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Writ of Error.

Filed.

New Jersey, *ss.*

The State of New Jersey to the Chief Justice and Associated Justices
[L. S.] of the Supreme Court of the State of New Jersey: Because in the judgment 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 said John B. Scarlett, on the seventeenth day of March, in the year of our Lord one thousand nine hundred and thirteen, with force and arms at the city aforesaid, in the county aforesaid and within the jurisdiction of this Court, being then and there a director of the Roseville Trust Co., a trust company organized and existing under the laws of the State of New Jersey and a depositor in and having an account with the said Roseville Trust Company, unlawfully, wilfully and knowingly, for his own private use and benefit, did overdraw his said account with said Roseville Trust Company in the sum of Three Hundred and Fifty Dollars, by then and there wilfully and knowingly withdrawing from the said Roseville Trust Company, by means of a bank check dated March 17th, one thousand nine hundred and thirteen, drawn upon said Roseville Trust Company, payable to the order of John B. Scarlett, for the sum of Three Hundred and Fifty Dollars, signed by him, the said John B. Scarlett, the said John B. Scarlett then and there well knowing that he did not have to his credit with said Roseville Trust Company moneys to the

amount of Three Hundred and Fifty Dollars, with the intent to defraud the said Roseville Trust Company; 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 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 Appeals, in the last resort in all causes, to be holden at Trenton, on the twelfth day of December 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 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 twenty-third day of November, nineteen hundred and sixteen.

THOMAS F. MARTIN,
Clerk.

McCARTER & ENGLISH,
Attorneys of Plaintiff in Error.

Supreme Court

of the

State of New Jersey

THE STATE, Defendant in Error, vs. JOHN B. SCARLETT, Plaintiff in Error.	On Indictment for Misdemeanor.

Writ of Error

(Filed, December 4, 1915)

New Jersey, to wit:

The State of New Jersey to William P. Martin and Harry V. Osborne, Judges of the Common Pleas of the (L.S.) County of Essex, constituting the Court of Oyer & Terminer, holden at Newark, in and for the County of Essex, of the Term of December, in the year of our Lord One thousand Nine Hundred and Fourteen.

Because in the record and proceedings, and also in giving of judgment upon a certain indictment

against John B. Scarlett, of the City of Newark, in the Conty of Essex, for that John B. Scarlett, late of the City of Newark, in the County of Essex aforesaid, on the seventeenth day of March, in the year of our Lord one thousand nine hundred and thirteen, with force and arms at the city aforesaid, in the county aforesaid and within the jurisdiction of this Court, being then and there a Director of the Roseville Trust Company, a Trust Company organized and existing under the Laws of the State of New Jersey and a depositor in and having an account with the said Roseville Trust Company, unlawfully, wilfully and knowingly, for his own private use and benefit, did overdraw his said account with said Roseville Trust Compaiy in the sum of Three Hundred and Fifty Dollars, by then and there wilfully and knowingly withdrawing from the said Roseville Trust Company, by means of a bank check dated March seventeenth, one thousand nine hundred and thirteen, drawn upon said Roseville Trust Company, payable to the order of John B. Scarlett, for the sum of Three Hundred and Fifty Dollars, signed by him, the said John B. Scarlett, the said John B. Scarlett then and there well knowing that he did not have to his credit with said Roseville Trust Company moneys to the amount of Three Hundred and Fifty Dollars, with the intent to defraud the said Roseville Trust Company.

Whereof before you he has been indicted and is thereof convicted by a certain jury of the County taken between the State of New Jersey and the said John B. Scarlett, as it is said, manifest error hath intervened to the great damage of the said John B. Scarlett, as from his compalint

we have received information; we being willing in his behalf 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 touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the 2d 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 14th day of May, in the year of our Lord One Thousand Nine Hundred and Fifteen.

McCARTER & ENGLISH,
Attorneys.

Clerk.

Judgment Record

(Filed, December 4, 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 in December, in the year of Our Lord, one thousand

nine hundred and thirteen, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by oath of Christian W. Feigenspan, John P. Fannan, John H. Ely, Joseph Horwietz, William Arthur, John A. Cohane, Jacob Meyer, John McCarthy, Ernest Hirschoff, Thomas J. Kenny, Gustav Jay, James A. Wormley, James M. Belson, John Enstice, William H. Roemer, Jacob Holle, Jr., John Harrold, David C. Seymour, Mortimer C. Newman, Henry Sternberger, Timothy J. Faughnan, Isaac Roth and 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 OYER AND 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 County of Essex, upon their oath Present that John B. Scarlett, late of the City of Newark, in the County of Essex aforesaid, on the seventeenth day of March, in the year of Our Lord one thousand nine hundred and thirteen, with force and arms at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, being then and there a Director of Roseville Trust

Company, a trust company organized and existing under the laws of the State of New Jersey, and a depositor in and having an account with said Roseville Trust Company, unlawfully, wilfully and knowingly, for his own private use and benefit, did overdraw his said account with said Roseville Trust Company in the sum of three hundred and fifty dollars, by then and there wilfully and knowingly withdrawing from said Roseville Trust Company by means of a bank check dated March seventeenth, nineteen hundred and thirteen, drawn upon said Roseville Trust Company, payable to the order of John B. Scarlett, for the sum of three hundred and fifty dollars, signed by him, the said John B. Scarlett, the said John B. Scarlett then and there well knowing that he did not have to his credit with said Roseville Trust Company moneys to the amount of three hundred and fifty dollars, with intent to defraud said Roseville Trust Company—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.

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 the 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.

Judgment Record

And afterwards, that is to say, on the thirty-first day of January, Nineteen Hundred and fourteen, at the Court of Oyer and Terminer, holden in Newark, in and for the County of Essex, before the Honorable Harry V. Osborne, presiding judge of the Court of Oyer and Terminer, John 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 being 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, etc., and Louis Hood, Prosecutor of the 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 at Newark, in 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 aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said John B. Scarlett, to recognize upon their oath whether the said John B. Scarlett is Guilty of the premises in the said indictment specified or Not Guilty because the said Frederick F. Guild, Esq., Prosecutor, as the said John B. Scarlett puts himself upon the jury and the same time is given to the parties aforesaid, at the same place.

Judgment Record

And afterwards, that is to say, on the fifteenth day of March, A. D., Nineteen hudred and fifteen, to which day the trial of said defendant was postponed, 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 same John B. Scarlett and the jury of who 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—By the State, eight jurors; by the defendant, ten jurors), Joseph A. Carroll, Edward McDermott, John P. Phillips, Edgar A. Arthur, Charles Anderson, Marcus Jacobs, Edward C. Petrie, Theodore Ames, William Clark, Edwin D. Harrison, George W. Ross, and Raymond R. Boice, being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until March 31st, A. D., 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 the Court now here fully understood, it is, on this fourteenth day of March, A. D. 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, and stand committed until the costs are paid which said costs are taxed by the Clerk at the sum of Two Hundred and Ninety Dollars and Eighty-one cents.

And the said defendant be in mercy, etc.

Return

(Filed, December 4, 1915)

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

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

In Witness Whereof, I have hereunto set my hand and the official seal of said county at Newark, N. J., this 2d day of June, A. D., 1915.

(Seal)

H. V. OSBORNE, J.

Return

NEW JERSEY SUPREME COURT

THE STATE,
Prosecutor,
v.
JOHN B. SCARLETT,
Defendant.

WRIT OF ERROR

Returnable June 2d, 1915.

McCarter & English,
Attorneys of Defendants,
765 Broad Street, Newark, N. J.

Signed and sealed May 14, 1915 3 p. m.

Presented in open Court this fourteenth day of May, 1915.
H. V. OSBORNE, J.

Testimony

ESSEX COUNTY OYER AND TERMINER

Monday, March 15, 1915.

STATE, vs. JOHN B. SCARLETT.	Indictment No. 396, December Term, 1914. Misdemeanor.

Before: HON. HARRY V. OSBORNE, Judge, and a Jury.

For the State appears Frederic F. Guild, Esq., Prosecutor of the Pleas and Wilbur A. Mott, Esq., First Assistant Prosecutor of the Pleas.

For the defendant appear Messrs. McCarter & English, by Conover English, Esq., and Augustus C. Studer, Esq.

Mr. Guild opens for the State.

Mr. Guild: I offer in evidence, if the Court please, a certified copy from the Commissioner of Banking & Insurance of the authority of the Roseville Trust Company to conduct business.

Mr. English: That is signed by the deputy.

Mr. Guild: Well, we put it in.

Mr. English: The certificate is signed by the deputy and not the commissioner. I don't know whether he has the same authority to sign a certificate or not.

The Court: I will admit it.

Marked Exhibit S-1.

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. Guild: If the Court please, there is produced here a copy of the certificate of incorporation of the Roseville Trust Company, which has been recorded in the office of the County Clerk. It is not signed, as it should be, by the Commissioner of Banking & Insurance.

Mr. English: Was it filed in the Clerk's office when the original went to Trenton?

Mr. Guild: Yes.

Mr. English: I have no objection.

Mr. Guild: It will go in with the same force and effect as though it were officialy authenticated.

Marked Exhibit S-2.

LA RUE VREDENBURGH, sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. Mr. Vredenburgh, are you connected with the Department of Banking & Insurance of this state? A. I am one of the examiners, and I am also special assistant deputy commissioner in charge of the Roseville Trust Company.

Q. You were asked to produce here today the oath of John B. Scarlett as a director of the Roseville Trust Company from the files of the banking department. A. I was, and it was forwarded to me to be exibited today.

Q. Do you now produce it? A. I do, by identification of the filing slip of the department.

Q. Under what date is it sworn to by Mr. Scarlett? A. February 3, 1913.

Q. What is the name attached to the oath? A. As having taken the oath?

Q. Yes. A. Signed "John B. Scarlett."

Q. Sworn to what date? A. February 5, 1913.

Q. And filed in the office of the banking department? A. February 5, 1913.

Mr. Guild: I offer it in evidence.

Mr. English: I would like to cross-examine on that.

CROSS-EXAMINATION by Mr. English:

Q. Did you know Mr. Scarlett's signature? A. I have become rather familiar with it.

Q. Did you know it prior to February 3, 1913? A. No.

Q. Have you ever seen him write before? A. No.

Q. So you don't know whether it is his signature or not? A. I feel pretty confident of it. I have seen a good many of his signatures in the course of my work there.

Q. Since this date? A. No, some of them dated before that, I think likely notes, checks.

Q. Have you ever seen him write at any time? A. No.

Q. All you know is that you have seen signatures which you understand are the signatures of John B. Scarlett? A. I don't recall now any particular instance, only a purported signature of his or acknowledged by him.

Mr. English: Mr. Scarlett says this is his signature. I don't think the witness has proved it, but I am willing to concede that it is his signature.

The Court: I think the official record is *prima facie* evidence of the correctness of what is contains.

Marked Exhibit S-3.

Mr. English: Have you the letter of February 3, 1913?

Mr. Guild: You just served us with a notice this morning.

Q. Have you in your possession, or have you ever seen a letter from Mr. Scarlett to the directors of the Roseville Trust Company dated February 3, 1913?

Mr. Mott: I object to that. I don't see how it is cross-examination. I shall object to the letter being shown to the witness unless the Court rules it has something to do with the direct-examination.

The Court: The witness is not going into the contents of the letter on the record. I understand that is not the purpose of this offer. It is merely to identify this piece of paper. The objection is overruled.

(Question read.)

A. I am not sure.

Q. Let me show you what purports to be a copy of the letter I speak of and see if that will refresh you recollection. A. I cannot identify that paper as one that I have seen; I may have seen it some time—I don't know.

Q. Have you in your possession all the old records of the Roseville Trust Company? A. I have all there were at the time I took charge.

Q. Will you be good enough to search and see if you can find this letter or have some body search for you? A. That is a matter of a week.

Q. It need not necessarily be a week. A. It will probably take a week.

Q. I didn't ask you to estimate the time; I asked you if you would be good enough to see if you can find the original of this letter in the records of the Roseville Trust Company? A. I haven't any one to put at that work, no one in my employ.

