by Stevenson, Rye & Company, John B. Scarlett, treasurer.

Q. To whose order? A. Drawn to the order of John B. Scarlett and endorsed so.

Q. Is there any other endorser on it? A. No, 20 sir.

Q. Was the note paid at maturity? A. No, sir; it was protested.

Q. In whose handwriting is the body of the note? A. In Mr. Scarlett's?

Mr. Guild: I offer the note in evidence.
Marked Exhibit S-65.

Q. You say that this note is the note that the bank held at the time it closed? A. Yes, sir.

Q. Was it renewed after the financial statement 30 came in? A. Yes, sir; it was.

JOHN LONG, re-called in behalf of State:

Direct-examination by Mr. Mott:

Q. You have already been sworn in this case before? A. Yes, sir.

40 Q. I show you Exhibit 53, being a check to your

John Long—Direct

order for \$2475, and ask you who signed the name "John H. Long" on the back of that note? A. I did.

Q. After you signed your name to that check do you recall when you signed this (indicating)?

A. In Mr. Scarlett's office, in the rear office.

Mr. Schotland: I object. The witness
has testified to that transaction. 10

Q. After you signed this check did you go anywhere at Mr. Scarlett's request? A. I went to the Roseville Trust Company.

Q. What did you take with you, if anything? A. I had a letter, a sealed letter.

Q. When you got to the Roseville Trust Company what did you do with that letter? A. I gave it to Mr. Smith.

Q. Then what did Mr. Smith do so far as you saw? A. He put some money in an official envelope and gave it to me. 20

Q. Did you observe anything about the kind of money he was putting in the envelope? A. Large denomination.

Mr. Schotland: I respectfully object. I do not think it is fair to have the witness testify to to a particular transaction, of everything he did, and then come back two or three days later and be called upon to testify over again to the same transaction except that he lets in some little detail, or little addition, or something that has been omitted before. I think that that rule which applies when there is an interruption and a consultation between counsel, and then the witness called upon to testify again upon the same subject-matter, ought to 30 40

John Long—Direct

hold, when he is recalled several days later and then asked to testify to something he has omitted to speak about.

The Court: An examination of my notes does not disclose that this witness was examined on this matter.

10

Mr. Mott: Not at all, your Honor.

The Court: The witness did not testify that he went up to the Roseville Trust Company and got this money when he was on the stand before.

Q. Then what did Mr. Smith do with the envelope after putting the money in? A. Gave it to me.

Q. What did you do with the envelope? A. Took it down and gave it to Mr. Scarlett.

20

Q. At his office? A. At his office.

Q. What did Mr. Scarlett do, that you saw, after you gave the envelope to Mr. Scarlett? A. He opened it and counted the money.

Q. What did Mr. Scarlett do then? A. I think he said, "There is \$100 short," and he called up on the telephone, Mr. Smith. Judging from what I heard on the telephone it was all right.

Q. What did you hear Mr. Scarlett say? A. He said there was a shortage there.

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Q. He said there was a shortage. Did he tell Mr. Smith there was a shortage? A. Yes, sir; on the 'phone.

Cross-examination waived.

State rests.

Argument

Mr. Schotland: Now, if the Court please, I move that the check book be stricken out as an exhibit, on the ground that it has not been connected up with this indictment in any way. The conspiracy that they say it was connected with has not been proven.

Mr. Mott: This check book was put in this case. The stubs of many of the checks which are in evidence are in the book, and the testimony has been given from it, and it is the defendant's book, kept either by himself or his bookkeeper, and represents the state of his account with the Roseville Trust Company.

The Court: That is what you say.

Mr. Mott: That is what the evidence shows.

The Court: There is no evidence to show that that is the state of his account. All the evidence shows that there is a check book which he used, which he says was the only check book which he used in connection with the Roseville Trust Company. I cannot see how that is connected with the facts of the conspiracy in such a way as to make it evidential. From the evidence it would appear that he had a legitimate account with the company and had legitimate transactions with the company which may be in that book; which, if it is the only book he had, I assume are in that book, but which may, without any further explanation, well tend to confuse the jury rather than help them, and which they might very erroneously attribute to other matters of which

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Argument

there is evidence. The motion to strike out is granted.

Mr. Mott: Then I offer so much of the book as contains the stubs of the checks which are in evidence.

10 Mr. Schotland: If the Court please, the State's case is closed.

The Court: Yes, and in any event, I don't think there has been any reference to the stubs which would serve to identify them with any particular checks. It is true that you might take these checks in evidence, and by fitting the perforations and torn parts, and comparing the numbers, reach the conclusion that that check applied to
20 any given stub; but there is no evidence. It would only be a conclusion of the jury and they might make a mistake. The motion of the prosecutor is denied.

Mr. Mott: That is the offer.

The Court: The offer is overruled. (Addressing the jury.) And now, while the matter is fresh in my mind I want to say at this time that the check book, which is marked S47, gentlemen—and I want to say
30 it now because I might overlook it at a later time—is excluded from the case, and any testimony regarding that check book is likewise excluded, on the motion of the defendant, and you will, therefore, not consider it in your deliberation, if this case reaches a point where you come to deliberations.

Mr. Schotland: Now, if the Court please, I move for the dismissal of the indictment.

40 The Court: Have you rested your case, Mr. Schotland?

Motion to Dismiss Indictment

Mr. Schotland: Am I not permitted to make my motion?

The Court: The practice in this Court is not to consider such a motion unless the defendant has rested his case and I think it is proper practice.

Mr. Schotland: Then, if that is your Honor's ruling I will rest. 10

Defendant rests.

The Court: Then you may make your motion.

Mr. Schotland: I move to dismiss the indictment on the ground that there has been no legal evidence to sustain the acts charged in the indictment; and on the further ground that there has not been sufficient legal evidence of overt acts from which the conspiracy charged in the indictment might by inference be supported to satisfy the rules of the criminal law that a charge made in an indictment must be established by the State, not only by the weight of evidence, but beyond a reasonable doubt. These are the points. I don't know that there is any reason to amplify them by way of argument. 20

The Court: I do not want to dictate to counsel how far he shall go. I think the question of whether the evidence is convincing beyond a reasonable doubt is a question for the jury, if there is an evidence here which would justify the jury in considering the matter at all. Of course, I would deny your motion. Assuming that the jury found it to be beyond a reasonable doubt that it indicated the guilt of the defendant, I would have to send the 30 40

Opening by Prosecutor

case to the jury so that they might consider that question.

Mr. Schotland: If there was any. I submit that there is not any on which any such finding could be based.

10 The Court: I will deny your motion.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE.

(Seal)

Judge.

Mr. Schotland: I ask for an opening by the prosecutor.

Mr. Mott opens to the jury.

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At this point the Court takes a recess from one to two, p. m.

After recess.

Mr. Schotland sums up for defendant.

(During the summing up a check for \$4,200 was offered in evidence by consent of counsel on both sides and marked Exhibit S-66.)

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Adjourned to Tuesday, April 13, 1915, at ten o'clock, a. m.

Charge

FIFTH DAY.

Essex County Oyer and Terminer,
Tuesday, April 13, 1915.

STATE,

vs.

JOHN B. SCARLETT.

10

Met pursuant to adjournment.

Present, counsel as before stated.
Mr. Mott sums up for the State.

The Court charges the jury as follows:

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Charge

OSBORNE, J.

Gentlemen of the Jury. One of the greatest Chief Justices New Jersey ever had said that "there is, perhaps, no crime, an exact definition of which is more difficult to give than the offense of conspiracy. That a combination of persons to effect an end, itself of an indictable nature, will constitute this crime, is clear; nor is there any more doubt that, though the purpose the confederacy is designed to accomplish be not criminal, yet if the means adopted be of an indictable character, this offense is likewise committed. It may be safely said that a combination will be an indictable conspiracy, whenever the end proposed, or the means to be employed are of a criminal

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Charge

character; where deceit is to be used, the object in view being unlawful; or where the confederacy, having no lawful aim, tends simply to be the oppression of individuals." In short, "a conspiracy is a confederation to effect an unlawful object by
 10 lawful means, or by unlawful means a lawful object."

So much of our statute as is applicable to this case provides that any two or more persons who shall combine, unite, confederate, conspire or bind themselves by oath, covenant, agreement, or other alliance to commit any crime, or to cheat and defraud any person of any property by any means which are in themselves criminal, or to cheat and defraud any person of any property by any means
 20 which, if executed, would amount to a cheat, or to obtain money by false pretenses, shall, on conviction, be deemed guilty of a conspiracy but no agreement to commit any crime (except certain crimes enumerated in the statute) shall be deemed a conspiracy unless some act in execution of such agreement be done to effect the object thereof by one or more of the parties to such agreement.

This, then, is the charge upon which the defendant at the bar is being tried, conspiracy, in
 30 that he, together with Raymond E. Smith, Augustus R. Jennings and William J. Thompson, did, in the language of the indictment, "amongst themselves conspire, combine and confederate and agree together fraudulently and falsely to cheat and defraud" the Roseville Trust Company.

As to Jennings and Thompson, the indictment has been dismissed; as to Smith, it appears that he has pleaded *non vult* to this charge, so that you
 40 have for your consideration only the guilt or innocence of the defendant at the bar.

Charge

The defendant is presumed to be innocent until proven guilty, and is entitled to the benefit of any reasonable doubt arising upon the evidence. The burden of proof is upon the State, and if, upon such proof there be a reasonable doubt with regard either to the guilt of the accused or of the degree of criminality, but in this case there is no question of degree; he is entitled to the benefit of that doubt. 10

Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The evidence must establish the truth of the facts to a moral certainty. That is, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. But if, after considering carefully the evidence and giving the accused the benefit of a reasonable doubt you are led to the conclusion that he is guilty you should so declare by your verdict. 20 30

It appears that the Roseville Trust Company, a banking institution of this city, was closed by the State Banking Department on the 14th day of August, 1913. The defendant, John B. Scarlett, was a director of the trust company, Raymond E. Smith was treasurer and Jennings and Thompson were tellers at the time it closed its doors. An 40

Charge

examination of the affairs of the bank by the examiners disclosed numerous alleged irregularities in its accounts and this indictment is the result of this situation. The irregular transactions complained of began, according to the testimony of Smith, some time in 1910, by what is known as "kiting checks," a term of such familiar and well known meaning that it would seem to be unnecessary for me to attempt to define it; that these irregularities continued, changing in character and increasing in number until just before the bank closed. The statute requires proof before there can be a conviction in this case, of some act done, in execution of the unlawful agreement, to affect the object thereof, and the State offers proof of some nineteen checks which, it is claimed, were cashed or certified pursuant to the alleged conspiracy, any one of which transactions therefore, the State claims, constitutes the overt act required to be proved by the statute; and the State further offers in addition to the checks, other facts and circumstances proven in the case, such as conversations between Smith and Scarlett, the overdrawing of his account by Scarlett; the cashing and certifying of checks referred to and the purchasing of the notes by Smith for Scarlett, as proof of the conspiracy alleged in the indictment. Smith says he remembers several different conversations regarding these checks between Scarlett and himself in one of which he told Scarlett he was trying his best to protect him by paying his checks, doing all kinds of things to pay them, charging the amounts to different accounts and taking out the cash.

Charge

In reference to most of the checks in the series numbered as Exhibits from 1 to 19, Smith says they were paid or certified by Scarlett's request and that he, Scarlett, knew his account was not good for them.

The checks Exhibits S-9, 11 and 14 were accompanied by letters from Scarlett in which he promised to "liquidate all these items," and asked to be "assisted by certifying them" and stating that he found it "impossible to get by without additional help." 10

Smith says he took Scarlett's notes without inquiry or knowledge as to the financial responsibility of maker or endorser, and that the notes were made by third persons as Scarlett could get no further credit at the bank. 20

I have not attempted to enumerate all of the evidence upon which the State relies for a verdict of guilty in this case. You will remember it in detail. Smith says that his purpose in acting as he did was because of his desire to help Mr. Scarlett; that he knew he was in need of funds; that he, Smith, never suspected the trust company would be cheated, and had no intention of cheating it; that he considered it good judgment to help Scarlett for the benefit of the bank. Now, intent is the purpose to use a particular means to effect a certain result. It is quite apparent, if you believe the evidence, that the intention of the defendant was to secure the money of the trust company and the intention of Smith was to help him, and that the money of the trust company was paid to the defendant on these checks and notes. It is also apparent, if you believe the evidence, that this money was gotten through an understanding between 30 40

Charge

Smith and Scarlett. I say it is apparent, that is, if you believe the testimony before you. Motive is the reason which leads the mind to desire a definite result. It is that which incites or stimulates a person to do an act, but a good motive does not prevent an act from being a crime and one
10 who conspires to commit an unlawful act is criminally liable for all the consequences which naturally flow from it, for the law presumes that a person intends the natural and probable consequence of his voluntary acts.

Smith's denial of an improper motive is not to govern your deliberations. It is the function of the jury to determine what the parties intended, what their motives were, from what they did and said
20 in furtherance of the alleged conspiracy, as disclosed by the evidence before you. In other words, you must say, after carefully considering and weighing all of the evidence before you, whether you are satisfied beyond a reasonable doubt that there was an unlawful conspiracy between Smith and Scarlett.

In considering this testimony I direct your attention to the fact that the State has called as its principal witness one of the alleged conspirators,
30 Smith, who is not entitled to full faith and credit because of the fact that he is a self-confessed criminal and whose testimony therefore should be satisfactorily corroborated. Our statute provides, however, that no person convicted of a crime shall be excluded as a witness, but such conviction may be shown for the purpose of affecting his credit. The conviction is a fact for your consideration in determining the weight that you will attach to his evidence and the extent to which it
40 affects his credibility.