Q. Where are those records? A. Some of them are here in the court house, some are in the vault of the Roseville Trust Company.

Q. Can't you have those in the court house investigated right away?

The Court: Have you served a demand?

Mr. English: Yes, this morning.

The Court: That ought to meet the situation. The question is whether you have any right to request this witness to do some work for you.

Mr. English: I won't press the witness any further. I ask the State if they won't kindly look through their records or the records of Mr. Vredenburgh and see if they cannot find the original of this letter.

The Court: I cannot see how it is relevant cross-examination on the direct-examination.

RAYMOND E. SMITH, sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. Mr. Smith, were you formerly connected

officially with the Roseville Trust Company of Newark? A. I was, yes, sir.

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

Q. As secretary was it part of you duty to keep the minutes of the meetings of the trust company and the board of directors? A. It was, sir.

Q. Have you before you a copy of the minutes of the trust company and of the board of directors? A. I recognize a book as the minute book, yes.

Q. Will you turn to the minute book showing the last election of John B. Scarlett as a director of the Roseville Trust Company? A. Yes, sir. (After examining book.) These are the minutes of the annual meeting of the Roseville Trust Company held January 14, 1913.

Q. And was John B. Scarlett elected director at that meeting? A. Yes.

Q. A meeting of the stockholders? A. Yes, sir.

Q. You kept the minutes? A. I did.

Q. How long did he continue to act and serve as director after that date? A. He continued as a director until the company was closed, the doors of the bank closed.

Q. And that was what date? A. August 14, 1913.

Mr. Guild: I offer the book in evidence.

Mr. English: I would like to cross-examine on that.

CROSS-EXAMINATION by Mr. English:

Q. Find the place.

Mr. Guild: That part of it that relates to the minutes of that date, not the entire book.

Q. Mr. Smith, is this your signature on this page (indicating)? A. Yes, sir.

Q. How were the minutes made up—you didn't personally typewrite them, did you? A. No, sir.

Q. Were they made up from notes which you took or how? A. Yes, sir; made up from notes that I took at the meeting.

Q. And afterwards written out in the bank? A. Yes, sir.

Q. When did you sign them? A. After they were typewritten.

Q. Do you know when that was? A. I don't remember—probably the day after the meeting.

Q. You don't know about that? A. I couldn't say positively exactly the date, no, sir.

Q. You say that Mr. Scarlett continued as a director until the following August. Did you, as secretray, receive a letter from him dated, February 3, 1913, tendering his resignation? A. I don't remember such letter at the present time.

Q. Do you say you did not receive it? A. I said I don't remember such a letter at the present time.

Q. I understand what you say, but I asked you whether you can say you did not receive it? A. I couldn't say.

Q. Let me show you a copy of this letter and see if that will refresh your recollection. A. I don't remember of having received such a letter.

Q. You don't remember the fact, though, that Mr. Scarlett tendered his resignation as a director, do you not? A. No. sir.

Q. Don't remember that? A. No, sir.

The Court: What was the date of that letter?

Mr. English: February 3, 1913, the same letter I referred to before.

Q. Don't you remember that Mr. Scarlett was unwilling to stand for a reelection and so stated to you prior to this meeting, but at your request he permitted his name to be placed before the stockholders? A. I don't remember.

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

Q. Do you remember that Mr. William A. Banister expressed a similar desire? Does that refresh your recollection? A. I remember that Mr. Banister expressed such a desire, yes, sir.

Q. But you can't remember Mr. Scarlett's connection with it? A. No.

Q. Was it customary for you as secretary to send out notices of the meeting to the directors? A. It was, yes, sir.

Q. Did you send out notice to Mr. Scarlett after the receipt of this letter or after the date of February 3, 1913? A. I think so.

Q. You say you think so—have you got any records to indicate it? A. No, sir; I have not.

Q. Is your recollection any better about that than any of the other things you testified to this morning? A. I don't remember sending Mr. Scarlett any notice of any meeting except as a regular form that we sent out to all of our directors.

Q. Did you personally attend to that? A. I did.

Q. You mailed the letter yourself? A. No, sir.

Q. When you say you attended to it, you mean it was under your instruction? A. Yes, sir.

Q. And you haven't any recollection about

a notice to Mr. Scarlett one way or the other? A. I haven't any special recollection of that, no, sir.

Q. You have been indicted in connection with this Roseville matter, have you not? A. Yes, sir.

Q. And you pleaded *non vult?* A. Yes, sir.

Q. You are not serving a term in prison? A. Yes, sir.

Q. You are now under sentence in State's prison? A. I am.

Q. You are here in Newark by the authority of the State to testify in this case? A. Yes, sir.

Q. Otherwise you would be in the State prison at Trenton? A. Yes, sir.

Q. How many indictments did you plead *non vult* to? A. I don't remember.

Q. A large number? A. Yes, sir.

Q. For embezzling how many thousand of dollars? A. I couldn't tell you.

Q. A great many thousands, was it not? A. I don't know.

Q. When you say you don't know, you mean you don't know how many thousands you pleaded *non vult* to, how many thousands you embezzled? A. I don't know the amount of money stipulated in the indictment to which I pleaded.

Q. Do you know how many thousands of dollars you embezzled?

Objected to.

Objection sustained.

Q. Have you been promised any mercy for testifying here? A. None whatever.

Q. How long have you been in Newark and away from the State prison prior to today in connection with the preparation of this case?

Objected to as immaterial.

The Court: I cannot see the materiality.

Mr. English: His interest here.

The Court: How can that affect his interests? It is so remote that I will exclude it. 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. OSBORNE,
Judge.

(Seal)

Q. Was there a record kept of the names of directors to whom notices were sent?

Mr. Guild: I think he has answered that question.

Mr. English: I asked him if such a list was kept.

Q. Was there a record or list kept of the names of directors to whom notices were sent after the meeting about which you have been asked? A. I don't know of any list. It was generally known—

Q. I don't care about what was generally known; I want to know if there was a list preserved in the bank? A. As a rule there was a copy of the letter sent out.

Q. Was that rule pursued after February 3, 1913? A. You mean board meetings or elections?

Q. You say it was customary to send notices to directors. A. Yes, sir.

Q. I want to know if there was any record kept

of notices sent out, kept by the bank? A. Yes, sir.

Q. There was such a record? A. Yes, sir.

Q. Did that purport to show copies of the letters as mailed to the directors? A. A copy of the letter kept.

Q. Was that rule persued? A. Yes, sir.

Q. And that rule was pursued after that date, and by that you mean February 3, 1913? A. Yes, sir.

Q. And a copy of each letter to each director was kept? A. Yes, sir.

Q. Was there any statement or affidavit kept of the mailing of the letters by the persons mailing them? A. No, sir.

Q. Who did mail them—whose duty was that? A. The stenographer at the time.

Q. A man or woman stenographer? A. Woman stenographer.

Q. What was her name? A. Miss Ida Hicks.

Q. Was she with the bank from January on to the closing of the bank in August following? A. No, sir.

Q. When did she leave? A. Some time in July, I think.

Q. Do you know where she is now? A. I do not.

Q. Where did she live when she worked for the bank? A. I don't know that I know the street; I think it is Eighteenth Street near South Orange Avenue.

Q. Newark? A. Yes, sir.

Mr. Guild. I offer the minutes appearing on page 426 and 427, minutes of

the annual meeting of the Roseville Trust Company. It is headed January 13, 1913. Marked Exhibit S-4.

CHARLES MINDNICH sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. Mr. Mindnich, you were formerly in the service of the Roseville Trust Company? A. Yes, sir.

Q. When did you go there first? A. I think it was in April, 1910.

Q. How long did you remain there? A. I was there until the bank closed on August 13th.

Q. What was your position there? A. Bookkeeper.

Q. And as bookkeeper did you have charge of the ledger account of depositors? A. Yes, sir.

Q. Right up to the end of your service there? A. Well, not—I should say about two or three weeks before the bank closed I was bookkeeper.

Q. Will you please examine the large book that is in front of you and tell us what it is? A. That is the ledger of the Roseville Trust Company.

Q. Ledger showing what? A. Showing the accounts from the letter N to the letter Z.

Q. Accounts of depositors? A. Yes, sir.

Q. Is there a deposit account of John B. Sarlett? A. Yes, sir.

Q. When was it opened? A. July 30, 1909.

Q. And it was continued to what date, so far as appears in this record? A. July 26, 1913.

Q. What do you say is the last date there? A. July 26, 1913.

Q. As shown by that ledger, what was the condition of John B. Scarlett's account on March 17, 1913, as showing the amount of money that was to his credit in the trust company? A. I think that the ledger shows a balance of $1.30.

Q. You say you think? A. I can't make out some of the dates here.

Mr. English: I move to strike that out. In a case of this importance we ought to have something better than a guess.

The Court: Strike out the statement of the witness as to what he thinks.

Q. Having examined that a little more carefully, what do you say as to the balance on March 17, 1913? A. The ledger shows a balance of $1.30.

Q. Down to the date of closing of that account as shown by the ledger, was that balance changed? A. No, sir.

Q. A check drawn on the Roseville Trust Company by a depositor—

By the Court: Q. Let me interrupt you. You say it was not changed down to the date of closing the account? A. There was a $300 credit and a $300 debit, but the balance is the same at the end.

Q. Then you don't mean that it was not changed during all that period from the 17th to March 26th? A. There was a change, yes, sir. The balance is the same now as it was at that time.

By Mr. Guild: Q. You spoke of a $300 deposit. According to the ledger, when does it show the deposit was made? A. December 23d.

Q. What year? A. 1913.

Q. Oh, no.

The Court: Just look again. Be careful about your answers.

Witness: Oh, December 23, 1912, it was.

Q. So that the $300 was prior to the date of this check? A. It is March 17, 1913, yes, sir.

The Court: Will you listen to the Prosecutor's question and then state whether there was any change in the account from the 17th of March to the date of the closing of the account on the 26th of July?

Witness: There was no change.

The Court: There was no debits and no credits?

Witness: No, sir.

Q. A check drawn by a depositor in the Roseville Trust Company that was deposited in some other bank, how did that check—what was the usual course that that check took to get that to the Roseville Trust Company? A. That check came up to the Roseville Trust Company in the exchanges.

Q. Will you explain that for the benefit of the jury? They are not all banking men, probably.

Mr. English: This is a check drawn on the Roseville deposit in some other bank?

Mr. Guild: Yes.

A. If a man that cashes a check say, for instance, on a bank down town that is drawn on the Roseville Trust Company, they will probably pay him that check down there if they know him, and then that check will come up as a debit against our bank in the exchanges the next morning.

Q. Through what bank did the Roseville Trust Company clear in Newark? A. Through the Union National Bank.

Q. Checks that came in through the exchanges, checks on the Roseville Trust Company, was a part of your duty to examine those checks? A. Well, I would look—sometimes I would look at the date, and always looked at the endorsements, as a rule.

Q. Would you compare those checks with the ledger to see whether they were good? A. Not until I came to the account. They were sorted out in alphabetical order, the checks were.

Q. Would you eventually check it up?

Mr. English: Well, the general custom is material, in a usual case; I don't think it ought to be in this case, because it is a well known fact, following the Armstrong case, that the usual banking method was not pursued by this banker as the other trust companies.

The Court: He has been asked about the custom in his bank, which may not, as you say, follow the general banking custom. There may be phases of the case, which for the proper understanding of it, we ought to know what the custom of the bank is.

Mr. English. He is speaking of something that he would do in this particular bank.

The Court. He is just telling us what the custom of this bank is. Objection overruled.

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)

(Question read).

A. What do you mean, Mr. Guild?

Q. To see whether the check was good. A. Certainly.

Q. If the check wasn't good what became of the check? A. It was thrown out.

Q. What do you mean by thrown out? A. We had a desk there for what we called not good items or returned items, if they were returned for any particular reason, say for mistakes of endorsement or not being good.

Q. I show you check dated Newark, N. J., March 17, 1913, No. 54, check signed by John B. Scarlett to the order of John B. Scarlett for $350 and I ask you if you have ever seen that check before? A. I can't remember at present whether I have ever seen it before.

Q. Is that check certified? A. Yes, sir, by R. E. Smith.

Q. What is the stamp on it, the certification? A. Certified—

Mr. English: I object to that. The check speaks for itself after it goes in evidence.

The Court: Objection sustained.

Mr. Guild: I ask to have the check marked for identification.

Marked Exhibit S5 for identification.

CROSS EXAMINATION by Mr. English: Q. How old are you, Mr. Mindnich? A. I am now twenty-two years old.

Q. How long did you work in the bank? A. From April 21, 191, up to the time it closed.

Q. So you were about twenty years old back in 1912 and 1913? A. Yes, sir.

Q. At the time of these transactions? A. Yes, sir.

Q. What was your position in the bank? A. I was bookkeper.

Q. First bookkeeper, second bookkeeper, or what? A. Well, we only had one bookkeeper at that time.

Q. Were you the bookkeeper then? A. Yes, sir.

Q. Did any body else keep any of the books? A. What do you mean?

Q. Just what I say, did anybody else keep any of the books? A. We had an assistant bookkeeper.

Q. Who was that? A. Well, we had several of them; we had one by the name of Murray and another young lad by the name of Brennan.

Q. Were you ever assistant bookkeeper? A. Yes, sir.

Q. How long? A. I can't remember how long.

Q. Prior to the date of this entry in the ledger of March 17, 1913?

Mr. Guild: There is not any such entry in the ledger.

Q. I will reframe the question. How long prior to March 17, 1913, had you been assistant bookkeeper? A. (Witness pauses.)

Q. Well, do you know? A. I can't tell you any definite date, no, sir.

Q. In March, 1913, were you the real bookkeeper? A. I believe I was, yes, sir.

Q. Who was assisting you? A. Mr. Murray.

Q. What is his full name? A. Cornelius, I believe, Cornelius Murray.

Q. Did you make all the enties in your handwriting in this ledger which you produce here showing the account John B. Scarlett? A. No, sir.

Q. This is what you all the individual ledger? A. Yes, sir.

Q. Supposed to show the individual accounts? A. Yes, sir.

Q. And it is supposed to show all deposits which the individual makes? A. Yes, sir.

Q. And all drafts against his account? A. Yes, sir.

Q. Who did make the entries if you didn't? A. Mr. Thompson has some writing in this ledger.

Q. What is his name? A. William J. Thompson.

Q. Who made the initial entry of July 30, 1909? A. Mr. Thompson.

Q. Who else's handwriting is on this account besides Mr. Thompson's and yourself? A. Mr. Brennan.

Q. What is the name? A. Michael Brennan.

Q. What was he in the bank? A. He was bookkeeper, from, I think, the first or second week in July up until the time the bank closed.

Q. He was only a few days? A. Yes, sir.

Q. Where do his entries come in? A. He balanced the book on July 26th, I believe.

Q. That is all there is in his handwriting? A. Yes, sir.

Q. Then the rest of it, except this showing the balance in 1913, July 30th, is in your handwriting and that of Mr. Thompson's, the teller, is that correct? A. Yes, sir, as far as I could see.

Q. Where does Mr. Thompson leave off and you begin in the handwriting? A. The last time Mr. Thompson made an entry that appears here is July 22, 1912.

Q. Had you made any entry before that date? A. Yes, sir.

Q. And you both had been working on it before that? A. Yes, sir.

Q. And that was true, you both worked on it intermittently? A. Mr. Thompson had charge of a window every Saturday morning, the receiving teller's window, and I ran the ledger on Saturdays.

Q. And the rest of the time he made the entries? A. Yes, sir.

Q. Who had charge of that ledger other days than Saturdays? A. Mr. Jennings.

Q. Did you have charge of any window? A. A few days before the bank closed I had the receiving teller's window.

Q. The custom in a bank when a depositor has an account there is to credit his account with all moneys which he deposits; is that correct?

Mr. Guild: I object. Counsel objected my asking what the bank did generally.

Mr. English: No, I didn't. I objected to the custom of this particular bank.

The Court: Do you mean a bank or the bank?

Mr. English: I mean a bank.

The Court: I think the direct examination was directed to the custom of this particular bank.

Mr. English: I think it was, partly, that is what I objected to. He was talking about banks abstractly.

(Question read.)

A. Yes, sir.

Q. And it is also the custom to charge or debit his account with all moneys which he draws out; is that correct? A. Yes, sir.

Q. Was that done in connection with the account of John B. Scarlett in the Roseville Trust Company? A. I think not.

Q. That account, in other words, is not accurate as showing the true account of John B. Scarlett, as showing the account in the ledger? A. I believe it is not.

Q. You know it is not, don't you? A. Yes, sir, I do.

Q. By whose direction were those inaccuracies put in there or by whose direction were entries which should have been made and do not appear left out? A. Well, you see, if I didn't receive a check against the account I couldn't charge it up. The same with a deposit, if I didn't get the deposit ticket I couldn't enter it on the ledger.

Q. Then the custom in the bank is when a deposit it made to have a deposit ticket made out? A. Yes, sir.

Q. And that comes in the receiving teller's window? A. Yes, sir.

Q. After the receiving teller gets the check and

the deposit slip what ordinarily is done with them? A. They are handed over to the bookkeper.

Q. That being yourself? A. Yes, sir.

Q. Were those deposits generally handed over to the bookkeeper in the Roseville Trust Company? A. I believe not.

Q. Do you know they were not? A. Yes, sir.

Q. That was true of Mr. Scarlett's account? A. Yes, sir.

Q. So that the ledger acount does not show all the deposits which were actually made to the account of John B. Scarlett; is that true? A. Yes, sir.

Q. By whose direction did the teller withhold delivering over to you the deposit slip? A. I wouldn't know that. You would have to ask the teller that.

Q. Mr. Smith, wasn't it? A. I think it was.

Q. You know it was, don't you? A. Well, I didn't hear him tell him.

Q. Mr. Smith ran that bank?

Mr. Mott: I ask to have that answer stricken out, as it appears that the witness has no knowledge as to Mr. Smith's direction.

The Court: Yes, he doesn't say; he only thinks it was Mr. Smith.

Mr. English: He was right there in the bank and he certainly knows what went on in the bank.

The Court: Strike it out.

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. Mr. Smith was the officer in charge of that bank? A. Yes, sir.

Q. No other officer of the bank paid any attention to its management, did they—I mean, were not there all the time? A. I believe Mr. Foster was there for a while before the bank closed, I should say a month or two before.

Q. Mr. Smith was the officer in charge of the bank? A. Yes, sir.

Q. He was treasurer? A. And secretary.

Q. And the clerks in the bank took their orders from him, did they not? A. Yes, sir.

Q. And what he said went? A. Well, he was the officer in charge.

Q. What he said went, didn't it? A. Yes, sir.

Q. In other words the clerks did as Mr. Smith told them to do; is that correct? A. Yes, sir.

Q. And you did? A. Yes, sir.

Q. If there are no entries or credits on that ledger—I mean credits of Mr. Scarlett—it was because no deposit slip was received by you containing any such deposit if it was, in fact, made; isn't that the reason? A. Yes, sir.

Mr. English: I noticed the State to produce the deposit slips to the credit of John B. Scarlett.

Mr. Guild: We have them here with the exception of one, I understand.

Mr. English: You produce now the de-

posit slips showing deposits to the credit of John B. Scarlett at my request?

Mr. Guild: As far as we can find them.

Q. Mr. Mindnich, I hold in my hand the deposit slips produced by the prosecutor. Look at the prosecutor. Look at the record and go over it and tell me whether all of the deposits as shown on the slips appear on the ledger? The first is July 30, 1909, $1200; May 23, 1910, $2150. A. It is May 24th here.

Q. It is scratched over. $2150? A. Correct.

Q. Are there any deposits noted there between those dates? A. Only interest items.

Q. September 9, 1910, $200? A. Correct.

Q. Is there any deposit noted in between those two? A. Interest items.

Q. Anything else? A. No, sir.

Q. September 13, 1910, $10,000? A. Correct.

Q. Anything in between that and the previous deposit? A. No.

Q. November 22, 1911, or 10, which is that—1910, $2000?

Mr. Guild: I think there is a duplicate deposit slip there.

Q. November 22, 1910, $2000, anything between that and the previous credit? A. Yes.

Q. What? A. Why, interest items.

Q. November 23, 1910, $1960. A. Correct.

Q. Anything in between that deposit? A. No, sir.

Q. December 8, 1910, $1000? A. Correct.

Q. Anything between that and the previous item? A. One interest item.

Q. December 12, 1910, $425? A. Correct.

Q. Anything in between that and the previous deposits? A. No, sir.

Q. December 13, 1908, $625? A. Yes, sir.

Q. Anything between that and the previous deposit? A. Yes, sir.

Q. What? A. $450.

Q. $450 under what date? A. The same day.

Q. Dec. 30, 1913? A. Yes, sir, there is a cross alongside of it.

Q. December 19, 1910, $1200. Does that appear? A. Yes, sir.

Q. Any entry between that and the one dated December 13, 1910, except the $450 item? A. No, sir.

Q. December 19, 1910, $150? A. Correct.

Q. Anything between that and the previous deposit? A. No, sir.

Q. December 22, 1910, $1200? A. Correct.

Q. Anything between that and the pevious deposit? A. No. The book was balanced. It doesn't make any difference.

Q. What day was it balanced? A. The 20th of December.

Q. What year? A. 1910.

Q. December 31, 1910, $805. A. Correct.

Q. Anything between that and the previous deposit? A. No, sir.

Q. January 16, 1911, $2900; is that there? A. Yes, sir.

Q. Anything between that and the previous deposit? A. No, sir.

Q. January 18, 1911, $4000? A. Correct.

Q. Anything between that and the previous deposit? A. No, sir.

Q. January 26, 1911, 1911, $1000; is that there? A. Yes, sir.

Q. Anything between that and the previous deposit? A. No, sir.

Q. March 3, 1911, $2700? A. Not March 3d.

Q. February 3d, is it—what is it? A. March 13th.

Q. March 13th, 1911, $2700; that is there? A. Yes, sir.

Q. Anything between that and the previous deposit? A. No, sir.

Q. March 21, 1911, $1960. A. Correct.

Q. Anything between that and the previous deposit? A. No, sir.

Q. April 1, 1911, $1200? A. Correct.

Q. Anything between that and the previous deposit? A. No, sir.

Q. April 6, 1911, $1500? A. Correct.

Q. Anything between that and the previous deposit? A. No, sir.

Q. April 28th, 1911, $1500? A. Correct.

Q. Anything between that and the previous deposit? A. No, sir.

Q. March 22, 1912, $1200? A. March 22d?

Q. That is what it looks to me like, 3/22; is that what it says? A. Yes.

Q. Anything between that and the previous deposit? A. Two of them—wait a minute—three deposits between.

Q. Three deposits between the deposit of April 28, 1911, and March 22, 1912? A. Yes, sir.

Q. Please give us the date and the amount of those deposits in between? A. What was the last one?

Q. The previous one was April 28, 1911. A. There is one for $525 on July 21st.

Q. What is the next? A. $1470, on the same day.

Q. What is next? A. One for $177 of November 22d.

Q. 1911? A. Yes, sir; and one other one on the same date for $1323.

Q. They all appear between the deposit slip dated April 28, 1911, and that dated March 22, 1912? A. Yes, sir.

Q. Is there a deposit on March 22d? A. Yes, sir; March 22d, $150.

Q. Is there anything between that one and the previous date of $1200? A. No, sir.

Q. Is there a deposit of July 12, 1912, of $150? A. July 12th—it is July 22d, $250.

Q. Anything between that and the previous item? A. No, sir.

Q. Is there a deposit on July 25, 1912, for $1-100? A. Not on the 25th.

Q. What date is this deposit slip I show you? A. 25th.

Q. There is nothing under that date? A. No, sir.

Q. What date is there an entry under? A. July 22d.

Q. 1912? A. Yes, sir.

Q. How much? A. $1100.

Q. Do you know in whose handwriting this last slip dated July 22, 1912, is? A. Mr. Jenning's handwriting.

Mr. English: I would like to have marked as one exhibit for identification

the bunch of deposit slips which have been checked off by the witness.