Charge

The defendant has not taken the witness-stand. He cannot be compelled to do so. Our Supreme Court has said "when the accused is upon trial and the evidence tends to establish facts, which, if true, would be conclusive of his guilt of the charge against him, and he can disprove them by his own oath as a witness, if the fact be not true; then his silence would justify a strong inference that he could not deny the charge." 10

You should not, however, permit the previous conviction of the defendant to influence you in deciding this case. You should confine your consideration to the testimony before you.

Some of the evidence before you is direct and some of it circumstantial, it is well settled that a conspiracy may be inferred from circumstances as well as proven by direct evidence, in fact the evidence in proof of a conspiracy will generally, from the nature of the case, be circumstantial. Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms to have that design. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another part of the same so as to complete it, with a view to the attainment of that same object, the jury will be justified in the conclusion, that they were engaged in a conspiracy to effect that object "and all who, with knowledge of the facts, concur in the facts originally formed and aid in executing them, are fellow conspirators." It is seldom that any one act, taken by itself, can be seen as tending to prove a conspiracy, but when taken in connection with other acts, its tendency 40

Charge

to prove the fact may be more clearly discerned. We may be satisfied from the circumstances attending a series of criminal acts, that they result from concerted and associated action, although if each circumstance was considered separately, it
10 might not show confederation; but where linked together, circumstances that in themselves are inconclusive, yet taken as a whole, may show that apparently isolated acts spring from a common object and have in view the promotion of a common purpose.

Gentlemen, you are to take all of the evidence, relying upon your own recollection of what the witnesses have said rather than upon the recollection of the Court or counsel, consider it care-
20 fully and if you are satisfied beyond a reasonable doubt of this defendant's guilt you should so declare; if you are not so satisfied you should find him not guilty.

(The jury retires.)

Mr. Schotland: I pray a general exception to your Honor's charge.

Defendant counsel prays a general exception to the charge of the Court, and the same is allowed,
30 and signed and sealed accordingly.

(Seal)

H. V. OSBORNE,
Judge.

Exhibits S. 1 to 19 Inclusive

Nineteen checks signed by John B. Scarlett drawn on the Roseville Trust Co.

Exhibits S. 20 to 28 Inclusive

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Nine checks signed by John B. Scarlett and drawn on various outside banks.

Exhibit S-29

Individual ledger of John B. Scarlett in the 20 Roseville Trust Co.

Exhibits S. 30 to 33 Inclusive

Four return item books.

Exhibit S-33

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Continuation book of return item books.

Exhibits S. 35 to 36

Receiving teller's proof books.

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Exhibit S-37

Oath of John B. Scarlett as director, dated February 3, 1913.

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Exhibit S-38

Letter dated February 3, 1913, accompanying oath Exhibit S-37.

Exhibits S. 39 and 40

Return item books used in proof of daily ex-
20 changes.

Exhibit S-41

No such exhibit is mentioned in the record.

Exhibit S-42

30 Letter of John B. Scarlett to Raymond E. Smith dated February 19, 1913. This letter accompanied check of same date for \$400 (Exhibit S-9).

Exhibit S-43

Letter of same to same, dated March 4th, 1914.
This letter accompanied check of same date for
40 \$500.

Exhibit S-44

Letter of same to same, dated March 17, 1913.
This letter accompanied check of same date for
\$350 (Exhibit S-14).

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Exhibit S-45

Letter of John B. Scarlett, dated March 15,
1913, headed "Statement of John B. Scarlett."

Exhibit S-46

No such exhibit is found in the record.

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Exhibit S-47

Check book of John B. Scarlett on Roseville
Trust Co.

Exhibit S-48

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No such exhibit is found in the record.

Exhibit S-49

Note of Rev. James Zucarelli, dated February
13, 1913, for \$750, to the order of Nicholas R. Sica. 40

Exhibit S-50

Note of same to same for same amount, dated May 13th, 1913.

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Exhibit S-51

Note of same to same for \$500, dated February 13th, 1913.

Exhibit S-52

20 Note for \$2,500 signed by Nicholas R. Sica to John H. Long, for three months, dated February 20th, 1913.

Exhibit S-53

30 Treasurer's check for \$2,475 signed by R. E. Smith, treasurer, to John H. Long, dated July 22nd, 1912.

Exhibit S-54

Check of Middlesex Hat Co. to John B. Scarlett, dated August 15th, 1912, for \$350.

Exhibit S-55

Check of John B. Scarlett to his own order, dated March 21st, 1912, for \$150.

Exhibit S-56

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Check of Bras D'Or Land Co. to John B. Scarlett on the State Bank of Hartford, for \$50, dated September 19, 1911.

Exhibit S-57

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Check of Bras D'Or Land Co. to Roseville Trust Co., drawn on the State Bank of Hartford, for \$150, dated September 19, 1911, and protest attached thereto.

Exhibit S-58

Check of John B. Scarlett to his order, drawn on B. M. C. Durfee Safe Deposit & Trust Co., for \$650. 30

Exhibit S-59

Check of John B. Scarlett to his own order on Brooks National Bank at Torrington, Conn., dated October 23rd, 1911, for \$650. 40

Exhibit S-60

Check of John B. Scarlett on Roseville Trust Co. to the order of cash, for \$500, dated December 20th, 1912. The same as Exhibit S-22.

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Exhibit S-61

Check stub #62 in check book of John B. Scarlett (Exhibit 47).

Exhibit S-62

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Treasurer's check of the Roseville Trust Co., dated August 13th, 1912, for \$1,227.50, to the order of Nicholas R. Sica.

Exhibit S-63

30 Declaration of trust signed by N. R. Sica, John B. Scarlett and Raymond E. Smith; the same as Exhibit D-1 for identification.

Exhibit S-64

40 Certified copy of deed from John B. Scarlett to Nicholas R. Sica, dated October 4th, 1912.

Order of Substitution of Attorneys

(Filed May 13, 1915)

ESSEX COURT OF OYER AND TERMINER

THE STATE, v. JOHN B. SCARLETT.	}	On Indictment for Conspiracy	10
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Upon the consent of Eugene Dotto, Esq., and Philip J. Schotland, Esq., hereto annexed;

IT IS ORDERED that Messrs. McCarter & English be and they are substituted as attorneys of record of the defendant John B. Scarlett in the place and stead of said Eugene Dotto, Esq., and Philip J. Schotland, Esq. 20

H. V. OSBORNE,
J.

Substitution of Attorney

ESSEX OYER AND TERMINER COURT

OF TERM OF APRIL, 1915

THE STATE, v. JOHN B. SCARLETT, Defendant.	}	Indictment and Conviction for Conspiracy.	30
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We, the undersigned, substitute in our place and stead, on the record of the above stated case, Messrs. McCarter & English.

Dated, May 13, 1915.

EUGENE DOTTO,
 PHILIP J. SCHOTLAND,
 Attorneys for Defendant. 40

Assignments of Error

(Filed Dec. 4, 1915)

NEW JERSEY SUPREME COURT

10	THE STATE OF NEW JERSEY, Defendant in Error, v. JOHN B. SCARLETT, Plaintiff in Error.	} On Indictment for Conspiracy. } On Error to Essex Oyer & Terminer.
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Afterwards, in the New Jersey Supreme Court, comes the said John B. Scarlett, by McCarter & English, his attorneys, and says that in the record of the Essex Oyer & Terminer, and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit:

1. Because the Trial Judge denied the motion of the defendant's attorney to dismiss the indictment and direct a verdict for the defendant.
2. Because the Trial Judge refused the motion of the defendant's attorney to strike out the testimony of the witness Mindnich.
3. Because the Trial Judge refused to permit the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Did you enter into any conspiracy with Mr. Scarlett or any one else to defraud the bank?"
4. Because the Trial Judge refused to permit

Assignments of Error

the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Mr. Thompson did you make any arrangement with Mr. Scarlett alone, or with others in connection with Mr. Scarlett, to honor checks drawn by him on the bank, whether or not he had funds there?" 10

5. Because the Trial Judge refused to permit the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Did you ever talk to Scarlett of the fact that you did that?"

6. Because the Trial Judge refused to permit the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Did you ever talk to Mr. Scarlett at all about his account or any of the checks that were drawn against his account?" 20

7. Because the Trial Judge admitted in evidence, over the defendant's objection, Exhibit S-37.

8. Because the Trial Judge permitted the State to ask the witness, over the objection of the defendant's attorney, as to why he certified the check for Three Hundred and Fifty Dollars, Exhibit S-14. 30

9. Because the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "Did he know his account was not good for it?"

10. Because the Trial Judge permitted the State to ask the witness Smith, over the objection 40

Assignments of Error

of the defendant's attorney, the following question: "Why did you certify it?"

11. Because the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question:
10 "Endorsed by him?"

12. Because the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "In that conversation in February do you recall saying anything to Mr. Scarlett about the position you were being placed in?"

13. Because the Trial Judge denied the motion of the defendant's attorney to strike out the answer of the witness Smith to the following question: "In that conversation in February, do you recall saying anything to Mr. Scarlett about the position that you were being placed in?"
20

14. Because the Trial Judge admitted in evidence, over the defendant's objection, a letter dated March 15th, 1913, headed "Statement of John B. Scarlett."

15. Because the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "Did you hear him say anything when shown that book, as to whether or not it was his check book that he used in connection with his account with the Roseville Trust Company?"
30

16. Because the Trial Judge admitted in evidence, over the defendant's objection, Exhibit
40 S-47.

Assignments of Error

17. Because the Trial Judge refused to permit the defendant's attorney to withdraw the question to the witness Smith, on cross-examination, "What items?"
18. Because the Trial Judge Refused to permit the defendant's attorney, on cross-examination, to ask the witness Smith: "Mortgaged by a first mortgage of \$12,000 and a second mortgage of \$4,000." 10
19. Because the Trial Judge refused to permit the defendant's attorney, on cross-examination, to ask the witness Smith: "Then you do not mean to say to the Court and jury that you admit the charge made against you in this indictment that you conspired with Scarlett to cheat the Roseville Trust Company?" 20
20. Because the Trial Judge refused to permit the defendant's attorney, on cross-examination, to ask the witness Smith: "If you and Mr. Scarlett had entered into an agreement to cheat the bank out of these moneys, would you have preserved those checks?"
21. Because the Trial Judge refused to permit the defendant's attorney, on cross-examination of the witness Jennings, to ask the following question: "Did you ever go in there and substitute checks?" 30
22. Because the Trial Judge permitted the witness Ferguson to testify to the contents of the defendant's check book.
23. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-49. 40

Assignments of Error

24. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-51.

10 25. Because the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "Who was the maker of the original note?"

26. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-52.

27. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-53.

20 28. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, a check dated August 15th, 1912, for \$350.00 bearing the name of Middlesex Hat Co.

29. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-56.

30 30. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, a protested check, the offer of which was pending at recess.

31. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-56.

32. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-57.

40 33. Because the Trial Judge admitted in evi-

Assignments of Error

dence, over the objection of the defendant's attorney, Exhibit S-58.

34. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-59.

35. Because the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S-61. 10

36. Because the Trial Judge denied the motion of the defendant's attorney to strike out the evidence of the witness Smith regarding the cashing of checks.

37. Because the Court permitted the State to ask the witness Ressler to answer the following question: "Tell me whether or not Mr. Scarlett at the former trial testified as follows:" 20

38. Because the Court permitted the State to ask the witness Ressler to answer the following question: "Referring to your notes taken at the former trial, I ask you whether or not at that trial Mr. Scarlett testified as follows:"

39. Because the Court denied the motion of the defendant's attorney to strike out the testimony of the witness Ressler. 30

40. Because the Court admitted in evidence Exhibit S-64.

41. Because the Court permitted the State to ask the witness Smith the following question: "Mr. Smith did you inform the Executive Committee that you knew Scarlett had conveyed the Johnson Avenue property to Sica or any one else when you presented the final statement to them?" 40

Assignments of Error

42. Because the Trial Judge erred in his charge to the jury.

43. Because the Trial Judge charged the jury as follows: "The defendant is presumed to be innocent until proven guilty, and is entitled to the
10 benefit of any reasonable doubt arising upon the evidence. The burden of proof is upon the State, and if, upon such proof there be a reasonable doubt with regard either to the guilt of the accused or of the degree of criminality (but in this case there is no question of degree); he is entitled to the benefit of that doubt."

44. Because the Trial Judge charged the jury as follows: "But if, after considering carefully the
20 evidence and giving the accused the benefit of a reasonable doubt you are led to the conclusion that he is guilty you should so declare by your verdict."

45. Because the Trial Judge charged the jury as follows: "It is quite apparent, if you believe the evidence, that the intention of the defendant was to secure the money of the trust company and the intention of Smith was to help him, and that the money of the trust company was paid to the defendant on these checks and notes. It is also ap-
30 parent, if you believe the evidence, that this money was gotten through an understanding between Smith and Scarlett. I say it is apparent, that is, if you believe the testimony before you. Motive is the reason which leads the mind to desire a definite result. It is that which incites or stimulates a person to do an act, but a good motive does not prevent an act from being a crime and
40 one who conspires to commit an unlawful act is

Certificate

criminally liable for all the consequences which naturally flow from it, for the law presumes that a person intends the natural and probable consequence of his voluntary acts.

Smith's denial of an improper motive is not to govern your deliberations." 10

McCARTER & ENGLISH,
Attorneys and of counsel
with Defendant in Error.