Marked Exhibit D1 for identification.

Mr. Guild: There are papers other than deposit slips.

Mr. English: I don't ask for them. Only the deposit slips.

Q. I want you to take this deposit slip in your hand and look at each one and tell me if you know the handwriting on any of them? You have already identified the last one as being in the handwriting of Mr. Jennings. A. Yes, sir. The first one, Mr. Jennings; second one is Mr. Scarlett's own handwriting.

Mr. Mott: Unless he identifies them how are we going to tell which are Mr. Scarlett's?

Mr. English: I would like to ask the State to produce the slip which was in the file and taken out by a representative of the prosecutor's office.

Mr. Guild: I decline to do that because it is a paper that belongs to my office and forms no record of the bank. It is a copy of a deposit slip and it was made in my office.

Mr. English: It appears from that checking which we have been doing with Mr. Mindnich that there are some deposits credited on the book or on the ledger account for which no deposit slip appears.

Q. How can you account for that? A. Probably lost.

Q. Is that the only explanation you can give?

A. It is the only one I know of yet, or else they would be there.

Q. Suppose that deposits were made that do not appear on the ledger account, how would you account for them? A. I don't know anything, about them.

Q. As a matter of fact, the books of the bank were more or less manipulated in the bank; isn't that true? A. I think so; yes, sir.

Q. You know that, don't you? A. Yes, sir.

Q. And it is a fact that the books of the bank did not show accurately deposits made or debits which were paid out; that is true? A. Yes, sir.

Q. And that is a possible explanation of the Scarlett account, is it not? A. Yes, sir.

Q. When a deposit was turned in with a deposit slip, in those cases where it was not turned over to the bookkeeper, what became of the slip, if you know? A. I don't know anything about that.

Q. Who does know, the teller who received the slip? A. Possibly.

Q. I show you again the list of deposit slips, you have already said that the one dated July 25, 1912, was in the handwriting of Mr. Jennings? A. Yes, sir.

The slip referred to is marked Exhibit D2 for identification.

Q. What is the amount of that? A. $1100, July 25, 1912.

Q. I show you the one dated July 30, 1909. In whose handwriting is that? A. Mr. Jennings.

Marked Exhibit D3 for identification.

Mr. Guild: What is the amount of it?

Witness: $1200.

Q. I ask you to look at the list of deposits and see if there are any other in the handwriting of Mr. Jennings? A. (Indicating.) That one.

Q. You produce the one of September 13, 1910, for $10,000? A. Yes, sir.

Q. Mr. Jenning's handwriting? A. Yes, sir.

Q. Do you find any other in the handwriting of Mr. Jennings? A. Those two.

Q. You hand me now one dated November 22, 1910, for $2000. A. Yes, sir.

Marked Exhibit D5 for identification.

Q. Also one dated November 23, 1910, for $1-960? A. Yes, sir.

Marked Exhibit D6 for identification.

Q. You also hand me one dated March 13, 1911, for $2700? A. Yes, sir.

Marked Exhibit D7 for identification.

Q. And you also hand me one dated March 21, 1911, for $1960? A. Yes, sir.

Marked Exhibit D8 for identification.

Q. Also one dated March 20, 1912, for $400. All these are in Mr. Jenning's handwriting? A. Yes, sir.

Marked Exhibit D9 for identification.

Q. That is all? A. Yes, sir, all of Mr. Jennings.

Q. Are there any there in the handwriting of anybody else in the bank? A. Yes, there is some here in Mr. Smith's handwriting.

Q. You hand me slips dated December 22, 1910, for $1200. You say that is in the handwriting of Mr. Smith? A. Yes, sir.

Marked Exhibit D10 for identification.

Q. Is there any other there in the handwrit-

ing of anybody else in the bank? A. All those there.

Q. Those which you hand me now are— A. Mr. Smith's handwriting.

Q. All in the handwriting of Mr. Smith? A. Yes, sir.

Q. January 26, 1911, $1000. A. Yes, sir.

Marked Exhibit D11 for identification.

Q. April 1, 1911, for $1200? A. Yes, sir.

Marked Exhibit D12 for identification.

Q. April 6, 1911, for $1500? A. Yes, sir.

Marked Exhibit D13 for identification.

Q. April 28, 1911, for $1500? A. Yes, sir.

Marked Exhibit D14 for identification.

Q. March 22, 1912, for $150. A. Yes, sir.

Marked Exhibit D15 for identification.

Q. And July 22, 1912, for $250. A. Yes, sir.

Marked Exhibit D16 for identification.

Q. Isn't it a fact that Mr. Smith manipulated the account of the trust company by sometimes crediting to one man's account moneys which had really been deposited to another's account?

Objected to as not cross examination.

Mr. Guild: He has only been asked about this account, not other people's accounts.

Mr. English: I think it was a little broader.

The Court: You may make him your own witness for this purpose.

Mr. English: My question is with reference to the account. I am not concerned with other people's accounts.

The Court: Your question is not directed to this account. Your question is directed with regard to other accounts.

Mr. English: I asked a general question for the purpose of following it up with a specific question.

The Court: 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. OSBORNE,
Judge.

(Seal)

Q. Didn't Mr. Smith, as a matter of fact, apply to the account of other depositors' moneys which were deposited to the account of John B. Scarlett? A. I believe he has, yes, sir.

Q. You know, as a matter of fact that he did, don't you? A. I think he has.

The Court: You say you do know, as a matter of fact, and then you say you believe and think?

The Witness: I think he was.

The Court: Do you know or do you not?

The Witness: Well, I know that he has misapplied money but I don't know whether it was Mr. Scarlett's money.

The Court: You are asked for your knowledge, you are not asked to give your opinion or your belief or your guesses and you should confine your answers to your knowledge of matters propounded in the question.

Q. Didn't you know, as a matter of fact, that Mr. Smith applied to the account of other depositors' moneys or checks which were, in fact, deposited to the account of John B. Scarlett?

(Witness pauses.) Can you answer the question? A. I am trying, your Honor, to answer it, I am thinking. Will you repeat the question?

(Question read.)

Witness: No, sir; I don't know that.

Q. When a deposit is presented by a depositor and his bank book is not produced, is it not customary to give him a duplicate deposit slip? A. In some cases it is, yes.

Q. And that is considered just as good a credit, or rather as good a receipt, from the bank as the entry in the pass book, isn't it? A. Yes, sir.

Q. So that if you were shown a duplicate deposit slip, properly signed and initialed, you would regard that just as binding upon the bank as the pass book entry, wouldn't you? A. Yes, sir.

Q. I show you here a deposit slip dated February 8, 1911, to the credit of John B. Scarlett for $5700 and marked "Dup." Under that "Roseville Trust Co.," and under that "J." I ask you if you can identify the handwriting "Dup." and "J"? A. Yes, sir.

Q. Whose handwriting is that? A. Mr. Jennings'.

Q. He was the receiving teller? A. Yes, sir.

Q. That is one of your regular deposit slips, is it not? A. Mr. Jennings didn't make out the deposit ticket.

Q. Isn't that one of your regular duplicate deposit slips? A. Yes, sir.

Q. And that means that there was received by the bank and should have been credited to John B. Scarlett $5700, does it not? A. Yes, sir.

Marked Exhibit D-17 for identification.

The Court: Look at the account and see if you can find any such entry there.

Q. Now, look at the individual ledger account of Mr. Scarlett's and see whether there is cred-

ited to him on the account under date of February 8, 1911, $5700? A. No, sir.

Q. It doesn't appear there? A. No, sir.

Q. I show you a check dated February 8, 1911, John B. Scarlett, to the order of John B. Scarlett, for $3000, certified by the National State Bank of Newark, endorsed "For deposit, Roseville Trust Company, John B. Scarlett," and bearing on the back in a red rubber stamp, "Pay to the order of any bank, banker or trust Co., February 8, 1911, restrictive endorsements guaranteed, Roseville Trust Co., Newark, N. J., Raymond E. Smith Treas," and I ask you whether that check went through your bank and was paid? A. It has been paid by the National State Bank and our endorsement of the Roseville Trust Company appears on the back of it.

Q. That means that the Roseville Trust Company got the money, does it not? A. Yes, sir.

Q. So it was paid and the money was paid to the Roseville Trust Company? A. Yes, sir.

Marked Exhibit D-18 for identification.

Q. I show you Exhibit D-18 and ask you to look at the duplicate deposit slip for D-17 identification, and the item on the deposit slip, $3000, and I ask you if the check bearing the same date, stamped for payment by the trust company of the same date is the $3000 check as caller for on that deposit slip? A. I couldn't tell you whether that is that particular check; I couldn't tell you that.

(Question read.)

Q. Can you answer that? A. I don't know.

Q. It appears that way on the face of it? A. I wouldn't say, no, sir.

Q. You wouldn't say it appears that way? A. The mere fact because there is a $3000 item does not necessarily say it is that same check.

Q. In the absence of any other deposit slip? A. It appears that way.

Q. The presumption is that it is called for by the deposit slip?

Objected to.

Objection sustained.

Q. If I produce to you a deposit slip dated February 8, 1911, showing, among other items, a deposit of $3000 to a given account, and also produce to you a check of the same date endorsed for deposit to that account and stamped on the back with the stamp of the Roseville Trust Company, in which the deposit was dated the same date, or February 8, 1911, and no other deposit slip of that date appears, would you or would you not say that the check referred to is presumably the same deposit as that appearing on the face of the deposit slip?

Mr. Guild: Objected to. It seems to me that that question is open to exactly the same objection as the other one.

Mr. English: He is qualified to answer that question.

The Court: It does not appear that he knows anything more of the custom of banks than he learned in the bank, and it is quite apparent from your examination that the custom of banks was not followed.

Mr. Guild: More than that. Isn't it a presumption? We cannot take this witness's presumption.

The Court: He might state what the probabilities are or what his opinion is.

I think that this question is objectionable.

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. English: Counsel objects to the word "presumption." I would like to frame another question.

Q. I show you a deposit slip, a duplicate deposit slip dated February 8, 1911, to the account of John B. Scarlett containing items among others, an item of $3000, and I show you a check of the same date for $3000, endorsed for deposit to the Scarlett account, also containing the endorsement of the Roseville Trust Company at the same date, and the check being stamped "Paid," and I ask you whether, in the absence of any other deposit slip being produced or any other check endorsed by the Roseville Trust Company of that date being produced, you can say whether or not the item on the deposit slip is the same as that referred to on the check?

Mr. Mott: I object to that, because he has already answered and said that he couldn't tell.

The Court: He may answer the question again.

(Question read.)

A. I cannot.

Q. You can't say that? A. No.

Q. As I understand your evidence, the rubber stamp in red on the back of the Roseville Trust Company check, when a check is produced marked or stamped "Paid" that rubber stamp indi-

cates that the check went through the exchange and the Roseville Trust Company got the money; it that correct? A. Yes, sir.

Q. I show you a check dated November 21, 1910, drawn on the Mechanics & Metals National Bank of New York to the order of Stevenson, Rye & Co. for $2000, signed by Kanouth, Nachod & Kuhne, endorsed "Pay to the order of John B. Scarlett, Stevenson, Rye & Company, Inc., Percival F. Rye, Secretary."; also endorsed "John B. Scarlett," and having on the back of it also the rubber stamp endorsement of the Roseville Trust Company, and the perforation "Paid," and I ask you whether that check went through the Roseville Trust Company and the Roseville Trust Company got the money? A. Well, it says on the back here "Pay to the order of Irving National Exchange Bank."

Q. My question is whether the Roseville Trust Company got credit for that check that went through the bank? A. I can't tell you that. There is another bank concerned with the Irving National Bank, the correspondents in New York.