Certificate

ESSEX COUNTY OYER AND TERMINER 20

THE STATE,

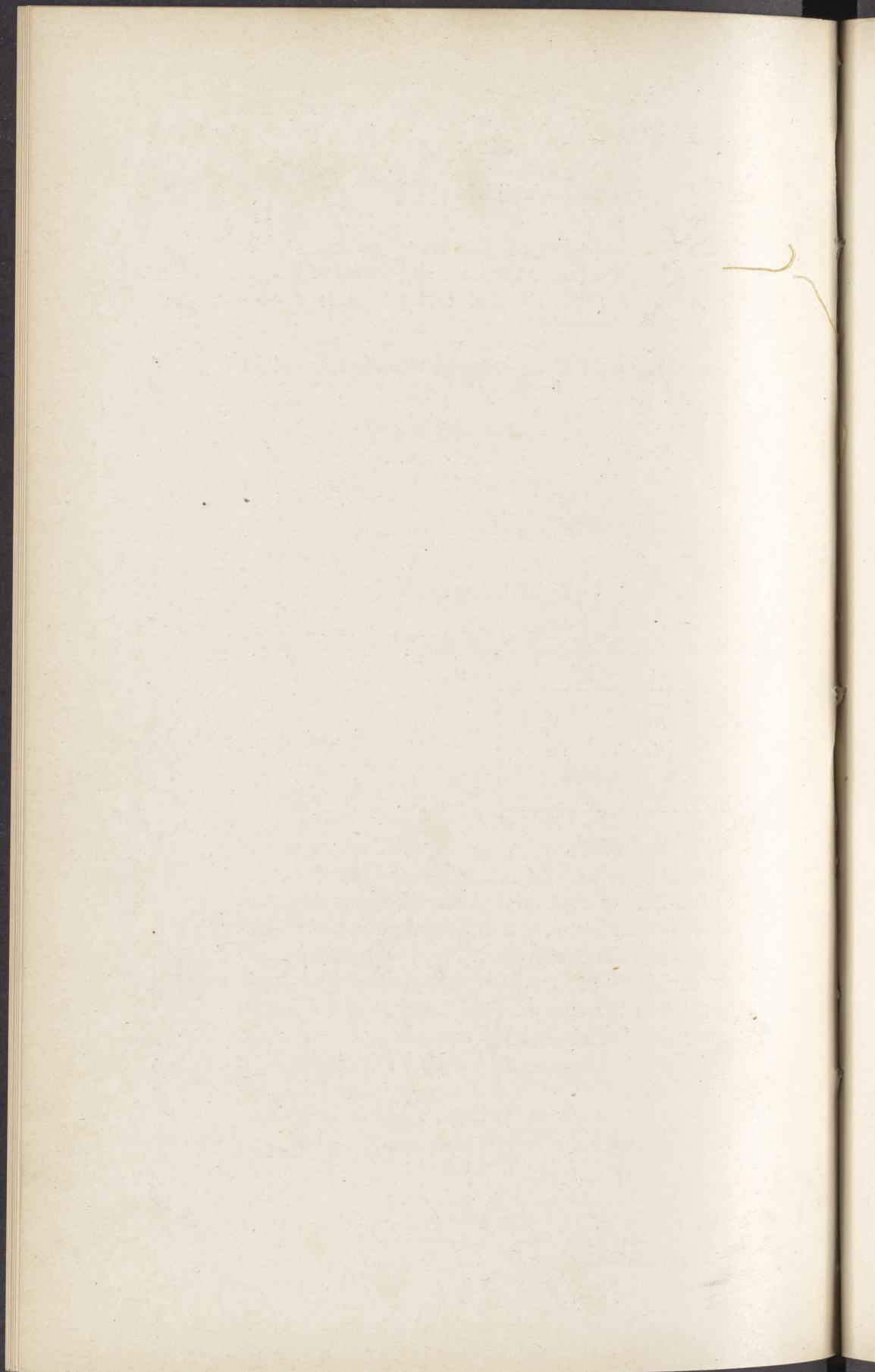
v.

JOHN B. SCARLETT.

} On Indictment
for Conspiracy.

I, Harry V. Osborne, one of the Judges of the Court of Oyer and Terminer of the County of Essex, do hereby certify that the above record and proceedings hereby transmitted by me to the Supreme Court of the State of New Jersey, comprise the entire record of the proceedings had upon the trial in the case of the State against John B. Scarlet, on indictment for conspiracy. 30

H. V. OSBORNE,
J.



New Jersey Supreme Court.

THE STATE,	}	<i>On Indictment</i>	
<i>Defendant in Error,</i>		<i>for</i>	
		<i>Conspiracy.</i>	10
<i>vs.</i>		<i>In Error</i>	
		<i>to Essex</i>	
JOHN B. SCARLETT,	}	<i>Oyer and</i>	
<i>Plaintiff in Error.</i>		<i>Terminer.</i>	
		<i>Causes for</i>	
		<i>Reversal.</i>	

The said plaintiff in error specifies the following causes in the record relied upon for relief of reversal in addition to the bill of exceptions pursuant to the statute in such case made and provided: 20

1. The trial court should have directed a verdict for the defendant, Scarlett, at the conclusion of the State's case.

2. The trial court should have directed a verdict for the defendant, Scarlett, at the conclusion of the entire case.

3. Because the plaintiff in error suffered manifest wrong and injury in the charge of the court and in particular as follows: 30

"Smith says that his purpose in acting as he did was because of his desire to help Mr. Scarlett; that he knew he was in need of funds; that he, Smith, never suspected the trust company would be cheated, and had no intention of cheating it; that he considered it good judgment to help Scarlett for the benefit of the bank. Now, intent is the purpose to use a particular means to effect a certain result. It is 40

Causes for Reversal.

quite apparent, if you believe the evidence, that the intention of the defendant was to secure the money of the trust company and the intention of Smith was to help him, and that the money of the trust company was paid to the defendant on these checks and notes. It is also apparent, if you believe the evidence, that this money was gotten through an understanding between Smith and Scarlett."

10

4. Because the trial judge improperly overruled the following questions on cross-examination of the witness Thompson:

A. "Q. Did you enter into any conspiracy with Mr. Scarlett, or anyone else, to defraud the bank?"

20

B. "Q. Did you make any arrangements with Mr. Scarlett, or with anybody else in connection with Mr. Scarlett, to defraud the Roseville Trust Company of any of its funds?"

C. "Q. Mr. Thompson, did you make any arrangement with Mr. Scarlett alone, or with others in connection with Mr. Scarlett to honor checks drawn by him on the bank, whether or not he had the funds there?"

30

5. Because the trial judge improperly admitted in evidence the State's Exhibits, S. 56, S. 57, S. 58 and S. 59.

McCARTER & ENGLISH,
Attorneys of Plaintiff in Error.

40

Exhibit S. 37.

EXHIBIT S. 37.

(Copy)

Oath of Director.

(Required by Sec. 12 of Chap. 174, Laws of 1889,
as amended by Chap. 191, Laws of 1906.)

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss. 10

I, the undersigned, Director of the Roseville Trust Company of Newark, in the County of Essex, in the State of New Jersey, being a resident of the City of Newark in the County of Essex in the State of New Jersey, do solemnly swear, that I will, so far as the duty devolves on me, diligently and honestly administer the affairs of said corporation; that I will not knowingly violate or knowingly permit to be violated any of the provisions of the act of the Legislature of said State, entitled, "An act concerning trust companies (Revision of 1899)," approved March 24, 1899, and that I am the owner in good faith, and in my own right, of the number of shares of stock of said corporation required by Section 12 of said act, subscribed by me or standing in my name on the books of the said corporation, and that the same is not hypothecated, or in any way pledged as security for any loan or debt. 20

JOHN B. SCARLETT. 30

Subscribed and sworn to this 3d day of February
A. D. 1913, before me at Newark, N. J.

HANNAH KNOWLES,
Commissioner of Deeds of N. J.

(Official title)

Exhibit S. 42.

The Director, when elected, should immediately take the above oath, before an officer authorized by the laws of New Jersey to administer oaths, and transmit the same to the Commissioner of Banking and Insurance, Trenton, N. J.

(Filed Feb. 5, 1913.)

10

GEORGE M. LAMONTE,
Commissioner of Banking and Insurance.

EXHIBIT S. 42.

Office of
JOHN B. SCARLETT,
Civil Engineer,
20 Real Estate,
764 Broad Street.

Newark, N. J., February 12th, 1913.

Dear Mr. Smith:—

I am enc Zucarelli note \$750, also S. R. & Co. note 1100—

I will send up J. H. Long note tomorrow with my statement.

30 I also enclose check \$400, which please be good enough to certify.

I will start in shortly after March 1st to liquidate all these Itims independent of the building loans.

If it were not absolutely *necessary* I would not ask you to help me further. Best wishes.

Very truly,

JOHN B. SCARLETT

Exhibits S. 43 and S. 44.

EXHIBIT S. 43.

Office of
JOHN B. SCARLETT,
Civil Engineer,
Real Estate,
No.... Broad St.

10

Newark, N. J., Mch 4, 1913.

Dear Mr. Smith:—

I am sorry to have to bother you again but see no help for it.

That N. Y. matter is not through yet and there is quite a serious matter needing immediate attention.

I hope you will be good enough to assist me once more by certifying the enclosed.

I can scarcely hope to repay your repeated courtesies. 20

Yours very truly,
JOHN B. SCARLETT

EXHIBIT S. 44.

Office of
JOHN B. SCARLETT,
Civil Engineer,
Real Estate,
No.... Broad St.
.....Floor

30

Newark, N. J., Mch 17, 1913.

Dear Mr. Smith:—

I find it impossible to get by without a little additional help as I spoke to you about last week.

Will you kindly certify the enclosed?

Will send statement up this P. M.

Yours very truly,
JOHN B. SCARLETT

40

Exhibit S. 56.

EXHIBIT S. 56.

000

Protested non-payment,
 Sept. 22, 1911, by
 Arthur C. Mason.
 10 Fees \$2.60. Notary Public
 No. 1941. Hartford, Conn, Sept. 19, 1911.
 STATE BANK OF HARTFORD.
 Pay to the order of John B. Scarlett,
 Five hundred 00/100.....Dollars
 \$500.00. Bras D'or Land Company.
 John B. Scarlett,
 Treas.

ENDORSEMENTS.

20 Pay to the order of
 Any Bank, Banker or Trust Co.,
 Sep. 19, 1911.
 Restrictive Endorsements Guaranteed
 Roseville Trust Co., Newark, N. J.
 Raymond E. Smith, Treas.
 Pay any Bank, Banker or Trust Co.
 or order
 Nat'l Bank of Commerce
 of Boston, Mass.
 30 W. R. Whittemore, Cashier.
 Prior Endorsements Guaranteed.
 Pay any Bank or Trust Company
 or order
 Sep. 20, 1911,
 With full recourse to
 Union National Bank, Newark, N. J.
 A. W. Conklin, Cashier.
 Union National Bank,
 40 5
 Sep. 25,
 Newark, N. J.

Exhibit S. 57.

EXHIBIT S. 57.

055

Protested non-payment
 Sept. 22, 1911, by
 Arthur C. Mason.
 Fees 2.33. Notary Public 10
 No. 1940. Hartford, Conn., Sept. 19, 1911.
 STATE BANK OF HARTFORD.
 Pay to the order of Roseville Trust Co.
 One hundred and fifty 00/100.....Dollars
 \$150.00 Bras D'or Land Company.
 John B. Scarlett,
 Treas.

Endorsements:

Pay to the order of
 Any Bank, Banker or Trust Co., 20
 Sep. 19, 1911.
 Restrictive Endorsements Guaranteed
 Roseville Trust Co., Newark, N. J.
 Raymond E. Smith, Treas.

Pay any Bank or Trust Company
 or order,
 Sep. 20, 1911,
 With full recourse to
 Union National Bank, Newark, N. J. 30
 A. W. Conklin, Cashier.

Union National
 Bank
 5
 Sep. 25.
 Newark, N. J.

Exhibit S. 58.

Pay any Bank, Banker or Trust Co.
 or order
 Nat'l Bank of Commerce
 of Boston, Mass.
 W. R. Whittemore, Cashier.
 Prior Endorsements Guaranteed.

10

EXHIBIT S. 58.

055

\$650.00. Fall River, Mass., Octo. 3rd, 1911.
 B. M. C. DURFEE SAFE DEPOSIT AND TRUST CO.
 Pay to John B. Scarlett or order
 Six hundred and fifty 00/100.....Dollars
 No. — P. N. P. John B. Scarlett.

20

Wm. C. Gray, N. P.
 10-13-11. Fee \$2.02.

Endorsed:
 Pay Roseville Trust Co.
 or order
 John B. Scarlett.

Cancelled
 Oct. 13, 1911.

30

Pay to the order of
 Any Bank, Banker
 or Trust Co.
 Prior Endorsements
 Guaranteed.
 National Shawmut Bank,
 5-20 Boston 5-20
 F. H. Barbour, Cashier.

40

Exhibit S. 59.

Pay to the order of
 Any Bank, Banker or Trust Co.
 Oct. 11, 1911.
 Restrictive Endorsements Guaranteed
 Roseville Trust Co., Newark, N. J.
 Raymond E. Smith, Treas.

Metacomet National Bank, 10
 Chas. B. Cook, Cashier.

EXHIBIT S. 59.

000

Connecticut

No. —
 Irvington, Conn., Octo. 23, 1911.
 BROOKS NATIONAL BANK. 20
 Pay to the order of John B. Scarlett (\$650.00)
 Six hundred and fifty dollars
 John B. Scarlett.