Q. This check went through the Roseville Trust Company evidently? A. I just told you I didn't know that.

Q. Hasn't it got their stamp on the back—that is what it is stamped—and the Roseville Trust Company the back "Paid," didn't go through the Roseville Trust Company? A. The Irving may have got credit for it.

Q. Answer my question. Didn't that check go through the Roseville Trust Company? A. I guess it did.

Q. Of course, it did. Isn't the stamp on the back of it?

The Court: Of course, assuming that that was stamped in the Roseville Trust Company.

Q. You had such a stamp? A. I don't remember that.

Q. That is a familiar stamp? A. No, why should it be familiar.

Q. Didn't you check up these checks? A. No, sir; I have nothing to do with that at all.

Q. You can't identify that as the stamp of the Roseville Trust Company? A. Not with the Irving Trust Company stamp.

Q. Leave that out. This reads, "Pay to the order of the Irving National Exchange Bank, New York City, restrictive endorsements guaranteed, Roseville Trust Company, Raymond E. Smith, Treas." A. I can't tell you.

Q. What was the Roseville Trust Company's exchange bank in New York? A. The Irving National Bank.

Q. And they had a stamp which they used in the course of business reading like the one which appears on the back of this check? A. Yes, sir.

Q. Don't you know as a matter of fact that that is the stamp? A. Well, they had a good many stamps; I can't remember that particular one.

Q. It was quite customary when a check came through drawn on some other bank to send it through the exchange bank of the city where the bank was upon which it was drawn, isn't that true? A. Yes, sir.

Q. And for that purpose you had a stamp which was stamped on when the check went out from the Roseville Trust Company; isn't that true? A. Yes, sir.

Q. And the exchange bank in New York was the Irving National Bank? A. Yes, sir.

Q. And when any check was drawn on a New York bank and went around through the exchanges it went through the Irving National Bank, it was sent by your bank to the Irving National Bank? A. I think so.

Q. And in order to conduct the system properly it was stamped in the way that check is stamped, wasn't it? A. Yes, sir.

Q. This stamp means that the Roseville Trust Company applied the amount of money named in the check on November 22, 1910? A. Yes, sir.

Q. Will you look at the Scarlett ledger account and see if there is any credit on November 22, 1910, to Mr. John B. Scarlett? A. How much is it?

Q. $2000. A. No, sir.

Q. No such credit there? A. No, sir.

Mr. Guild: Pardon me. I understand that credit does apeear there. I think he ought to be a little more careful about that.

Witness: On November 22nd there is one for $1200.

Mr. Guild: 1910 we are talking about, and I understood the witness to say 1911,

Q. I understand the question is whether on the ledger account any credit appears for $2000 November 22, 1910? A. Yes, sir, there is one here on November 22, 1910.

Q. How much? A. $2000.

Marked Exhibit D-19 for identification.

Q. How many deposits are there to the credit of John B. Scarlett on November 22, 1910? A. One.

Q. For $2000? A. Yes, sir.

Q. That is the sole entry for that date? A. No, there is a charge for the same amount on that day.

Q. But this is the sole credit on that day? A. Yes, sir.

Q. I show you a check dated November 19, 1910, to the order of Stevenson, Rye & Co. for $1000, signed "Middlesex Hat Company, C. A. Sherwood, Treasurer," endorsed "Stevenson, Rye & Co., Percival F. Rye, Secretary," per some initials, which I can't read—"J. M. S." it looks like—also endorsed "Pay Roseville Trust Company, of Newark, New Jersey, or order, J. B. Scarlett," and having on the stamp of of the Roseville Trust Company, "Pay to the order of any bank, banker or trust company," dated November 22, 1910, and marked "Paid," and I ask you if that check went through the Roseville Trust Company? A. I think it did, yes.

Q. And the Roseville Trust Company got the money? A. I presume so; yes, sir.

Q. You know so from the general custom of the bank? A. There is a spindle hole there.

Q. What does that mean ? A. It means it has been held as one of the cash items.

Q. The check was drawn on the Metuchen National Bank? A. Yes, sir.

Q. And went through some exchange? A. I suppose so.

Q. Well, you know, don't you.

The Court: All he can say is what the various markings on the check indicate. You asked him "Don't you know?" He cannot say any more than he believes so. You ask him to assume that the stamps are

genuine and the various signatures are genuine. When you press him for additional statements, "Don't you know so?" he might or might not know?

Mr. English: I was speaking of the general custom of the bank.

Q. The stamp of the Roseville Trust Company on the back indicates it went through the usual course? A. Yes, sir.

Q. And that the Roseville Trust Company got the money in the ordinary course? A. I suppose it did.

By the Court: Q. Did it? A. Yes, sir.

Q. The question is whether there is anything about that check or markings on it which indicate that the Roseville Trust Company got that money? A. No, sir.

The Court: Why did you say yes when I asked you?

By Mr. English: Q. There is nothing to indicate the contrary, is there? A. The stamp is evidence that the bank got the money.

Q. That is the stamp of the Roseville Trust Company? A. Yes, sir.

Q. Look at your ledger account of John B. Scarlett and see if under date of November 22, 1910, which is the date of the Roseville Company's stamp on the back, there is any credit to Mr. Scarlett? A. You mean other than that $2000?

Q. Other than the $2000 which you have testified to? A. No, sir.

By the Court: Q. Do you say that this perforation indicated that the check must have been paid, cashed? A. Yes, sir, it must have been.

Q. Is that what it indicates? A. Yes, sir, that is the way we did with checks.

Q. So if this check was brought up to the window and cashed, as indicated by that perforation it being the custom of the bank to stick these cash checks on the file— A. Spindle.

Q. —And then sent through for collection and the bank got its money back after having cashed that check, is that the way the check would be marked, the way you see it now? A. Do you mean the Roseville Trust Company would it be marked that way?

Q. There are various markings on this check, some of them apparently by the man who drew the check, some by endorsement and some rubber stamps of the Roseville Trust Company and other banks, a perforation "Paid," a spindle perforation, now all of those marks indicate something to you apparently because you have been answering questions based on the variously marked checks. What do the marks on this check indicate as to the history of that check that put that in circulation? A. That the check has been paid.

Q. But how was it paid, was it deposited or credited to somebody? You say these marks mean something to you. Was it deposited and credited to somebody's account or drawn against or was it taken up to the cashier's window and cashed and put on the file and sent through for collection through the Metuchen National Bank upon which bank it was drawn and in which event it was entered in the account of the man who had happened to cash the check? A. The mere fact that the spindle hole is in that—I can't tell you all that, your Honor.

Q. Can you tell me what would the spindle hole indicate. You told me it indicated something. A. That the check had been paid, but I

don't know whether the Roseville Trust Company paid that check or the Metuchen National Bank.

Q. Is it the spindle mark or the "Paid" which shows that? A. It shows there that the Metuchen National Bank has paid it.

Q. What does the spindle hole indicate? A. That we had paid it up there.

Q. Under what circumstances? A. I can't tell you that.

Q. Do you put checks that are deposited on a spindle? A. No, sir.

Q. Under what circumstances do you put checks on the spindle? A. Only when they are drawn on our own bank.

Q. They put checks on the spindle that are put through the paying teller's window and cashed?

Q. Yes, sir, if they are drawn on the Roseville Trust Company we do.

Q. If drawn on any other bank do you? A. No, sir.

Q. You can't say what that spindle indicates then, because here is a spindle check that was drawn on the Roseville Trust Company; does it mean anything to you, a spindle check? A. I have a faint recollection that that is a return of some kind.

By Mr. English: Q. You don't even know whose spindle that is, do you? A. No, I couldn't tell you that, but I can tell you that Mr. Scarlett didn't endorse this here—

Q. Wait a moment. Tell me whether that is your spindle? A. I can't tell that, no, sir.

Q. You can't undertake to identify any spindle, can you? A. No.

Q. It does appear that this check was endorsed

for deposit, pay to the order of the Roseville Trust Company? A. Yes, sir.

Q. And that is quite a customary method of endorsing checks for deposit, is it not? A. Yes, sir.

Q. And if this check pursued the ordinary course of busines it was deposited to the account of John B. Scarlett? A. Yes, sir.

Q. And afterwards sent to the Exchange Bank and paid by the Metuchen Bank upon which it was drawn? A. Yes, sir.

Q. And in the ordinary course of business the account of John B. Smarlett ought to show the credit for $1000, hadn't it? A. If it didn't have that spindle hole there, yes, I would say that.

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

CHARLES MINDNICH, resumes the stand.

Cross-examination (continued) by Mr. English:

Q. You are not able to swear what bank owns the spindle that made the spindle hole, are you? A. No, sir.

Mr. English: I ask to have the check dated November 19, 1910, for $1000, marked for identification.

Marked Exhibit D-20 for identification.

By the Court: Q. Can you tell me whether there is any difference on the marking of checks that are merely cashed collected at the bank, or

markings on checks that are deposited and credited to a man's account? A. No, sir.

Q. I say, there is no difference? A. I can't tell you.

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

Q. All you know is the work which passed through your hands at this particular bank? A. Yes, sir.

Q. You had no other banking experience? A. No.

Mr. Guild: I think one af these difficulties that we are laboring under is Mr. English's attempt to qualify this man as an expert banking man when he is not any such thing.

Mr. English: Right in this connection, the Knauth, Nachod & Kuhne checks are produced by the bankers as courtesy to us, and I have copies. Is there any objection to letting them have the original back?

Mr. Guild: There is no objection.

The copies of checks referred to are marked Exhibits D-19 and D-20.

By Mr. English. Q. I show you another check dated November 19, 1910, being check No. 688, drawn on the Second National Bank to the order of Stevenson, Rye & Co., for $1000 by the Middlesex Hat Company, by its treasurer, and endorsed, "Stevenson, Rye & Co., Percival F. S. Rye secretary, per J. M. S." also endorsed, "Pay Roseville Trust Co. of Newark, N. J. or order, J. B. Scarlett," and containing the stamp of the Roseville Trust Company, "Pay to the order of any bank, banker or trust company, November 22, 1910, Roseville Trust Company of Newark, N. J., Raymond E. Smith, Treasurer," and I ask you

to look at that check and see whether it does, in fact, bear the stamp of the Roseville Trust Company and if it indicates on its face that it has been paid? A. It bears the stamp of the Roseville Trust Company.

Q. And is perforated by it? A. It is perforated, yes, sir.

Q. So looking at that check in the ordinary course of events it would indicate that it had been sent to the Metuchen National Bank through the usual exchanges and had been paid by that bank, would it not? A. Yes.

Q. Look at the ledger account of Mr. Scarlett, and tell me if there is any credit for that check; the stamp on the back is December 22, 1910, the stamp of the Roseville Trust Company; the amount of it is $1000. A. No, sir.

Q. It doesn't appear that he received credit for it? A. No, sir.

Marked Exhibit D-21 for identification.

Q. Now, you said that under date of November 22d there was a charge and a debit of $2000; is there any other charge under that date—1910 I am speaking of? A. November 22d?

Q. Yes. A. No, sir; one charge of $2000.

Q. And a credit of $2000? A. Yes, sir.

Q. November 22, 1910. Is there anything on the next day? A. November 23d? A. Yes, sir.

Q. What is that? A. $3.16.

Q. Do you know what it is for? A. No, sir; it is a charge.

Q. A charge of $3.16. Look at your ledger and see if there is any credit for any amount on July 21, 1911? A. Yes, sir.

Q. How much is that? A. $525.

Q. And that was the charge I thought you said that the prosecutor produced the deposit slip for? A. I don't remember that.

Q. I show you a duplicate deposit slip of the Roseville Trust Company dated July 21, 1911, for $525. Do you recognize that as a duplicate deposit slip? A. Yes, sir.

Q. And it is initialed by by some bank check? A. Yes, sir.

Q. Who? A. Mr. Jennings.

Q. And he was the receiving teller? A. Yes, sir.

Check marked Exhibit D-22 for identification.

RE-DIRECT-EXAMINATION by Mr. Guild:

Mr. Guild: I don't think I have offered this ledger in evidence. I offer it now.