Protested for non-payment
 Oct. 26, 1911.
 William F. Peetz,
 Notary Public.

Endorsed:
 John B. Scarlett. 30

Pay to the order of the
 Boston Clearing House Association
 Prior Endorsements Guaranteed
 National Bank of Commerce of Boston
 By W. R. Whittemore, Cashier

Pay to the order of the
 Any Bank or Trust Company
 Prior Endorsements Guaranteed
 Boston Clearing House Association
 By Charles A. Ruggles, Manager. 40

Exhibit S. 59.

Pay to the order of
 And Bank, Banker or Trust Co.
 Oct. 23, 1911.

Restrictive Endorsements Guaranteed
 Roseville Trust Co., Newark, N. J.
 Raymond E. Smith, Treas.

10

Pay any Bank or Trust Company
 on order
 Oct. 24, 1914

With full recourse to
 Union National Bank, Newark, N. J.
 A. W. Conklin, Cashier.

20

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Opinion of Supreme Court.

Opinion.

Filed November 10, 1916.

New Jersey Supreme Court

June Term, 1916.

10

THE STATE,

Defendant-in-Error,

vs.

JOHN B. SCARLETT,

Plaintiff-in-Error.

*On Error to
the Court of
Oyer and
Terminer of
Essex
County.*

Submitted June 6, 1916.

20

Decided November 8, 1916.

Before Gummere, Chief Justice, and Justices
Trenchard and Black.

Frederick F. Guild, Esq., for defendant-in-
error.

Messrs. McCarter & English, for plaintiff-in-
error.

Per curiam:

30

The defendant was indicted and convicted for conspiracy, fraudulently and falsely to cheat and defraud the Roseville Trust Company. Of the defendants named, the indictment as to two was dismissed and a third defendant pleaded non-vult. A general exception was taken to the judge's charge. Upon this exception error has been assigned upon the following portion of the charge, viz.: "It is quite apparent, if you believe the evidence, that the intention of the de-

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Opinion of Supreme Court.

fendant was to secure the money of the trust
 company and the intention of Smith was to help
 him, and that the money of the trust company
 was paid to the defendant on these checks and
 notes. It is also apparent, if you believe the
 evidence, that this money was gotten through
 10 an understanding between Smith and Scarlett.
 I say it is apparent, that is, if you believe the
 testimony before you. Motive is the reason
 which leads the mind to desire a definite result.
 It is that which incites or stimulates a person
 to do an act, but a good motive does not pre-
 vent an act from being a crime and one who
 conspires to commit an unlawful act is crimi-
 nally liable for all the consequences which natu-
 rally flow from it, for the law presumes that a
 20 person intends the natural and probable conse-
 quence of his voluntary acts.

"Smith's denial of an improper motive is not
 to govern your deliberations." But this passage
 immediately follows, viz.: "It is the function
 of the jury to determine what the parties in-
 tended, what their motives were, from what they
 did and said in furtherance of the alleged con-
 spiracy, as disclosed by the evidence before you.
 In other words, you must say, after carefully
 30 considering and weighing all of the evidence be-
 fore you, whether you are satisfied beyond a rea-
 sonable doubt that there was an unlawful con-
 spiracy between Smith and Scarlett."

The criticism aimed at this portion of the
 charge is that it was error in reference to the
 question of motive and in the interpretation of
 the evidence relating to motive, that the judge's
 charge in this respect usurped the functions of
 the jury. We fail to perceive an error in the
 40 charge of the trial judge in this respect.

Opinion of Supreme Court.

The second point argued is, that the trial judge erred in refusing to direct a verdict of acquittal for the defendant, because the State failed to prove any corrupt motive on the part of the defendant, as one of the alleged conspirators. There is no legal merit in this point, and it needs no discussion. 10

Thirdly, it is further urged that the judge was in error in overruling certain questions put to the State's witnesses, Thompson and Smith, by the defendant's counsel, upon cross examination, and also error in admitting in evidence four checks. These assignments of error are without merit.

The judgment of the Court of Oyer and Terminer of Essex County is hereby affirmed. 20

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Affirmance.

Affirmance.

Entered November 13, 1916.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> JOHN B. SCARLETT, <i>Plaintiff-in-Error.</i>	}	<i>On Indictment for Conspiracy.</i>
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The above stated cause having been duly argued at the June Term, Nineteen Hundred and Sixteen, in the New Jersey Supreme Court, by
 20 Wilbur A. Mott, attorney for the defendant in error, and McCarter & English, attorneys for John B. Scarlett, the plaintiff in error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex County Court of Oyer and Terminer;

It is thereupon ordered and adjudged that the judgment of the Essex County Court of Oyer and Terminer, removed by the writ of error in this cause, be affirmed in all things with costs;
 30 and that the record be remitted to the Essex County Court of Oyer and Terminer to be proceeded with according to law and the practice of said Court.

Entered November 13, 1916,

On motion of

JACOB L. NEWMAN,
Prosecutor of the Pleas.

40 A true copy.

WM. C. GEBHARDT,
Clerk.

*Assignments of Error.***Assignments of Error.**

Filed.

New Jersey Court of Errors and Appeals

THE STATE, <i>Defendant-in-Error,</i> vs. JOHN B. SCARLETT, <i>Plaintiff-in-Error.</i>	}	<i>On Error to the Supreme Court.</i>	10
		<i>On Indictment for Conspiracy.</i>	
		<i>Assignments of Error.</i>	

Afterwards, in the New Jersey Court of Errors and Appeals, comes the said John B. Scarlett, by McCarter & English, his attorneys, and says that in the record of the Supreme Court, and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions and in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit:

1. That the said Supreme Court affirmed the judgment of the Essex County Oyer and Terminer, whereas said Court should have reversed said judgment. 30

2. Because in the trial of said case the Trial Judge denied the motion of the defendant's attorney to dismiss the indictment and direct a verdict for the defendant.

3. Because in the trial of said case the Trial Judge refused the motion of the defendant's attorney to strike out the testimony of the witness Mindnich. 40

Assignments of Error.

4. Because in the trial of said case the Trial Judge refused to permit the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Did you enter into any conspiracy with Mr. Scarlett or any one else to defraud the bank?"

10 5. Because in the trial of said case the Trial Judge refused to permit the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Mr. Thompson, did you make any arrangement with Mr. Scarlett alone, or with others in connection with Mr. Scarlett, to honor checks drawn by him on the bank, whether or not he had funds there?"

20 6. Because in the trial of said case, the Trial Judge refused to permit the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Did you ever talk to Scarlett of the fact that you did that?"

30 7. Because in the trial of said case, the Trial Judge refused to permit the defendant's attorney to ask the witness Thompson, on cross-examination, the following question: "Did you ever talk to Mr. Scarlett at all about his account or any of the checks that were drawn against his account?"

8. Because in the trial of said case the Trial Judge admitted in evidence, over the defendant's objection, Exhibit S. 37.

9. Because in the trial of said case the Trial Judge permitted the State to ask the witness, over the objection of the defendant's attorney, as to why he certified the check for Three Hundred and Fifty Dollars, Exhibit S. 14.

Assignments of Error.

10. Because in the trial of said case the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "Did he know his account was not good for it?"

11. Because in the trial of said case the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "Why did you certify it?" 10

12. Because in the trial of said case the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "Endorsed by him?"

13. Because in the trial of said case the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "In that conversation in February do you recall saying anything to Mr. Scarlett about the position you were being placed in?" 20

14. Because in the trial of said case the Trial Judge denied the motion of the defendant's attorney to strike out the answer of the witness Smith to the following question: "In that conversation in February, do you recall saying anything to Mr. Scarlett about the position that you were being placed in?" 30

15. Because in the trial of said case the Trial Judge admitted in evidence, over the defendant's objection, a letter dated March 15th, 1913, headed "Statement of John B. Scarlett."

16. Because in the trial of said case the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's at- 40

Assignments of Error.

torney, the following question: "Did you hear him say anything when shown that book, as to whether or not it was his check book that he used in connection with his account with the Roseville Trust Company?"

10 17. Because in the trial of said case the Trial Judge admitted in evidence, over the defendant's objection, Exhibit S. 47.

18. Because in the trial of said case the Trial Judge refused to permit the defendant's attorney to withdraw the question to the witness Smith, on cross-examination, "What items?"

19. Because in the trial of said case the Trial Judge refused to permit the defendant's attorney, on cross-examination, to ask the witness Smith: "Mortgaged by a first mortgage of \$12,-
20 000 and a second mortgage of \$4,000."

20. Because in the trial of said case the Trial Judge refused to permit the defendant's attorney, on cross-examination, to ask the witness Smith: "Then you do not mean to say to the Court and jury that you admit the charge made against you in this indictment that you conspired with Scarlett to cheat the Roseville Trust Company?"

30 21. Because in the trial of said case the Trial Judge refused to permit the defendant's attorney, on cross-examination, to ask the witness Smith: "If you and Mr. Scarlett had entered into an agreement to cheat the bank out of these moneys, would you have preserved those checks?"

22. Because in the trial of said case the Trial Judge refused to permit the defendant's attorney, on cross-examination of the witness Jen-

Assignments of Error.

nings, to ask the following question: "Did Mr. Smith ever go in there and substitute checks?"

23. Because in the trial of said case the Trial Judge permitted the witness Ferguson to testify to the contents of the defendant's check book.

24. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 49. 10

25. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 51.

26. Because in the trial of said case the Trial Judge permitted the State to ask the witness Smith, over the objection of the defendant's attorney, the following question: "Who was the maker of the original note?" 20

27. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 52.

28. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 53.

29. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, a check dated August 15th, 1912, for \$350.00 bearing the name of Middlesex Hat Co. 30

30. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 56.

31. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, a protested check, the offer of which was pending at recess.

Assignments of Error.

32. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 56.

33. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 57.

10 34. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 58.

35. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 59.

36. Because in the trial of said case the Trial Judge admitted in evidence, over the objection of the defendant's attorney, Exhibit S. 61.

20 37. Because in the trial of said case the Trial Judge denied the motion of the defendant's attorney to strike out the evidence of the witness Smith regarding the cashing of checks.

38. Because in the trial of said case the Court permitted the State to ask the witness Ressler to answer the following question: "Tell me whether or not Mr. Scarlett at the former trial testified as follows:"

30 39. Because in the trial of said case the Court permitted the State to ask the witness Ressler to answer the following question: "Referring to your notes taken at the former trial, I ask you whether or not at that trial Mr. Scarlett testified as follows:"

40. Because in the trial of said case the Court denied the motion of the defendant's attorney to strike out the testimony of the witness Ressler.

40 41. Because in the trial of said case the Court admitted in evidence Exhibit S. 64.

Assignments of Error.

42. Because in the trial of said case the Court permitted the State to ask the witness Smith the following question: "Mr. Smith did you inform the Executive Committee that you knew Scarlett had conveyed the Johnson Avenue property to Sica or any one else when you presented the final statement to them?"

10

43. Because in the trial of said case the Trial Judge erred in his charge to the jury.

44. Because in the trial of said case the Trial Judge charged the jury as follows: "The defendant is presumed to be innocent until proven guilty, and is entitled to the benefit of any reasonable doubt arising upon the evidence. The burden of proof is upon the State, and if, upon such proof there be a reasonable doubt with regard either to the guilt of the accused or of the degree of criminality (but in this case there is no question of degree); he is entitled to the benefit of that doubt."

20

45. Because in the trial of said case, the Trial Judge charged the jury as follows: "But if, after considering carefully the evidence and giving the accused the benefit of a reasonable doubt you are led to the conclusion that he is guilty you should so declare by your verdict."

30

46. Because in the trial of said case the Trial Judge charged the jury as follows: "It is quite apparent, if you believe the evidence, that the intention of the defendant was to secure the money of the trust company and the intention of Smith was to help him, and that the money of the trust company was paid to the defendant on these checks and notes. It is also apparent, if you believe the evidence, that this money was gotten through an understanding between Smith

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Assignments of Error.

and Scarlett. I say it is apparent, that is, if you believe the testimony before you. Motive is the reason which leads the mind to desire a definite result. It is that which incites or stimulates a person to do an act, but a good motive does not prevent an act from being a crime and

10 one who conspires to commit an unlawful act is criminally liable for all the consequences which naturally flow from it, for the law presumes that a person intends the natural and probable consequence of his voluntary acts.

Smith's denial of an improper motive is not to govern your deliberations."

McCARTER & ENGLISH,
Attorneys and of Counsel
 with *Defendant-in-Error.*

20

30

40

Causes for Reversal.

Causes for Reversal.

Filed.

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p>THE STATE, <i>Defendant in Error,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>JOHN B. SCARLETT, <i>Plaintiff in Error.</i></p>	}	<p><i>On Error to the Supreme Court.</i></p> <p><i>On Indictment for Mis Conspiracy. demeanor.</i></p> <p><i>Causes for Reversal.</i></p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
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Plaintiff in error assigns the following reasons for reversal of the judgment of the Supreme Court, sustaining the verdict and judgment of conviction in the above stated cause upon the whole record.

1. The trial court should have directed a verdict for the defendant, Scarlett, at the conclusion of the State's case.
2. The trial court should have directed a verdict for the defendant, Scarlett, at the conclusion of the entire case.
3. Because the plaintiff in error suffered manifest wrong and injury in the charge of the court and in particular as follows:

"Smith says that his purpose in acting as he did was because of his desire to help Mr. Scarlett; that he knew he was in need of funds; that he, Smith, never suspected the trust company would be cheated, and had no intention of cheating it; that he considered it good judgment to help Scarlett for

Causes for Reversal.

10 the benefit of the bank. Now, intent is the purpose to use a particular means to effect a certain result. It is quite apparent, if you believe the evidence, that the intention of the defendant was to secure the money of the trust company and the intention of Smith was to help him, and that the money of the trust company was paid to the defendant on these checks and notes. It is also apparent, if you believe the evidence, that this money was gotten through an understanding between Smith and Scarlett."

4. Because the trial judge improperly over-ruled the following questions on cross examination of the witness Thompson:

20 A. "Q. Did you enter into any conspiracy with Mr. Scarlett, or anyone else, to defraud the bank?"

B. "Q. Did you make any arrangements with Mr. Scarlett, or with anybody else in connection with Mr. Scarlett, to defraud the Roseville Trust Company of any of its funds?"

30 C. "Q. Mr. Thompson, did you make any arrangement with Mr. Scarlett alone, or with others in connection with Mr. Scarlett to honor checks drawn by him on the bank, whether or not he had the funds there?"

5. Because the trial judge improperly admitted in evidence the State's Exhibits, S. 56, S. 57, S. 58 and S. 59.

McCARTER & ENGLISH,
Attorneys of Plaintiff in Error.

New Jersey Court of Errors and Appeals

THE STATE, <i>Defendant in Error,</i> vs. JOHN B. SCARLETT, <i>Plaintiff in Error.</i>	}	On Indictment for Conspiracy.
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Brief for Defendant in Error.

Raymond E. Smith, Augustus R. Jennings, William J. Thompson and John B. Scarlett were jointly indicted for conspiracy, fraudulently and falsely to cheat and defraud the Roseville Trust Company.

Smith pleaded *non vult* to the indictment, and a *nolle prosequere* was entered as to Jennings and Thompson. Scarlett was tried and convicted.

The indictment charges that the defendants above named conspired to cheat and defraud the Roseville Trust Company of a large sum of money, to wit, \$6,642.63 (page 16, line 20).

The indictment sets out the means by which the object of the conspiracy was to be effected, as follows:

The payment of certified checks drawn by Scarlett in overdraft of funds standing to his credit; fraudulent application by the treasurer, Smith, of moneys of the trust company for the use other than of the trust company, and wilfully and corruptly concealing said fraudulent application by falsely keeping the accounts of the trust company; the withdrawing of moneys by Scarlett as a depositor in excess of moneys to his credit, and the wilfully concealing of such withdrawing by falsely keeping the accounts of

the trust company; and procuring the embezzlement by Smith, the treasurer, of the moneys and securities of the trust company, committed to his keeping.

The indictment then proceeds to set out the various overt acts done pursuant to and to effect the object of the conspiracy, to wit, the drawing of certain checks by Scarlett which are set out in the indictment, some of which were certified by Smith, and some of which were not, the payment of the checks by the Roseville Trust Company, the failure of Smith to charge the checks, when paid, to the account of Scarlett; that Scarlett well knew when he drew the checks that they were in overdraft of the amount of money he had in the bank, and that Smith well knew, when he certified and paid the checks, that they were in overdraft of the amount of money Scarlett had in the bank.

The checks set out in the indictment, being Exhibits S. 1 to 19, inclusive, the drawing, certification and payment of which are charged as overt acts, amount to \$6,642.63 (page 198), the amount of the overdraft charged in the indictment.

The overdraft actually proven at the trial was considerably in excess of this amount (p. 275, line 30).

The dates and amounts of the checks as set out in the indictment are as follows:

July 23, 1912, \$500.
 Sept. 13, 1912, \$1,247.76.
 Jan. 21, 1913, \$82.
 Jan. 21, 1913, \$26.
 Jan. 29, 1913, \$89.95.
 Feb. 13, 1913, \$86.92.
 Feb. 19, 1913, \$400.
 Feb. 21, 1913, \$400.

March 4, 1913, \$500.
March 11, 1913, \$100.
March 13, 1913, \$90.
March 17, 1913, \$350.
March 17, 1913, \$100.
May 19, 1913, \$175.
June 12, 1913, \$120.
July 2, 1913, \$1,200.
July 3, 1913, \$1,000.

On pages 120 to 127, inclusive, Smith testifies to various conversations he had with Scarlett relative to the condition of his account with the Roseville Trust Company.

Smith says (page 127) that previous to July, 1912, he had several talks with Scarlett about the condition of his account—"with relation to paying his checks or advancing the money one way or another" (line 10). "As nearly as I can tell conversations, they all related to the one thing—raising money one way or another for Mr. Scarlett by protecting his checks" (line 15).

On pages 123 and 124, Smith testifies as to a conversation he had with Scarlett on February 19, 1913, and he says on page 124, line 10, "I remember several different conversations that we had between Mr. Scarlett and myself, in which I called his attention to the fact that I was trying my best to protect him, paying his checks and doing all kinds of things to pay the checks, and charging amounts to different accounts and paying the checks in that way; taking them out of the cash, but I can't remember the exact words of the conversation. The purport of it was to that effect."

On his cross examination (page 191), Smith testified as follows:

"Q Then during this whole period covered by this series of checks S-1 to S-19,

from July, 1912, to July, 1913, Mr. Scarlett made no deposit and did not draw directly against his account? A He made no deposit; he drew against his account, but the check—

Q By an arrangement made with you?

Mr. Guild. Allow him to answer the question.

Witness. The checks were not charged against his account.

Q By special arrangement with you? A No, not special arrangement. It was understood that I should take care of the checks, honor them, rather, as they came in. It might be called a special arrangement.

Mr. Guild. I should think so, if I had made that arrangement with the bank.

Witness. A special arrangement; yes, sir.

Q A special arrangement with regard to the \$26 check? A I think so.

Q Then his account with the bank was practically a dead account, wasn't it, during that time? A So far as his deposits were concerned, yes, sir.

Q So far as the bank knew, or the bank was concerned, and so far as his drawing against it was concerned. What was there for you to talk to him about in his account? You say you had several times talked to him about his account being in bad shape? A It was with reference to these checks that he had drawn that had not been made good.

Q These advances that he was procuring and had promised to reimburse you for, that is what you talked to him about, wasn't it? A I talked about the checks that had been paid by the bank and never charged up to his account and paid irregularly."

Scarlett did not take the witness stand on the trial of this indictment.

The testimony of Smith as to the various conversations he had with Scarlett remained absolutely uncontradicted.

Of the nineteen checks set out in the indictment, it will be observed that ten of them are dated after the 19th day of February, 1913, when Smith had his conversation with Scarlett about the condition of his account, and told him the methods he was resorting to to pay his checks.

Smith testified (page 129) that Exhibit S-9, being Scarlett's check of February 19, 1913, for \$400, was accompanied by a letter signed by Scarlett. The letter was introduced in evidence and marked Exhibit S-42. Smith says he certified the check Exhibit S-9. The Exhibit S-42, will be found on page 4 of "Addenda" to State of the Case.

Smith further testifies (page 129) that Exhibit S-11, being Scarlett's check of March 4, 1913, for \$500, was also accompanied by a letter signed by John B. Scarlett. This letter was introduced in evidence (page 130) and marked Exhibit S-43. The letter S-43 will be found on page 5 of the "Addenda."

Smith further testifies (page 130) that Exhibit S-14, being Scarlett's check of March 17, 1913, for \$350 was also accompanied by a letter signed "John B. Scarlett." The letter was introduced in evidence and marked S-44, and will be found on page 5 of the Addenda.

Each one of these letters requests Smith to certify an enclosed check.

In the letter Exhibit S-42 Scarlett writes: "I enclose check for \$400, which please be good enough to certify. * * * If it were not abso-

lutely necessary I would not ask you to help me further."

In the letter Exhibit S-43 Scarlett writes: "I am sorry to have to bother you again, but see no help for it. * * * I hope you will be good enough to assist me once more by certifying the enclosed. I can scarcely hope to repay your repeated courtesies."

In the letter Exhibit S-44 Scarlett writes: "I find it impossible to get by without a little additional help, as I spoke to you about last week. Will you kindly certify the enclosed?"

John H. Long testified (page 205) that he was in the employ of Scarlett at the Middlesex Hat Company, at Metuchen. He says that in July or August, 1912, Raymond E. Smith had an interview with Scarlett at the latter's office in Newark; that Smith and Scarlett had been in the back room for half or three-quarters of an hour; that when they came out of the office he heard Smith say to Scarlett (page 207): "It would look better to have somebody else's name on the note rather than put somebody else's name on the note * * * rather than have his own name, or something like that, on the note."

In September, 1912, Scarlett sent up to Smith, the Spinoza note, endorsed by Sica, for \$1,247.76, payable ten days after date. This note Smith purchased and placed the proceeds to the credit of Scarlett (pages 133 and 134).

Smith says that he did not know Spinoza, had never heard of him, and did not know who he was. He made no inquiry of Scarlett as to the responsibility of Spinoza (pages 134 and 135), and he says on page 228, that at that time he didn't know much about Sica's general standing.

Exhibit S-64 was a certified copy of the deed from John B. Scarlett to Nicholas R. Sica, dated October 4, 1912 (page 310).

It was admitted (page 278) that this deed conveyed Scarlett's Johnson avenue property.

In his letter of February 12, 1913, Exhibit S-42, Addenda (page 4), Scarlett says "I will send by John H. Long, note tomorrow with my statement."

The history of this note, which was for \$2,500, will be found on pages 217, *et seq.*

The original maker of the note was a Mr. Reynolds, who was a clerk employed by Scarlett in his office (page 219). Reynolds died, and Sica's name was substituted as maker.

Smith says (page 219, line 25) that he knew nothing about the financial responsibility of Reynolds, and made no inquiry, and he says on page 221, that Scarlett made no representation to him as to Long's financial responsibility and he made no inquiry. For this note Smith gave Scarlett a treasurer's check for \$2,475 (page 220, line 20).

Exhibit S-45 (page 307) was a letter of John B. Scarlett, dated March 15, 1913, headed, "Statement of John B. Scarlett."

This exhibit is not printed in the record, but it appears on pages 278 and 279, that it was a statement of Scarlett's financial condition, and it also appears that among the assets claimed in the statement was the Johnson avenue property.

In his letter, Exhibit S-42, Addenda (page 4), Scarlett writes: "I will send up J. H. Long note tomorrow, with my statement."

Smith says (page 131), referring to the statement mentioned in Exhibit S-42: "It was a statement of his financial condition that the Roseville Trust Company had asked him for showing his

worth—showing his holdings in real estate, assets, liabilities, etc. * * * I asked for it for the institution. The directors had mentioned it in a previous meeting, and I had asked it from him at their request.”

Smith testifies (pages 278, 279 and 281) that he presented this financial statement, Exhibit S-45, to the executive committee; that at the time he presented the statement to the executive committee he knew that Scarlett had conveyed the Johnson avenue property to Sica, and he did not inform the committee at all of that fact.

Point I.

We respectfully submit that the Trial Judge did not err in his charge to the jury, either with reference to the question of motive or in his interpretation of the evidence relating to motive.

The portion of the charge objected to with relation to motive will be found on page 302, beginning at line 2.

The pertinent context will be found on the same page at line 15:

“Smith’s denial of an improper motive is not to govern your deliberations. It is the function of the jury to determine what the parties intended, what their motives were, from what they did and said in furtherance of the alleged conspiracy, as disclosed by the evidence before you. In other words, you must say, after carefully considering and weighing all of the evidence before you, whether you are satisfied beyond a reasonable doubt that there was an unlawful conspiracy between Smith and Scarlett.”

Point II.

We respectfully submit that the Trial Judge did not err in refusing to direct a verdict of acquittal for the defendant Scarlett because the State failed to prove any corrupt motive on the part of Scarlett as one of the alleged conspirators.

Under the evidence above recited, we respectfully submit that the evidence of corrupt motive on the part of Scarlett is plenary.

Point III.

This point alleges error by the Trial Judge in overruling certain questions of the defendant's counsel asked upon cross examination.

A.

On his cross examination Thompson, who was a bookkeeper and receiving teller of the bank, was asked (page 74): "Did you enter into any conspiracy with Mr. Scarlett, or anyone else, to defraud the bank?"

This question was clearly improper, for two reasons: In the first place, it was not proper cross examination, and in the next place, it called for a conclusion rather than a statement of the fact.

On page 74, line 34, and on page 78, line 25, Thompson was asked on his cross examination whether he had entered into any arrangement with Scarlett or with anyone else to defraud the bank.

This question was overruled, on the ground that it was not cross examination, the Court saying (page 78, line 38), "All this witness has done is to identify certain books."

We submit that these questions are improper because they call for a conclusion rather than a

statement of fact. Whether or not the witness had entered into an arrangement with Scarlett or others to do certain things depended on what he did and said. It was not for the witness to say whether he had entered into any "arrangement," but rather to state what he had said or done.

On page 86 the prosectuor made this statement:

"*Mr. Guild.* Mr. Schotland asked a question of this witness, and I objected, and that is the question, whether he had ever had any talk with Mr. Scarlett about Scarlett's account, dealings with the bank; that is my recollection of the question. I withdraw the objection and desire to have the question answered.

Mr. Schotland. Do you want me to renew my question?

Mr. Guild. Yes.

Witness. The question as to whether I had any talk with Mr. Scarlett in reference to his account? I did not, no."

The witness Thompson was not on trial. The indictment as to him had been *nolle prossed*.

B.

On page 179, line 20, Smith on his cross examination was asked this question:

"If you and Scarlett had entered into an agreement to cheat the bank out of these moneys, would you have preserved these checks?"