Mr. English: I object to it on the ground that it would be very improper to admit in evidence a ledger designed to show a deficit on an indictment for an overdraft when the evidence, if it shows anything at all, shows that the ledger has been most inaccurately kept. It appears that deposits of large sums of money were deposited there and not credited, and whether there are drafts against it do not appear, but it appears that the books have been manipulated by instructions of the treasurer, and the only object of this offer can be to prove that the time the check mentioned in the indictment was drawn there was not money enough in the bank to meet that check; but it seems to me that to prove it by that

ledger would be very improper because the ledger is completely discredited now.

The Court: That is a matter of opinion. It may be in your mind, but your objection goes to the weight of the evidence, not necessarily to its admissibility. It does show something; it purports to show this account and you have examined at length as to the contents of that account. It seems to me that it is part of the record of the bank. Whether you have discredited it or not or have shown anything to affect its weight with the jury, is, of course, another question. 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. OSBORNE,
Judge.

(Seal)

The two pages of the ledger referred to are marked Exhibit S-6.

Q. You gave an item of deposit under date of December 13, 1911. Look at that. A. I have it.

Q. As a matter of fact, isn't that a debit which by mistake is posted as a credit and later corrected by debiting the account with $900?

Objected to.

A. Alongside of the $450 is a cross; that means a cross entry; that is the way they were marked.

By the Court: Q. What does cross entry mean; that is what the Prosecutor wants to know? Does it mean a mistake or what does it mean, if you know? A. It is a cross entry of some kind. If I could have the debit books to refer to I could tell you exactly.

By Mr. English: Q. Did you keep these debit books? A. For a time I did. I can tell you very shortly whether I did on that particular day or not.

Mr. English: He is going to use a book that is not in evidence.

The Court: He asks for a book. I cannot anticipate the next move.

(Book handed witness.)

Witness: This is the book.

(Question read.)

Mr. English: I ask to be permitted to interrogate him.

By Mr. English: Q. What is the book you have before you now? A. That is the debit book of the M to Z ledger.

Q. To whose account have you turned? A. I haven't turned to any particular account; there are any number of accounts here. All the individual accounts are in this book.

Q. Are the entries in your handwriting which you are now referring to? A. Yes, sir.

Q. Is the entry to which you propose to refer in answering this question in your handwriting? A. Yes, sir, that is my handwriting.

Q. Is that what you call the debit book? A. Yes.

The Court: It is a cash book, apparently in two sections, debit book and credit book.

Q. The whole thing is the cash book and this is the debit side of the cash book; is that right? A. Yes, sir.

Q. Are those entries in your handwriting—is that your handwriting (indicating)? A. Yes, sir.

Q. When were those entries made? A. December 13, 1910.

Q. Did you put that cross there or somebody else? A. I don't know; I don't remember that.

Q. You don't know anything about that cross? A. No.

Q. The only reason you can testify now is because somebody put a pencil cross there; is that it? A. No.

Q. If you get a debit charge on the ledger it should balance the book? A. No, sir, there is a credit charge of $450 on that day.

Q. There is a credit entered in the individual ledger of John B. Scarlett, on that day? A. Yes, sir.

Q. There is no debit charge on the individual ledger? A. No, sir.

Q. But you produce a book now which is the debit side of the cash book in which you think you find a debit for that same amount? A. I don't think it; I know it.

Q. Is it customary to post this book up by the general ledger and ought not the two to correspond back and forth? A. The credits are posted in the ledger—

Q. My question is whether this debit book it not written up in the ledger and if the two ought not to balance?

Mr. Mott: May I suggest that the witness, until he testifies that the entries he proposes to refer to are in his own handwriting, that counsel wait until he testifies to them?

The Court: When counsel is through you can get at the transaction. He has not kept the books and he is not familiar with the system. I would suggest that after having

satisfied yourself that it is part of the bookkeeping system, in this witness's handwriting, you ask him to explain the transaction.

Mr. English: I don't want the witness to testify to a false entry, if it is a false entry. It seems to me it is quite material as bearing on the relevancy of the evidence.

The Court: It is a part of the bookkeeping system at that time, and if it is needed by the witness to refresh his memory, it is perfectly competent, and he is entitled to use the book.

Mr. English: This is subject to my objection and exception.

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. On December 13, 1910, there was a check drawn by Mr. Scarlett for $450 which was entered on the credit side by mistake and added to his last balance; in order to straighten that out it is necessary to charge the account with double the amount of $450.

By Mr. Guild: Q. $900 has to be taken off the account to straighten that out? A. Yes, sir.

Q. Was that done? What date was the counter charge? A. The 19th of December.

Q. So that when you testified that he had a credit of $450 under date of December 13, 1910, it was

merely an apparent credit? A. I think I mentioned that there was a cross alongside of it.

Q. In the interval what was the condition of his account as to his balance?

The Court: Is that between the 13th and the 19th?

Mr. English: I object to this.

Mr. Guild: Yes.

Mr. English: I object.

The Court: The correction was made on the 19th.

Mr. Guild: Yes.

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.

H. V. OSBORNE,
Judge.

(Seal)

A. Do you mean did it affect his account in any way?

Q. Yes, between the 13th and the 19th. A. Certainly, it would make the balance more.

Q. $450 more?

The Court: Make it appear more?

Witness: Yes, sir.

Q. That would make it appear more, but if you take that out did he have a balance or was he overdrawn? A. He had a balance.

Q. How much?

Mr. English: I object to that as immaterial.

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.

H. V. OSBORNE,
(Seal) Judge.

A. $618.92 on December 19th.

By the Court: Q. In addition to this apparent balance? A. No, that is the balance with the correction made.

Q. That is the balance after deducting this erroneous entry? A. Yes, sir.

By Mr. Guild: Q. What was the condition of the account on the 14th?

Mr. English: I object to that as immateral and improper.

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.

H. V. OSBORNE,
(Seal) Judge.

A. Do you mean allowing for that cross entry?

Q. If the correction had been made instead of making a wrong entry you made a right entry? A. There would have been a balance of $212.17.

Q. That is your explanation of the account? A. Yes, sir.

Q. Come on down to the 15th and 16th, on down to the 19th. A. On the 16th—

Objected to.

The Court: Let it appear that these questions covering the balance between the

13th and 19th of December, 1910, are objected to and the testimony is taken subject to objection of counsel and an exception allowed.

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. On the 16th he would have had a balance of—

Q. What do you mean? A. As it appears on the ledger—

Q. I am assuming that this $450 was put where it should be put, as a debit, not as a credit. A. He would have on the 16th $45.32. On the 15th the balance was the same as on any other dates.

Q. The next date? A. On the next day there is an overdraft of $591.08.

Q. What is the next date? A. The next date, a balance of $618.92.

Q. To his credit? A. Yes, sir.

Q. The next date? A. The next date—

The Court: That is, the 19th?

Witness: There would be an overdraft of $281.08.

Q. That is after you charge him up with $900? A. Yes, sir. That is the 19th.

Q. I want to call your attention to a deposit of $300 on the 23d of December, 1912. A. Yes, $300.

Q. Now, take your side book of the same date.

The Court: Cash book.

Mr. English: He has still another book now.

By the Court: Q. What do you call that, debit and credit cash? A. Yes, sir.

Q. Part of one book called the cash book? A. Yes, sir.

Q. As a whole, the four books constitute the cash book? A. Yes.

Q. Is that what you call them? A. Cash book; yes, sir.

By Mr. Guild: Q. You are looking at the debit book? A. No, the credit book.

Q. That is not the one you used before? A. No, it is a different one. That book isn't here.

Q. I will pass that for a moment until we get the book. You were asked on cross-examination about improper entries, irregular entries in the books of the bank. Do you know of an irregular entry in Scarlett's account?

Mr. English: He said he did.

Mr. Guild: I am calling his attention to a particular instance, if he knows of any particular instance with the exception possibly of this $300 item?

Witness: No, I do not.

Q. In case Scarlett's account was credited with the proceeds of a note would that usually be entered on the deposit slip? A. Yes, sir.

Mr. English: I object to it as not redirect-examination. There was nothing said about notes.

The Court: You examined into the account and deposit slips quite generally.

Mr. Guild: The point is this, there are credits in the ledger for which no deposit slips are produced. What I want to know

is, in all instances where the credits were through notes, deposit slips were made out and used or simply whether the account was credited with the amount of the note.

Mr. English: My motion is to strike out the answer.

The Court: The objection is overruled and the motion to strike out is 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. OSBORNE,
Judge.

(Seal)

A. There were deposit slips made out.

Q. Always? A. Well, up to October, I believe, 1912.

Q. And after that? A. They were copied out of a note book.

Q. What was copied out of a note book? A. The amounts of the notes to the different accounts.

Q. And put to the credit of the depositors? A. Yes sir.

Q. And no deposit slip— A. Were made out, no, sir.

Q. You say after what date is that? A. I believe it was October, 1912.

Q. During the time that these deposits were made that Mr. English called your attention to this morning there were drafts against the account, I suppose, merely to show it was an active account? A. Yes, sir, there were.

Q. Have you the books here to which you de-

sire to refer in relation to that $300 item? A. Yes, sir, I have.

Q. Under date of December 23d, in whose handwriting are those entries? A. The December 23d entries are in Mr. Murray's handwriting.

Q. December 26th. A. Also in Mr. Murray's handwriting.

Q. Where is Mr. Murray, do you know? A. No sir; I couldn't tell you.

Q. Up to what time was he connected with the bank? A. I think until the 1st of May, 1913.

Q. You are familiar with his handwriting? A. Yes, sir.

Q. And he was assistant bookkeeper at that time? A. Yes, sir.

Q. Do you find that Scarlett item of $300 under date of December 23d in the book before you?

Mr. English: I object. The book speaks for itself.

The Court: It will not speak unless we get it on the record.

Mr. English: He can't refresh his recollection by a memorandum of somebody else's.

The Court: These books were in his charge as bookkeeper and apparently part of the bookkeeping system, of the bank, and if every item had to be proved by the same hand that made the entries we would never get through with the case.

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)

Q. You were the head bookkeeper at that time, December 23, 1912? A. Yes, sir.

Q. And Mr. Murray was your assistant? A. Yes, sir.

Q. Working under your direction? A. Yes, sir.

By the Court: Q. This book which you are now referring to is a part of the bookkeeping system which was then in use in the bank? A. Yes, your Honor.

By Mr. Guild: Q. And the date your attention is called to, December 23d, and 26th, are in the handwriting of Mr Murray, your assistant, is that right? A. Yes, sir.

Q. Under date of December 23d do you find the Scarlett item of $300? A. Yes, sir.

Mr. English: What year?

Q. 1912. You find that in the ledger? A. Yes, sir.

Q. What is the other book before you? A. The Credit book.

Q. Under date of December 23d do you find the Scarlett $300 item entered? A. No, sir.

Q. Where do you find it entered, if at all? A. On December 26th.

Q. 1912? A. Yes, sir.

Q. How do you explain the difference in the date in the two books? (witness pauses.) Can you explain it? A. Yes, your Honor, but that is what I was indicted for.

By the Court: Q. Do I understand your hesitation is due to what? A. I don't want to incriminate my self.

The Court: The witness says that the answer to the question may tend to incriminate him.

Mr. Guild: In as much as he did not make the entries I don't understand how it would incriminate him. I will get at the matter in another way.

By Mr. Guild: Q. There is an entry in the credit book, or do you call it? A. Yes, sir.

Q. Under date of December 26th, 1912? A. Yes, sir.

Q. And your hesitation in testifying about this particular matter is that you are apprehensive that it may incriminate you? A. Yes, sir.