We respectfully submit that this question was improper. It did not call on the witness to state any fact, but it did ask him to speculate and state what he would have done if he had done a certain thing.

In overruling the question the Court said (page 180, line 17), "You are asking him to testify what he would have done in the light of certain events if certain conditions were true."

We respectfully submit there was no error in overruling this question.

C.

On his cross examination Smith (page 168, line 10) was asked this question: "Then you didn't mean to say to the Court and jury that you admit the charge made against you in this indictment; that you conspired with Scarlett to cheat the Roseville Trust Company."

We respectfully submit that the effect of Smith's plea to the indictment was a matter of law, and it was not competent for Smith to explain the effect of his plea.

Smith was fully cross examined as to his relations with Scarlett, and to his motive and intent.

On page 141, line 38, and page 143, line 1, he was asked:

"Q Mr. Smith, did you ever arrange with Mr. Scarlett to cheat the Roseville Trust Company out of any of its funds? A No, sir.

Q Did you ever suspect that the Roseville Trust Company would be cheated out of its funds by Mr. Scarlett? A No, sir, I never did."

On page 162, line 35, Smith was asked the following questions on cross examination:

"Q You didn't agree to let Mr. Scarlett have this money intending to cheat the bank out of it? A No, sir; I didn't intend to cheat the bank out of it. No, sir.

Q Did Mr. Scarlett, so far as you know? A I don't think so."

On page 167, line 38, Smith was asked this question on cross examination:

“Q. Why, then, did you plead *non vult* to this indictment? A. There are several reasons. This was one of many indictments that were against me; there are many indictments against me that I believe I could have fought and beaten, but I didn't consider it good policy. *Non vult*, as I plead meant that I didn't wish to go against the State.”

It will be observed that Smith was allowed to state the reasons why he pleaded *non vult* to this indictment. This, we respectfully submit, was as far as it was proper to allow him to go. His plea *non vult* speaks for itself. In overruling the question we are now considering, the Court said, page 168, line 35:

“I do not understand that the plea of *non vult* indicates anything as to his feeling of guilt or innocence; all I understand it means is, that he does not contend against the State; that he does not chose to contend for whatever reason, because he thinks he is innocent or because he thinks he is guilty.
* * * * It does not admit anything except that he doesn't contend.”

We respectfully submit that by his plea of *non vult* Smith, as a matter of law, is presumed to have meant whatever the legal effect of his plea was, and he cannot be heard to deny the legal effect of his plea.

We therefore submit that there is no error in the record, and that the judgment below should be affirmed.

J. HENRY HARRISON,
Prosecutor of the Pleas.

WILBUR A. MOTT,
Assistant Prosecutor.

New Jersey Court of Errors and Appeals

THE STATE, Defendant-in-Error,	} On Indictment for Conspiracy. On Writ of Error to Supreme Court.	10
vs.		
JOHN B. SCARLETT, Plaintiff-in-Error.		

BRIEF FOR PLAINTIFF IN ERROR.

Raymond E. Smith, Augustus R. Jennings, William J. Thompson and John B. Scarlett, were jointly indicted for conspiring fraudulently and falsely to cheat and defraud the Roseville Trust Company. Of the defendants named the indictment was dismissed as to Jennings and Thompson. Smith pleaded *non vult*. The indictment was pressed to trial as against the defendant Scarlett. 20

The charge against the defendants as stated in the indictment was that they had conspired to cheat and defraud the Roseville Trust Company of a large sum of money, to wit, \$6,642.63 (page 16, line 20). The overt acts charged in the indictment looking toward the carrying out of this conspiracy to cheat and defraud were, (1) the payment of certified checks drawn by said Scarlett in overdraft of funds standing to his credit; (2) fraudulent application by the treasurer, Smith, of moneys of the trust company for the use other than of the trust company, and wilfully and corruptly concealing said 30 40

fraudulent application by falsely keeping the accounts of the trust company; (3) the withdrawing of moneys by Scarlett as a depositor in excess of moneys to his credit, and the wilfully concealing of such withdrawing by falsely keeping the accounts of the trust company; and (4) the procuring the embezzlement by Smith, the treasurer, of the moneys and securities of the trust company, committed to his keeping (page 16, line 25, to page 17, line 20).

The indictment then proceeds to charge that in execution of and according to the said conspiracy, and to effect the object thereof (page 17, line 35) the defendant Scarlett drew certain checks, which are specified in the indictment, some of which were certified, and some of which were not, and that Smith fraudulently and corruptly omitted to post and to cause to be posted said checks.

It will be observed that the charge against the defendant Scarlett is against him in his capacity as a depositor only. No charge in this indictment is predicated on the fact that he was a director. The indictment in the overdraft case rests upon that specific fact, but the mere fact that he was a director has no bearing upon the issue in this case, either under the indictment or under the facts.

The defense rested its case at the conclusion of the State's case, and moved for a dismissal of the indictment and direction of a verdict (pages 295-296).

To sustain its case the State was required to prove beyond a reasonable doubt that the defendant Scarlett had committed the overt acts charged in the indictment, namely, the overdrawing of the account, or the procuring of certified checks in overdraft of his account, and the falsifying of the books of the trust company, so as to conceal these withdrawals, and further that he had done these

things with the intent to cheat and defraud the trust company.

The State practically rested its entire case on the testimony of the self-confessed embezzler Smith.

While Smith's testimony tended to show that the amount of money named in the indictment had been received by Scarlett in overdraft of his account, and that Scarlett knew that his account was thus overdrawn, Smith's testimony tended equally to show that the overdrafts were not with intent to cheat or defraud the bank, and that it was the expectation of the parties that the money would be repaid. 10

The case also showed that Scarlett had deeded to a trustee, one Sica, a valuable property on Johnson Avenue, which property was to secure loans made to him by Smith. Smith's version of the transaction was that he had made the arrangement in order to secure the bank against any possible loss from loans to Scarlett on overdraft, while Scarlett's contention, as shown by the cross examination (and also the record in the overdraft case), was that the arrangement was to secure Smith personally for the moneys advanced personally by him to Scarlett. 20

POINTS.

I.

The Trial Judge erred in his charge to the jury: (a) With reference to the question of motive, and, (b) in his interpretation of the evidence relating to motive. 30

A general exception was taken to the Judge's charge (page 304, line 26). Upon this exception error has been assigned (assignment 45, page 318, 40

line 23) (#46, page 341, line 30) upon the following portion of the charge (page 302, line 2):

10 “Motive is the reason which leads the mind to desire a definite result. It is that which incites or stimulates a person to do an act, but a good motive does not prevent an act from being a crime and one who conspires to commit an unlawful act is criminally liable for all the consequences which naturally flow from it, for the law presumes that a person intends the natural and probable consequence of his voluntary acts.

Smith’s denial of an improper motive is not to govern your deliberations.”

20 Grounds of reversal pursuant to Section 136 of the Criminal Procedure Act have been served and filed, and ground #3 relies upon the following language of the Judge’s charge (page 301, line 23) (page 343, line 33):

30 “Smith says that his purpose in acting as he did was because of his desire to help Mr. Scarlett; that he knew he was in need of funds; that he, Smith, never suspected the trust company would be cheated, and had no intention of cheating it; that he considered it good judgment to help Scarlett for the benefit of the bank. Now, intent is the purpose to use a particular means to effect a certain result. It is quite apparent, if you believe the evidence, that the intention of the defendant was to secure the money of the trust company and the intention of Smith was to help him, and that the money of the trust company was paid to the defendant on these

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checks and notes. It is also apparent, if you believe the evidence, that this money was gotten through an understanding between Smith and Scarlett.”

In an action of this character the conspiracy is the crime.

State vs. Young, 37 N. J. L., 184, page 189.

10

The proof of a conspiracy lies in the overt acts done by the parties, coupled with a criminal intent.

State vs. Young, *supra*.

State vs. Hickling, 41 N. J. L., 208, page 211.

20

In order for the acts of the parties to constitute a criminal conspiracy the intention must be fraudulent.

State vs. Cole, 39 N. J. L., 324, page 325.

State vs. Beinstock, 78 N. J. L., 256.

State vs. Reiners, 80 N. J. L., 196, page 197.

In *Wood vs. State*, 47 N. J. L., 461, this Court, 30 by Judge Reed, said (page 463):

“It may not be easy to exactly define by a general formula what elements of fact are essential to constitute such a combination a criminal conspiracy, but it may be said that the motives of the confederates must be corrupt, or no criminality can attach to such a confederation.”

40

It is apparent, therefore, that the motives of the parties was of the first importance in determining the guilt or innocence of the defendant.

It may be admitted that the defendant overdrew his account. That, in itself, is not a crime. Something more than a mere overdraft of the account had to be established. On the other hand it
 10 appeared from the State's own evidence that it was the intention of the defendant to make good the overdrafts. Thus Smith testified (page 122, line 24) :

“Q. In calling his attention to the fact what did you say to him? A. I told him his account was in bad shape, that I had paid several checks of his that had never been taken care of.

20 “Q. You have told us about eighteen. A. That is several.

“Q. You mean at that time there had been several; is that what you mean? A. That is what I say.

“Q. What did he say? A. He said he would make them good in time.”

Nor did Scarlett conspire or intend to cheat the bank in what he did. Smith testified on cross examination at page 142, line 2, as follows:
 30

“Q. Did you ever suspect that the Roseville Trust Company would be cheated out of its funds by Mr. Scarlett? A. No, sir, I never did.”

And again on page 162, line 35, Smith testified:

40 “Q. You didn't agree to let Mr. Scarlett have this money intending to cheat the bank

out of it, did you? A. No, sir; I didn't intend to cheat the bank out of it, no, sir.

"Q. And did Mr. Scarlett, as far as you know? A. I don't think so."

The real reason why Smith honored Scarlett's checks in overdraft of his account was that he thought it good judgment in the interests of the bank. 10

His testimony was (page 166, line 1):

"Q. When you honored the check which accompanied this letter, Exhibit S-43, did you believe that the bank was going to be cheated out of that \$500? A. No, sir.

"Q. You had no such suspicion? A. I didn't think the bank would be cheated out of it, no, sir. 20

"Q. Did you believe that as soon as Mr. Scarlett realized on his holdings in the Stevenson Rye Company he would pay the money back? A. I believed he would pay it back, yes, sir.

"Q. And is that or is it not the only reason that you took up these two checks for him, because you believed he would pay all the money back? A. That is one reason. I certainly would not have made him any loan or agreed to take care of any of his checks as an acting officer of the trust company if I had had any idea that they were not going to be taken care of eventually. That is one reason. There are other reasons. 30

"Q. Your friendship with Scarlett or willingness to help him were other reasons? A. That is another reason, perhaps. There are more probable reasons than that. Mr. Scar- 40

10 lett was already indebted to the bank considerably, and a great many of those checks that have been paid were given to settle matters which were pending against him, which would involve him seriously, and would probably as he told me one time, put him in bankruptcy, ruin him in other words, financially, and I helped Mr. Scarlett as treasurer of the trust company.

 “Q. Then as a banker representing the trust company you considered it good judgment to help him tide over his troublous times for the benefit of the bank? A. I did; I considered it so.

 “Q. And that was the primary reason, you say? A. That was the real reason.”

20 In his letter to Smith (Exhibit S-42) (Exhibit S-16 in the overdraft case, page 1016) Scarlett wrote (page 170, line 12): “I will start in shortly after March 1st to liquidate all these items independent of the building and loan.”

 Smith was specifically cross examined as to a number of the checks which he testified had been paid in overdraft (pages 269-275), and his testimony shows that he not only expected that the money would be returned, but that there was no
30 intention on the part of either him or Scarlett to cheat or defraud the trust company.

 Thus he testified (page 269, line 35):

 “Q. Well, did you cash them for the purpose of aiding Mr. Scarlett to defraud the bank? A. No, sir.

 “Q. Did you expect to get this money back from the bank when you cashed these checks? A. I thought we would get it back, yes sir.”

40

Again (page 270, line 16) :

“Q. And was that check cashed as a result of any arrangement between you and Scarlett to defraud the Roseville Trust Company of that \$150? A. No, sir; not to my knowledge.

“Q. Did you have any intention of assisting Scarlett to defraud to the extent of \$150 by cashing this check, S-55? A. I did not.” 10

Again (page 272, line 4) :

“Q. You do know, however, that you didn't cash this for the purpose of enabling Scarlett to cheat the bank? A. No, I didn't do that; or rather, I know that, yes, sir.

“Q. You know that you did not do that? A. Yes, sir. 20

“Q. That there was no such intention at the time this check was cashed? A. No, sir.”

Again (page 272, line 28) :

“Q. Who asked you to cash it? A. Mr. Scarlett, I believe.

“Q. Did you cash that for the purpose of enabling Mr. Scarlett to cheat or defraud the Roseville Trust Company out of the \$500 represented by that check? A. No, sir; I did not. 30

“Q. Why did you cash it? A. I cashed it because I wanted to help Mr. Scarlett.

“Q. Any other reason? A. I cashed it at his request.

“Q. Did you want to help him for any particular reason? A. No particular reason; I don't know of any particular reason at that time; simply that I knew he was in need of funds and I wanted to help him all I could. 40

"Q. You knew how he was situated so far as his business investments were concerned, didn't you? A. Fairly well, yes, sir.

10 "Q. And you knew that if he was able to sell the stock of the Stevenson, Rye Company he would have enough money to liquidate his indebtedness? A. I knew, if Mr. Scarlett sold the stock for the price that he said it was worth, he would be able to clean up his indebtedness. That was, providing he applied it that way.

"Q. You had sufficient faith and confidence in him to believe he would apply it that way? A. I believed so at the time; this part of it, anyhow.

20 "Q. And you cashed this check, then, to help him out until he got an opportunity to sell the stock, didn't you? A. I don't think that check was cashed on those conditions, that one check. I can't remember that.

"Q. No; but that was the general line of thought in your mind as you were helping him, wasn't it? A. Yes, sir; that was."

30 That there was some justification for the attitude of Smith in assisting Scarlett in the way he did, and in expecting that the loans thus made would be repaid, is found in the fact that, as Smith testified, all of the transactions of this character which had been going on for some time prior to July, 1912—which was the date the first overdraft was not finally paid—were all repaid by Scarlett (page 233, lines 15-35) (page 234, lines 10-30).

40 And not only that, but Smith had taken security to the value of over \$9,000 to protect the bank against any possible loss from Scarlett's overdrafts. Scarlett claimed that the security was given to Smith personally, and that the loans were

made to him by Smith personally. Smith, on the other hand, claimed that the security was taken by him on behalf of the bank, and that the loans were made by the bank. It makes little difference, so far as this particular question of motive is concerned. If Smith was accepting the security as a bank officer and on behalf of the bank, it demonstrates that he was careful to have the bank secured against any possible loss on account of Scarlett's overdrafts, and—adopting Smith's story—the fact that Scarlett gave this security shows that he intended that the bank should be protected against any possible loss from the said overdrafts. Scarlett certainly intended that the creditor who loaned the money should be protected. 10

The security was in the form of a trust agreement between Smith, Scarlett and one Sica, by which there was conveyed to Smith, to secure the sum of \$9,700, certain valuable property on Johnson Avenue (page 229, lines 10-20) and this property had an equity of \$14,000 (page 230, line 16). 20

These facts are inconsistent with the State's theory that Scarlett and Smith had conspired with intent to cheat the bank. If they had conspired with intent to cheat, why should Smith have been careful to take security to protect the bank from the loans represented by the overdrafts, and why should Scarlett have been willing to have given the security. Again Smith testified that he had asked Scarlett to return the money as soon as he could, and that he thought that he was doing all he could to do so. His testimony was (page 193, line 3) : 30

“Q. All you told him was that you had to charge them to other accounts to get them out of the way, and it put you in a mean position?

A. I remember telling him that, yes, sir.

“Q. And asking him to get the money as soon as he could and pay back? A. Yes, sir.

“Q. And he was making every effort to get the money, so far as you knew? A. I can't tell you that.

10 “Q. Do you know, or from talks with him, did he inform you who he was meeting and whom he was negotiating with and things of that kind? A. I thought at the time Scarlett was doing all he could to make good, but I don't know how far that went, but that is the way I felt about it, I thought of it.”

20 This position of the treasurer is inconsistent with the State's theory that he and Scarlett were in conspiracy together to cheat the bank. If they had conspired to cheat, why should Smith be concerned to have Scarlett return the money, and why should he have thought that Scarlett was doing all he could to return it?

This recital of the facts is important in its bearing on the Judge's charge.

First, as bearing upon his charge with reference to motive.

This is covered by assignment of error No. 45, (page 318, line 23, #46, page 341).

30 In his charge on this subject the trial judge said (page 302, line 2) :

“Motive is the reason which leads the minds to desire a definite result. It is that which incites or stimulates a person to do an act, but a good motive does not prevent an act from being a crime and one who conspires to commit an unlawful act is crim-

inally liable for all the consequences which naturally flow from it, for the law presumes that a person intends the natural and probable consequence of his voluntary acts.

“Smith’s denial of an improper motive is not to govern your deliberations.”

It is true that immediately following this, the trial judge charged as follows (page 302, line 16) : 10

“It is the function of the jury to determine what the parties intended, what their motives were, from what they did and said in furtherance of the alleged conspiracy, as disclosed by the evidence before you. In other words, you must say, after carefully considering and weighing all of the evidence before you, whether you are satisfied beyond a reasonable doubt that there was an unlawful conspiracy between Smith and Scarlett.” 20

This but left it to the jury to say whether there was an unlawful conspiracy. They were to say this from the evidence. An integral part of criminal conspiracy is the motive. Motive can be gathered both from what is said and what is done. Smith’s denial of an improper motive was a part of the evidence in the case. Yet the trial judge, while purporting to charge the jury to consider all the evidence, specifically withdrew from their determination and consideration that part of the evidence which consisted of Smith’s admission that he had no improper motive, as brought out on cross examination: Smith being the State’s star witness and chief reliance at the trial. 30

The New Jersey cases already cited show that nothing is better settled than that it is the criminal intent which, taken with the overt acts, goes to establish the criminal conspiracy. Not only is it 40

so established in the decisions of our own State, particularly in *Wood vs. State*, 47 N. J. L., 461, where Judge Reed said (page 463), that

“it may be said that the motives of the confederates must be corrupt or no criminality can attach to such a confederation”;

10 but it is equally settled by the authorities of other jurisdictions.

Thus in *Duffy vs. People*, 26 N. Y., 588, page 593, Judge Selden said:

20 “In every accusation of crime, there is involved the question of felonious or criminal intent, which is usually, if not in all cases, a question of fact peculiarly within the province of the jury to decide. A charge to the jury, that upon the facts testified to, assuming them to be true, it would be their duty to convict the prisoner if ever proper, would be so only in the very rare cases in which the force of the facts proved should be such, as to make the inference of criminal intent an inference of law, and not of fact.”

See also *People vs. Powell*, 63 N. Y., 88, page 91, where Judge Andrews said:

30 “The general rule is, that to constitute crime there must not only be the act but also the criminal intention; and these must concur, the latter being equally essential with the former. (*Stokes vs. People*, 53 N. Y., 179.) And the intent is to be found by the jury.”

Also *People vs. Winan*, 42 N. E., 408 (N. Y.), where the Court said:

40 “Criminal intent is essential to constitute the crime (forgery) and the testimony bearing thereon is always a question for the jury.”

In Encyclopaedia of Evidence, vol. 7, page 596,
it is said:

“Except in Alabama the rule is now believed to be universal in the United States that whenever, in either civil or criminal cases, the intent of a person is relevant to the issue, or whenever the intent of a person in the doing of an act or in the uttering of a declaration, becomes material, such person whether a party to the cause or not, may testify directly as to what his intention was in a given instance. *National Cash Register Co. vs. Leland*, 94 Fed., 502.” 10

The motive, then, is of the greatest importance in determining upon the existence of a conspiracy, and is a matter for the determination of the jury. 20

It is quite true that the overt acts done by the parties constitute an element of proof of motive in a conspiracy case. But it is equally pertinent to permit the parties charged to interpret their own acts, and to state whether their motives were improper or not. The trial judge seems to have recognized the propriety of such an inquiry, for he permitted cross examination along that line at great length (see page 142, line 3; page 162, line 37; page 166; page 193, line 17; and pages 269-275). 30

Assuming that the denials by Smith of any improper motives on the part of either himself or Scarlett were not conclusive, nevertheless his statements, given under oath and upon cross examination, constituted, at the very least, material evidence for the consideration of the jury.

The jury was required to say two things; first, whether there had been any overt act as charged in the conspiracy, and second, whether it had been with a fraudulent intent and corrupt motive. The 40

second was as essential as the first to the establishment of the crime. While the acts of the parties were evidential as to the character of their motives, so also was the evidence of Smith, given in cross-examination, upon the very acts which the State relied upon to establish a corrupt motive.

10 When, therefore, the trial judge categorically charged the jury that "Smith's denial of an improper motive is not to govern your deliberations," he fell into error. While Smith's denial of an improper motive may not have been conclusive, it certainly was material evidence for the jury to take into consideration in deliberating the question of the guilt or innocence of the defendant.

Second, the trial judge erred in his interpretation of the evidence relating to motive.

20 This is set forth in ground of reversal #3 (page 343).

In his charge to the jury the trial judge said, (page 301, line 24) :

30 "Smith says that his purpose in acting as he did was because of his desire to help Mr. Scarlett; that he knew he was in need of funds; that he, Smith, never suspected the trust company would be cheated, and had no intention of cheating it; that he considered it good judgment to help Scarlett for the benefit of the bank. Now, intent is the purpose to use a particular means to effect a certain result. It is quite apparent, if you believe the evidence, that the intention of the defendant was to secure the money of the trust company and the intention of Smith was to help him, and that the money of the trust company was paid to the defendant on these checks and notes. It is also apparent if you believe the

40

evidence that this money was gotten through an understanding between Smith and Scarlett.”

In thus charging the jury the trial judge usurped the functions of the jury. It was the function of the jury to say whether the facts indicated a corrupt motive and a fraudulent intent. For, without corrupt motive and fraudulent intent, there could be no crime of conspiracy as charged. 10

See the cases cited, *supra*.

The trial judge, instead of leaving it to the jury to gather what intention of the defendant was from the state of facts recited, proceeded to tell the jury what that state of facts meant as bearing upon the question of the intention of the defendant. He told them that it was “quite apparent” from the evidence “that the intention of the defendant was to secure the money of the trust company.” The inference from his language, of course, was that it was the intention of the defendant to secure the money of the trust company fraudulently. It was for the jury to say whether the facts meant that or not. 20

Again he told the jury that it was apparent

“that this money was gotten through an understanding between Smith and Scarlett.” 30

Again the inference was that the money was gotten through a corrupt understanding. The mere getting of money from a bank officer means nothing. It is the getting of money corruptly or with a corrupt purpose, which constitutes a crime. The charge of the trial judge practically amounted to directing a verdict for the State. To be sure, he told the jury that these results followed “if you 40

the evidence," but that reservation amounted to nothing. There was no dispute about the facts. They had not been controverted by the defendant and the facts of the case as they appear in the record were necessarily established. The all important question was what was the attitude of the defendant toward those facts, and did they show a corrupt motive on his part. That was the fundamental question for the jury in this case, and the trial judge by his charge virtually withdrew that question from them.

II.

The Trial Judge erred in refusing to direct a verdict of acquittal for the defendant Scarlett because the State failed to prove any corrupt motive on the part of Scarlett as one of the alleged conspirators.

The indictment is in conspiracy. The conspiracy alleged is to cheat and defraud the trust company. The means to that end are alleged to be the overdrawing of the account by checks, either certified or uncertified, and the falsifying of the records of the trust company. Under the evidence the most that the verdict of the jury can mean is that the defendant Scarlett either participated in or knew of the overdrafts. There is absolutely no evidence to connect him actively with any falsification of the records of the trust company. Whatever falsification of the records there was, was done entirely by Smith. There is no evidence whatever that Scarlett procured or requested Smith to falsify the records, although Smith does say that on one occasion he told Scarlett that he had to charge some

of the checks to other accounts in order to get them out of the way (page 192, line 37).

But even then Smith felt that Scarlett was doing all the could to make good.

His testimony was (page 193, line 3 etc) :

“Q. All you told him was that you had to charge them to other accounts to get them out of the way, and it put you in a mean position? 10

A. I remember telling him that, yes, sir.

Q. And asking him to get the money as soon as he could and pay back? A. Yes, sir.

Q. And he was making every effort to get the money, so far as you knew? A. I can't tell you that.

Q. Do you know, or from talks with him, did he inform you who he was meeting and whom he was negotiating with and things of that kind? A. I thought at the time Scarlett 20 was doing all he could to make good, but I don't know how far that went, but that is the way I felt about it, I thought of it.”

But much of his manipulation Scarlett knew nothing about (see page 151, line 27).

Besides that, Smith had the Johnson Avenue property held in trust to secure any charges against Scarlett (page 145). Very evidently that was a personal transaction with Smith; but adopting Smith's view of it that it was a bank matter, 30 the result is the same.

The analysis of the testimony which has already been had, shows that the State failed to prove a corrupt motive. The testimony of Smith was consistent throughout that he expected, and the actions of Scarlett show that he also expected, that the loans represented by the over-drafts would be repaid. In addition to the evidence already adverted to, two further things are per- 40

tenant: first, that Smith made no serious effort to conceal what he was doing; and second, that Scarlett gave security to protect his creditor against the moneys borrowed.

10 With reference to the actions of Smith, he kept the uncharged checks in Box 55 (page 152, line 37), and he says that this box was not used for his personal papers, but "for the bank papers en-
tirely" (page 153, line 3), and he testified further that anybody connected with the bank could have gone to the box, and that the key was left in the lock. His testimony on this was (page 252, line 32):

"Q. You said anybody could have gone to box 55 while the bank was open, a good part of the day? A. They could have had access to the box all the time, yes, sir.

20 "Q. You say the key used to be allowed to stick in the lock? A. Yes, sir."

It is true that the defendant did not take the stand in his own behalf, and this is a presumption against him, but the defendant was not called on to take the stand if the State had failed to make out a case against him. He was in such case entitled to rely on his motion and exception, which he did.

30 While the fact that Smith says he told Scarlett on one occasion that he had not charged up to his account certain checks, tends to bring this case within the ruling of the Court of Errors in the *Armstrong* case, 95, at 997, nevertheless the fact that Smith sought security (according to his version) on behalf of the bank, and that Scarlett gave this security, namely, the trust deed on the Johnson Avenue property, offsets the effect of Scarlett's knowledge that the checks were not charged, and
40 shows that the intent of the parties was not criminal as charged in the indictment.

III.

The Trial Judge erred in overruling certain questions of the defendant's counsel asked upon cross-examination.

a. Because the Trial Judge admitted in evidence Exhibit S-37. 10

(This appears as Exhibit S-3, in the overdraft case, page 1010.)