Q. By that you mean you may get into trouble yourself? A. Yes, sir.

Q. Then you decline to answer on that ground, that it may incriminate you, do you? A. Yes, sir.

Q. You find no entry under date of December 23d, 1912, you testify? A. No, sir.

Q. The dates between the 23d and the 25th, how many business days in between? A. One, I believe, the 24th.

Q. And there are entries there on the 24th, I mean in your credit book? A. Yes, sir, but not to Mr. Scarlett's account.

Q. No, I mean in the regular course of business? A. Yes, sir.

Q. And the 25th was a holiday? A. Yes, sir.

Q. And the 26th is your next business day? A. Christmas? Yes, sir.

Q. How many entries appear in this book ahead of the Scarlett item on the 26th? A. One day's work, the 24th.

Q. How many items under date of the 26th before you come to the Scarlett item?

Mr. English: Your Honor permitted the answer because you said it was part of

the bank book. The book is not in evidence and he continued to testify from a book that is not in evidence, particularly as he did not make the entries; I object to his testifying from a book in which he did not make the entries and which is not in evidence.

The Court: He may refresh his memory. If he testified to the contents it ought to go in evidence. Do you wish to offer it now?

Mr Guild: I will offer that book in evidence.

The Court: What book is it you offer in evidence?

Q. Will you describe the book? A. M to Z credit book.

Q. Any numbers on it? A. It runs from July 22d, 1912, to August 13th, 1913.

Mr. English: I desire to cross-examine on the offer.

By Mr. English: Q. That is the book which contains the entry of the $300 item about which you testified? A. Yes, sir.

Q. And the entries were made under your direction? A. It was his duty to keep those books.

Q. Who? A. Mr. Murray.

Q. But you said he was your assistant? A. Yes, sir.

Q. Then they were made under your direction? A. Well, yes, if you want it that way.

Q. Who were you acting under, whose instructions, Smith? A. Yes, sir.

Q. And you put in that book what Smith told you to? A. No, sir.

Q. Did you make, or cause to be made, that

$300 entry under Smith's instructions? A. I refuse to answer that question.

Q. On the ground that it may incriminate you? A. Yes, sir.

Mr. Guild: Which book are you referring to?

Mr. English: The book that you have offered in evidence.

Mr. Guild: The side book.

Q. You refuse to answer that? A. Yes, sir.

Q. That $300 entry was a deposit of cash, was it not? A. I can't remember unless I—I can't remember.

Q. Can't remember that? A. No sir.

Q. It was not accompanied by a deposit slip, was it—or was it? A. There must have been a deposit slip.

Q. It is not in the bunch of deposit slips which the prosecutor produced. The prosecutor admits that. You say it must have been accompanied by one, would you say? A. I couldn't tell you.

Q. Is it not a fact that the deposit slips were more or less destroyed after they were entered up in the books? A. No, sir.

Q. Who handed you the deposit slips?

The Court: Are you not getting a little bit away from examination on the books?

Q. How long after the entry had been made did you know that it had been made? A. I can't remember it.

Q. Was it a matter of some days or some weeks? A. I can't remember.

Q. No knowledge about it at all, you had no knowledge whether it is accurate or not except

as you see it in the book there? A. I beg pardon.

Q. I say you have no knowledge other than than appears in the book there? A. No, sir.

Mr. Guild: I renew my offer with special reference to the pages in which this $300 is on December 26, 1912.

The Court: It will be admitted subject to objection and 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.

H. V. OSBORNE,
Judge.

(Seal)

By Mr. Guild: Q. I show you Exhibit D-20 and D-21 for identification. Is there any endorsement on the back of that check showing that they were deposited by Mr. Scarlett? A. Yes, sir.

Q. What is it there that makes you think so? A. By the Roseville Trust Company, of Newark, N. J., or order J. B. Scarlett.

Q. That to your mind, means that they were deposited?

Mr. English: He said on cross-examination that that was a very usual method of endorsing for deposit.

Mr. Guild: I am asking the question again.

A. Yes, sir.

Q. Suppose they had been put in there, cashed, the checks being made payable to his order?

Mr. English: What is the question?

Q. Suppose they had been put in the window and cashed, would that be a proper endorsement? A. No, sir.

Q. You say those two checks were paid? A. They are cancelled across the face.

Q. Were there not many other checks of the Middlesex Hat Company that were deposited by Mr. Scarlett to your bank that came back not paid?

Objected to.

(Question withdrawn.)

By Mr. English: Q. When was it the bank adopted the system of not making out deposit slips on notes? A. I believe October, 1912.

Q. And then what was done? A. They were copied in these bills purchased book, is what they called it.

Q. In this Scarlett account where moneys are credited without a deposit slip does it follow that a note was discounted? A. No, sir, not necessarily.

Q. Quite likely that the deposit was side-tracked to some other account, isn't it? A. I couldn't tell you.

Q. I didn't ask you whether you could tell me. It is quite likely the way things were run in the bank? A. I don't know.

Q. That would be a possible explanation of it, wouldn't it? A. I wouldn't say either one way or the other.

Q. I am asking you to say. A. I don't know.

Q. You undertook to give the amount of the balance back and forth along in December 1910? A. Yes, sir.

Q. That is when you were talking about, that cross entry of $450; is that right? A. Right.

Q. When was the book balanced, about that time? A. Balanced on the 19th of December.

Q. And that showed a balance in favor of the depositor? A. $4.42.

Q. When the account was balanced at that time it came out to the good $4.42? A. Yes, sir.

Q. That did not take into account, that balance, the check for $2000 which is marked D-19 for identification nor the check for $1000, each marked D-20 and D-21 for identification, did it not? A. I don't know.

Q. If the $2000 check, D-19 for identification, for example, had been added to that account, the balance would be $2004.42 instead of $4.42? A. If it had been added, yes.

Mr. Guild: I think you will find that that $2000 is credited in his account.

Mr. Mott: And he has so testified. I object to the question because it assumes a false statement of the fact. The witness has already testified that that $2000 check was credited to the account on November 21st.

The Court: In response to the question just asked he testified that it was not taken into consideration in reaching this balance. If the witness is mistaken, I suppose counsel has a perfect right to show that.

Q. Was it added? A. It was already down there.

Q. It is down there? A. Surely.

Q. Any debit against it? A. $2000.

By the Court: Q. As a debit? A. Yes, sir.

By Mr. English: Q. If the two checks for $1000 each, D-20 and D-21, had been added, would the

account show that much in excess of that what it does show, according to your book? A. What dates were those deposit slips?

Q. November 22d, according to the stamp on the back, 1910. A. Surely, if they had been added, they would increase the balance.

Q. So there is no debit against them or no credit against them one way or the other? A. No.

Q. If this account had accurately set forth the deposits there would have been at least $2000 in excess of what your balance showed on December 23d, 1910, would there not?

Objected to.

Objection overruled.

A. If they had been added, yes, sir.

Q. Do you now say as you did in answer to the prosecutor's question on re-direct examination, that you know of no inaccuracies in the account? A. No.

Q. The balance which was struck when the bank went out of business in July 1913 you say amounted to how much? A. $1.30.

Q. If there had been added to that the amount shown on the duplicate deposit slip, Exhibit D-17, amounting to $5700, that would have changed that balance somewhat, would it not? A. If it would have gotten credit for it, yes.

Mr. Guild: This deposit slip is under what date?

Mr. English: February 8, 1911.

The Court: I suppose it would depend a great deal on whether he had drawn it out in the meantime.

Mr. English: There is a balance of $1.30 with no credit of $5700.

Q. Assuming that the account shows what was drawn out, there is $5700 unaccounted for; there is no entry in your books on February 8, 1911, of this deposit, is there? A. No.

Q. Then standing by itself it is not an unusual thing in banking for an account to be overdrawn some times; is it?

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. Osborne,
Judge.

(Seal)

By Mr. Guild: Q. What is the date of the last balance as shown by your ledger? A. July 26, 1913.

Q. That four hundred and some odd dollars and cents, what is the date of that? A. December 19, 1910.

Q. Does that mean that his pass book was balanced at the same time? A. Yes, sir.

Q. Did Mr. Scarlett ever make any objection to you about the amount of that balance? A. Not that I remember.

Q. Wouldn't you be likely to remember it? A. I don't think he would come to me and tell me about it.

Q. Did you ever hear of any objection?

Objected to.

Q. From Mr. Scarlett?

Mr. English: Direct from Mr. Scarlett, you mean?

Q. From Mr. Scarlett? A. Not that I remember.

Q. The subsequent balances how many of them were there? A. The book was balanced twice—wait a minute—the book was balanced four times, the book was balanced.

Q. You have that four hundred and some odd cents balance, what is the date of the next balance? A. The date of the next balance is May 9, 1911.

Q. And the balance shows what? A. $148.40.

Q. A credit balance? A. Yes, sir.

Q. Was there any objection made to you by Mr. Scarlett in connection with that balance? A. Not that I remember.

Q. What is the next one? A. November 12, 1911, thirty cents.

Q. Did he make any objection to you about that balance? A. No, sir.

Q. Is there another one? A. The last one, July 26, 1913, $1.30.

Q. To his credit? A. Yes, sir.

Q. Did he ever object to you about that? A. No, sir.

By Mr. English: Q. Mr. Scarlett never had any conversation with you one way or the other, did he, in connection with his account in the bank? A. I can't remember.

Q. Depositors don't usually talk to a clerk, they talk to the officer in charge, don't they? A. Well, I couldn't tell you that.

By the Court: Q. Is there anything about those two checks for $1000 each that enables you to say whether they were or were not deposited to be credited to the account of Mr. Scarlett? A. Well, I couldn't tell you who got credit for them.

Q. I didn't ask you that. Listen to the question.

(Question read.)

Q. Look at them. A. No, sir.

Q. Isn't it a customary method of endorsing a check for deposit to make it payable to the bank in which it is deposited? A. It is the customary way.

Q. When you see these checks each endorsed by the Roseville Trust Company or order, signed J. B. Scarlett, can't you say from that, standing on the face of it, that it was a check deposited for deposit in the account? A. No, sir.

Q. Why can't you? A. Not with that signature on the bottom there, that is not Mr. Scarlett's writing.

Q. Can't anybody endorse a check for deposit? A. I don't know about that.

Q. Don't you know that in every day practice, that with a check payable to the order of any given depositor can be endorser by anybody in his name for deposit? A. No, I don't know that.

Q. You don't know that? A. No.

Q. That is the only reason you say there is nothing on this check to indicate that it was endorsed for deposit because you say the signature J. B. Scarlett it not Mr. Scarlett's own handwriting? A. Yes, sir.

Q. That is the only reason is it? A. That is all.

Q. That is all you can say about it? A. Yes, sir.

Q. How long were you with the bank? A. I told you from April 21st to the date it closed.

Q. What year? A. 1910.

Q. And it closed in August, 1913? A. Yes, sir.

Q. You were there over three years? A. Yes, sir.

Q. Do you mean to say to us that you never received for deposit a check endorsed for deposit in the name of the depositor when the handwriting was not his own? A. No, sir.

Q. You don't remember any such experience? A. No, sir.

The second page of side book of credits under date of December 26, 1910, is offered in evidence and marked Exhibit S-7.

Mr. English: As to the other book, I move that that much of the witnesses's testimony given out of some book that the prosecutor does not offer in evidence be stricken out. He used two other books, the first one was with reference to the $450 cross entry; the second one was a reference to the $300 item of December, 1912.

Mr. Guild: I offer the book.

Mr. English: I object on the same ground, that they are not properly proved and they are immaterial and false in fact.

The Court: You concede that those books stand in the same relation?

Mr. English: Yes.

The Court: Then it will not be necessary to bring the witness back. I will admit it.

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

H. V. OSBORNE,
Judge.

(Seal)

New Jersey State Library

FRED L. COBB, sworn in behalf of the State.

Direct-Examination by Mr. Guild:

Q. Are you connected with the Essex County Bank of Newark? A. Yes, sir.

Q. In what capacity? A. Chief clerk.

Q. In that position do you have anything to do with checks that have passed through the bank? A. I think I was bookkeeper about the time.

Q. March 17th, 1913? A. Yes, I think so.

Q. March 17th were you bookkeeper? A. I didn't have his account then, but I have been there since 1895.

Q. I show you a check marked Exhibit S-5 for identification; it is a check drawn by John B. Scarlett on the Roseville Trust Company to the order of John B. Scarlett for $350, and is endorsed John B. Scarlett, Greylock Land Company, John B. Scarlett, Treasurer, and ask you whether the Greylock Land Company had an account with the Essex County Bank? A. The Greylock Land Company had an account at that time and deposited a check of $350 on that date.