This exhibit was the oath of Scarlett as a director of the Roseville Trust Company (page 89, line 25 to page 91, line 15).

The indictment alleged a conspiracy to cheat the bank, the cheat consisting in overdrawing the account, and procuring moneys on checks both certified and uncertified. It was no part of the State's case that the defendant was also a director. It is made a crime by statute for a director to overdraw, and the defendant had been indicted, tried and convicted on that issue. The fact that he was a director had no place in this case, unless to prejudice him with the jury. It was no logical or essential part of the State's case. It was not material evidence and could have had no result whatever except a harmful one, to prejudice the defendant. 20 30

See

State vs. Foster, 97 Atl., page 787.

b. Because the Trial Judge admitted in evidence Exhibits S-56, S-57, S-58 and S-59 (pages 238-247; assignments of error 29, 32, 33 and 34; page 316, line 25, page 317, line 10; #30, 33, 34 and 35, page 339, line 32, &c.; grounds of reversal #5, page 344). 40

Exhibit S-56 was a check of Bras D'Or Land Co. drawn on the State Bank of Hartford, Connecticut, to the order of John B. Scarlett, for \$500, dated September 19, 1911 (page 236, line 233; page 238, line 15). It was presented at the Roseville Trust Co. and cash (page 237, line 10). It was cashed in the ordinary course of business, without
 10 any knowledge on the part of Smith, one way or the other, as to whether it was good (page 237, line 34). On September 22d, 1911, it was protested.

Exhibit S-57 was a check dated September 19, 1911, drawn on the State Bank of Hartford, Connecticut, to the order of Roseville Trust Co., signed Bras D'Or Land Co. for \$150 (page 241, line 30; page 242, line 40). It was given for quarterly interest (page 242, line 5) due on Mr.
 20 Scarlett's loan of \$10,000 (page 242, line 14).

(No attack has been made on this loan of \$10,000 which was duly authorized by the Board of Directors and regular in every way.)

This check was subsequently protested (page 242, line 25).

Exhibit S-58 was a check for \$650 and drawn on the B. M. C. Durfee Safe Deposit & Trust Co. (page 241, line 10; page 243, line 10; page 246, line 10). It was given to take up the \$500 check
 30 (Exhibit S-56) and the \$150 check for interest (Exhibit S-57, page 243, line 10).

Exhibit S-59 was a check dated Torrington, Connecticut, October 23, 1911, drawn on the Brooks National Bank for \$650, by John B. Scarlett, to the order of John B. Scarlett (page 246, line 24). It was given to take up the previous check for \$650 (page 246, line 32). It was afterwards protested (page 246, line 37).

The object of introducing these checks in evi-
 40 dence was presumably to bear out the State's con-

tention of a conspiracy. The prosecutor conceded that the interest check for \$150 had nothing whatever to do with the conspiracy (page 246, line 8). The admission in evidence of these checks was vigorously contested, and exceptions taken (pages 238-247). Every one of the checks was dated in either September or October, 1911.

The indictment averred as among the overt acts 10
relied upon to prove the conspiracy, the cashing of a series of checks beginning July 23d, 1912 (page 16, line 9). The last check mentioned in the indictment was dated July 3d, 1913 (page 46, line 15).

Among the objections urged to the admission of these checks was that they were prior to the time laid in the indictment (page 242, line 30). This was true. It was also objected that the checks were not mentioned in the indictment (page 242, 20
line 32). This was also true. While this objection was not specifically raised to every check (it was to check Exhibit S-57, page 242, line 30), nevertheless the case coming up on grounds of reversal under Section 136 of the statute, as well as assignments of error, the fact that the checks antedated the time named in the indictment, should be considered as to all of them, as well as the fact that none of these checks was mentioned in the indictment. 30

Not only so, but none of these checks was drawn on the Roseville Trust Co. They were all of them checks drawn on other banks, and put through the Roseville Trust Co. in the ordinary course of business. While it is stated in the evidence that these various checks were protested, there is nothing to show whether they were subsequently paid by the home banks on which they were drawn.

Their admission in evidence had no bearing on the alleged conspiracy set forth in the indictment. 40

They were not material to the issue. They must of necessity have been prejudicial to the defendant.

See *State vs. Foster*, 97 Atl., page 787.

c. The Trial Judge overruled the following questions asked the State's witness Thompson :

10

"Q. Did you enter into any conspiracy with Mr. Scarlett or any one else to defraud the bank? (page 74, line 19) (assignment of error #3, page 312, line 33; #4, page 336, ground of reversal #4A, page 344).

20

"Q. Did you make any arrangement with Mr. Scarlett or anybody else in connection with Mr. Scarlett to defraud the Roseville Trust Company of any of its funds? (page 74, line 34); (ground of reversal #4B, page 344).

"Q. Mr. Thompson, did you make any arrangement with Mr. Scarlett alone, or with others in connection with Mr. Scarlett, to honor checks drawn by him on the bank, whether or not he had funds there?" (page 78, line 25; assignment of error #4, page 312, line 40; #5, page 336; ground of reversal #4C, page 344).

30

This case comes up on writ of error, where assignments of error are filed, and also grounds of reversal, pursuant to Section 136 of the Criminal Procedure Act (2 C. S., page 1863). Some of these questions were overruled on the ground that they were not cross-examination (page 74, line 23; page 78, line 34; page 79, line 38) :

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The witness Thompson was one of the defendants named in the indictment. He was called to identify and prove certain books, explain certain checks and to explain the system of exchanges

through other banks. The books which he identified had been kept by himself (page 67, line 39), and they were all put in evidence (page 68, line 13; page 71, line 6; page 73, lines 20-40; page 74, line 3). One of the books which he identified and was offered in evidence was the individual ledger (page 66, line 35) containing the defendant Scarlett's account. The State's evidence all through the case was that Scarlett had overdrawn his account, and that this ledger showed it. It also appeared that many checks which were drawn against his account were not entered up in this ledger. The witness Thompson treated the Scarlett account different from other accounts in that all checks returned back to him by the bookkeeper signed by Scarlett, were referred to Mr. Smith to get instructions on them (page 82, lines 15-30). The object of the State in introducing the evidence of Mr. Thompson and the books which he kept, was to show that the records of the bank had been falsified. Falsifications of the records made by the witness Thompson were not told the defendant Scarlett by Thompson (page 86, line 33). The situation, therefore, was that Thompson testified to the keeping of records with reference to the account of Scarlett which records were false; and further that he had not told Scarlett of these false entries. One of the charges in the indictment was that Scarlett had procured the making of false entries to conceal the overdrafts. It was, therefore, of the greatest importance to the defendant for him to prove from the lips of the State's witness, Thompson, one of the defendants in the indictment, that he had not entered into any conspiracy with him, or made any arrangement with him to defraud the bank, or made any arrangement for the honoring of checks drawn in overdraft of funds.

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So fundamental a matter to the interests of the defendant requires a better justification for its exclusion than that the questions were not proper cross-examination.

Nor can the exclusion be justified on the ground that the questions called for the mere conclusion of the witness. They dealt with matters of fact: did
 10 you enter into a conspiracy; did you make an arrangement etc.

It is true the Trial Judge said at page 78, line 35: "All this witness has done is to identify certain books"; but the Trial Judge in so stating, was wrong. He did much more than that. See his direct examination, pages 67 to 74.

We think that the questions were proper cross examination, and that the Trial Judge erred in ruling to the contrary; but beyond that, and as-
 20 suming that they were strictly not cross examination, and that the control of the cross examination was in the discretion of the Court, their denial comes within the purview of Section 136 of the Criminal Procedure Act which requires a reversal where there has been

"the denial of any matter by the Court which was a matter of discretion."

30 *d.* The Trial Judge overruled the following question asked the State's witness Smith:

"Q. If you and Mr. Scarlett had entered into an agreement to cheat the bank out of these moneys, would you have preserved those checks?" (page 129, line 20; assignment of error #20; page 315, line 22), (#21, page 338).

40 The Trial Judge overruled this question because he said (page 180, line 17):

“You are asking him to testify what he would have done in the light of subsequent events if certain conditions were true.”

This was hardly the situation. Smith had testified that he had preserved a large number of checks which had been drawn in overdraft of Scarlett's account, but not entered on the ledger, in locked box 55; that anybody in the band could have had access to the box at any time because the key was kept in the lock (page 252, lines 32-39). One of the essential allegations of the State in the indictment was that the defendants had conspired to conceal the withdrawing of the moneys.

10

Counsel on cross examination had developed a situation which tended to show that this effort at concealment had not been made. It was pertinent, therefore, to ask the State's witness Smith, the man who was named in the indictment as having concealed the withdrawal of the money by the manipulation of the records, whether, if he had entered into an agreement as alleged, to cheat the bank, he would have preserved those checks. His answer would have thrown light on the motives of the alleged conspirators and motive was of the essence of the case.

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e. Because the Trial Judge overruled the following question asked the State's witness Smith:

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“Q. Then you don't mean to say to the Court and jury that you admit the charge made against you in this indictment that you conspired with Scarlett to cheat the Roseville Trust Company?” (page 168, line 10; assignment of error #19, page 315, line 14; #20 page 338) :

40

In answer to the previous question Smith had given his reasons why he had pleaded *non vult* to this indictment, and said:

“*Non vult*, as I pleaded, meant that I didn’t wish to go against the State.”

10 The trial Judge, in overruling the question, said that the plea of *non vult* does not indicate “anything as to his feeling of guilt or innocence” (page 168, line 37), nor does it admit anything “except that he doesn’t contend” (page 169, line 10).

20 Remembering that the essence of the State’s charge was a conspiracy to cheat, that the two chief parties to the alleged conspiracy were the defendant Scarlett and Smith, it was most material to the defendant to establish, if he could, that Smith had not admitted the charge made against him. His answer to the previous question indicates that he pleaded *non vult* for reasons of policy. Whether or not in pleading *non vult* he had intended to admit the charge made against him and thereby have affected the standing of the defendant Scarlett, was a matter which it was material to the defendant Scarlett for the jury to know.

30 In *State vs. Henson*, 66 N. J. L., 601, Justice Van Sycle, in a comprehensive opinion in the Court of Errors, dealt among other things with the plea of *non vult*, and the right to ask a witness whether he had pleaded such. He said (page 608):

“The plea of *nolo contendere* has the same effect as a plea of guilty, so far as regards the proceedings on the indictment.

“It is a confession only for the purposes of the criminal prosecution, and does not bind the defendant in a civil suit for the same wrong. *Whart. Cr. Pl. & Pr.*, §418; *Bis. Cr. Pro.*, §802.

40 “A judgment founded on a plea of guilty, or of *nolo contendere*, is in like manner conclusive

in a subsequent criminal prosecution, but in civil suits it is not such an admission of guilt as to be evidence against the party pleading it. 2 *Whart. Ev.*, §783.

“In *Commonwealth vs. Horton*, 9 Pick., 206, it is held that a plea of *nolo contendere* to an indictment has the same effect in the criminal trial itself as a plea of guilty, and sentence thereupon follows. 10

“In our Supreme Court, in a case decided in 1884, and not since called in question, it is held that a plea of *nolo contendere* is equivalent to a plea of guilty, the only difference in the significance of the two pleas being in the force each has upon a collateral proceeding. *Peacock vs. Hudson Sessions*, 17 Vroom., 112.

“The books agree that the only advantage the defendant obtained by this plea is that he is not estopped to set up his innocence in an action based upon the same facts. 2 *Hawk. P. C.*, 31, §3; 1 *Chit. Crim. L.*, §431. 20

“The defendant cannot plead this plea as of right, he must obtain the consent of the Court to do so, and the fact that he has pleaded *non vult* presupposes that he had obtained leave of the Court to enter such plea.

“The question whether the defendant had pleaded *non vult* was equally competent with the question whether he had pleaded guilty.” 30

It is thus settled that in civil suits at least such a plea is not such an admission of guilt as to be evidence against the party pleading it, and that the party so pleading is not estopped to set up his innocence in an action based upon the same facts.

Justice Van Syckle in his opinion in the *Henson* case refers to 2 *Hawkins Pleas of the Crown*, chap. 31 and 1 *Chitty's Criminal Law*, page 431. 40

In 1 *Chitty's Criminal Law*, page 431, it is said, in speaking of the plea of *non vult*:

"The difference in effect between an implied and an expressed confession is that after the latter, not guilty cannot be pleaded to an action of trespass for the same injury; whereas it may at any time be done after the former."

10

In 2 *Hawk. P. C. Ch.*, 31, the author says, in speaking of pleas of confession:

"An implied confession is where a defendant in a case not capital, doth not directly own himself guilty, but in the manner admits it by yielding to the king's mercy, in which case, if the Court think fit to accept such submission, and make an entry that the defendant *posuit se in gratiam regis*, without putting him to a direct confession on plea (which in such cases seems to be left to discretion), the defendant shall not be estopped to plead not guilty to an action of the same fact, as shall be where the entry is *quod indictamnitum*."

20

If, therefore, the defendant, who pleads *non vult* may plead not guilty in an action for trespass for the same injury, as Chitty says; and is not estopped to plead not guilty to an action of the same fact, as Hawkins says, *a fortiori* he ought to be permitted when testifying and confronted with his plea of *non vult* to explain what he meant by such plea.

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We respectfully say that the record sent up contains errors material and damaging to the defendant Scarlett and that the judgment of the Supreme Court and the conviction should be set aside.

Respectfully submitted,

MCCARTER & ENGLISH,
Attorneys for John B. Scarlett,
Plaintiff-in-Error.

40

CONOVER ENGLISH,
of Counsel.