Q. Is there any indication that that check went through the Essex County Bank? A. A deposit of $350 on that date.

Q. I ask you whether there is any indication that that check went through the Essex County Bank? A. Yes, it has our stamp on it and it looks like our check; no other check deposited on that date.

Q. No other check deposited on that date for $350? A. It is undoubtedly that check.

Q. Did the land company get credit for that

amount? A. Yes, sir, it was a single check for $350.

Q. Is there any indication that that check has been paid? A. It never was charged to the account.

Q. Will you examine that check and see if it was paid, as far as you are able to tell by the appearance of the check? A. It has been paid all right, certified when it was paid; it was certified on the same date that the check is dated.

Q. I am asking you whether it has been paid to your bank? A. It has our stamp on it.

Q. Won't you please answer my question, whether that check was paid to your bank? A. Yes.

CROSS-EXAMINATION by Mr. English:

Q. You are in the Essex County National Bank? A. Yes, sir.

Q. What is your present position? A. Chief clerk.

Q. What were you in March, 1913? A. I wasn't bookkeeper on that account then.

Q. You were not? A. No.

Q. Have you got any personal knowledge of this matter at all? A. Only that I went back on our books on that date and found those entries. I wasn't bookkeeper on that date.

Q. After this matter was brought to your attention some time after that date you looked up your records and from that you ascertained the information which you now testify about? A. Yes, sir.

Q. In other words, you got what somebody else told you and what somebody else's record shows? A. Yes, sir; I have looked at our records and saw that check was charged up.

Q. And you have no personal knowledge? A. No, sir.

Q. And you haven't now? A. No, sir.

Q. And you only know what you got from that second handed evidence? A. Yes, sir.

Q. When a check is drawn on some other bank and deposited in your bank what is the practice, how do you get your money? A. Those checks were sent through the exchanges, cleared through the Union National Bank?

Q. You clear through the Union National Bank? A. Yes, sir, clear the Roseville checks through the Union Bank.

Q. I am not a banker. This check, a check drawn on the Roseville Trust Company, is deposited to the credit of one of your depositors? A. It was deposited to the credit of the Greylock Land Company on the 17th.

Q. Were they a depositor of yours? A. Yes, sir.

Q. In the ordinary course you would credit the Greylock Company with the amount of the check? A. Yes.

Q. Now then, what would you do with the check? A. We would send it through with the Union with all the Roseville Trust Company checks on that day and the Union Bank would pay us.

Q. Then you would send the check to the Union Bank? A. In a separate box, we would get our payments from the Union Bank.

Q. After this check had been deposited the next step for your bank would be to send it to the Union Bank? A. Yes, sir.

Q. Don't you stamp it when you send it? A. Yes, sir.

Q. There is a stamp Essex County National Bank March 17, 1913; is that the stamp which your bank put on when you sent it to the Union Bank? A. Yes, sir.

Q. In the ordinary course of business what would the Union Bank do with it? A. The Union Bank would turn this over on the morning of the 18th to the Roseville Trust Company.

Q. Does your bank have an account with the Union Bank? A. No, the custom is to pay those checks just as if they were on them, as they clear for that bank.

Q. Give us the history then in a proper case. Your bank would credit the depositor, the Greylock Company, with the amount of his check? A. Yes, sir.

Q. You would send it to the Union Bank? A. Yes.

Q. And the Union Bank would pay to your bank that sum of money, $350, or whatever it was? A. If that check wasn't good it would be returned by the Roseville Trust Company or by the Union National Bank on the same date.

Q. Returned to whom? A. The Essex County.

Q. It didn't come back? A. It didn't come back.

Q. The Union Bank after that paid you the money, and what did you do with the check? A. That would be sent with all the rest—our checks are made up, Roseville Trust Company checks are made up in a separate package and the Union Bank cleared for them. They would simply take their bundle of checks and send them to the Roseville Trust Company and receive payment for them.

Q. In the ordinary course the Union Bank,

having received payment for you, would send them back to the Roseville Trust Company and the Roseville Trust Company would pay them? A. Yes, sir.

Q. And then the check would be marked "Paid?" A. I don't know whether it would be cut as paid by the Roseville Trust Company.

Q. There would be some perforation to indicate that it had been paid or cancelled? A. Yes, I should think so.

Q. Would the Union Bank, in the ordinary Course, stamp its name on the back? A. No.

Q. But the check which had been paid under the practice we have described, would that be perforated? A. Yes, sir.

Q. And in the ordinary banking business, if the check is not perforated, you would say a check had not been paid?—that would be an ordinary case? A. Yes, I should think so. It would, in our case, in our bank.

Q. That is true of every bank, in your experience? A. Yes, sir.

Q. You don't know of any bank that pays a check and does not cancel it? A. No, some kind of cancellation.

Q. Just look at this check and see if there is anything on it to indicate any cancellation showing that it had been paid by the Roseville Trust Company? A. No, certification is not cancelled and there is no cut in it.

Q. There is nothing there to indicate that the trust company ever paid this check? A. No.

Q. That is true? A. Yes, sir.

By Mr. Guild: Q. If the trust company had not

paid this check how do you account for its being in their possession?

Mr. English: I object to that. That is a purely hypothetical question which there is no foundation in the evidence for.

The Court: Your examination has been more or less on hypothetical lines.

Mr. English: How can he answer the question?

The Court: I do not know. He knows that better than I do.

(Question read.)

Mr. English: I object to it. That is a question that he would simply be guessing at the answer.

The Court: (To the witness.) You may answer that question if you can.

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 can't account for their having the check unless they paid for it.

By the Court: Q. You have told us a good deal about the ordinary course of banking in response to Mr. English's question. In the ordinary course of banking, if the check had not been paid by the Roseville Trust Company you would have been notified of it, wouldn't you? A. We would have had possession of the check.

Q. It would have come back to you? A. Come back to us.

Q. And you would look to the person who de-

posited it? A. Yes, the Greylock Land Company, of course.

By Mr. Guild: Q. Did the check ever come back to you? A. No, sir.

By Mr. English: Q. Would you be the party who would look to the person who made out the check or would the Union National Bank who paid you the money? A. It is the custom in Newark amongst all of the banks who clear through other banks to return them from the bank that clears for another bank, simply take their checks as they are listed and send them through and pay for them, and if there are any return items, they come back direct, they come back from the Union or any other bank that clears through another bank; the Roseville Trust Company would return it; we would not receive it from the Union or we would not know anything further from the Union in regard to it.

Q. Whatever the mystery of this check matter, you, as a banker, don't know of any case where a bank pays a check and does not perforate it or in any way indicate that it has been paid, if, in fact, it has not been paid; that is true, isn't it? A. Yes, sir.

Mr. Guild: I want to offer this side book. This is the side debit book.

Mr. English: That is in regard to the $450 item.

Marked Exhibit S-8.

By Mr. English: Q. Suppose a check drawn, as this check was, S-5 for identification, on the Roseville Trust Company, was received back by the Roseville Trust Company from the exchange bank, namely, the Union Bank, in the way you have described, and was, in fact, paid by some in-

dividual. say an officer of the bank, and then kept by him, would that explain why it was not perforated by the bank, as an institution, which had paid the check?

Objected to.

A. I couldn't answer that.

The Court: I do not see how the witness could answer it. He testified as to the ordinary course of business, that the the ormark the check that way. Now you asked him a question about something that may have taken place in some other bank, and specifically ask him if that would explain it. I will overrule 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. OSBORNE,
Judge.

(Seal)

WILLIAM J. THOMPSON sworn in behalf of the State.

Direct-examination by Mr. Guild:

Q. Were you formerly connected with the Roseville Trust Company? A. Yes, sir.

Q. In what capacity? A. Bookkeeper and receiving teller.

Q. On March 17, 1913, were you there? A. I think I was, yes, sir.

Q. Then what was your position? A. Receiving teller.

Q. I show you check marked Exhibit D-5 for identification and ask you whether you have seen

that check before? A. By looking at the check I can't remember ever seeing it before.

Q. The question is whether that check was paid by the Roseville Trust Company?

Mr. English: I object to that because he says he can't remember ever having received the check.

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.

H. V. OSBORNE,
(Seal) Judge.

A. Simply by looking at the check, I can't tell whether I have ever seen it before, but by looking at the book I can tell whether I have seen it or handled it.

Q. What book do you desire to look at? A. The receiving teller's proof book, in the first place.

Q. I show you a book marked "Receiving Teller's proof, Roseville Trust Company." What is that book? A. This is the receiving teller's proof book showing proof of March, 17, 1913.

Q. What do you mean by proof? A. Why, that is the total of all the transactions, some of them taken as a single item, but the majority of them taken as a bulk, and debits and credits that have gone through the receiving teller's cash that day, and if the debits and credits side balances the receiving teller shows a proof for that day's business.

Q. Who kept that book on that ate? A. I did on that particular date.

Q. March 17th? A. Yes, sir.

Q. And you say that is what you call the receiving teller's proof book? A. Yes.

Mr. Guild: I offer it in evidence.

Mr. English: I want to cross-examine first.

CROSS-EXAMINATION by Mr. English:

Q. Tell me how this book was made up? A. At the end of the day's business the total of the debits that had gone through the receiving teller's cash are entered as one total; the total of credits that have gone through the receiving teller's cash are entered as a credit, and all other entries, such as have gone through the receiving teller's cash for that day are shown, either as a single item or as a whole through the proof.

Q. When the teller receives money which is deposited you call that cash, whether it is cash or check? A. No, sir; call it cash if it is cash, and call it checks, if it is checks; they are listed as two separate items in the receiving teller's proof book there.

Q. Are they listed here in this proof book? A. Why, as a total, yes, sir.

Q. Which is the total of checks and which is the total of cash? A. (Indicating.) This is the total of the cash; there is the total bills received on that day.

Q. That means bank notes? A. Yes, sir., nickels, pennies, gold, silver and the total—

Q. Wait a minute. There is the word "sundries." What are sundries? A. Sundries are items held in the cash for some particular reason, a check that has been received during the course of the day and held for some reason or another.

listed in there as a sundry item, and this is the individual items of that date. There happen to be two of them.

Q. Does this proof book show the moneys which come in the windows during the day? A. Yes, sir, shows the total of them.

Q. What has this book got to do with a check drawn on your bank and deposited in some outside bank and which comes to you through the exchange? A. These sundry items were what I wanted to look after first off.

Q. Just answer my question. A. That is what we would have to do if it was sundries. In this particular instance, if it didn't appear in the sundries that day, I would have to look in another book.

Q. Listen to my question. You produce here what you call a teller's proof book? A. Yes, sir.

Q. Do I understand it is made up of moneys or checks which come in through the teller's window? A. Yes, sir.

Q. My question is what has a check drawn on the Roseville Trust Company which goes through some outside bank and comes back to the Roseville Trust Company through the exchanges got to do with any entries which are in this teller's proof book representing checks and cash coming through the window? A. Because all checks that come through to be paid by the Roseville Trust Company from an outside bank necessarily have to come through the receiving teller's proof.

Q. So they do come from the receiving teller's hands finally? A. Yes, sir.

Q. And all checks are listed in here under the

head of sundries? A. Oh, no, not all of them. I said any checks that were held out for any reason—held over—that is not paid—not charged up to the account or not turned back to the bank, but had a special collection for the check, those checks would be listed as sundry items. I was trying to explain the meaning of sundries as listed in the sundries.

Q. Are sundries which come to the teller's desk and which would ordinarily be turned over, go out of his possession at the end of the banking day, but which are kept in his drawer for some reason or other? A. Those which were kept in his drawer for some reason or another, yes, sir, they were kept in his drawer for that day for some reason or another.

Q. Do they stay there more than a day? A. No, sir.

Q. As a matter of fact, the checks of the Roseville Trust Company did stay in the receiving teller's drawer for more than one day? A. No, sir.

Q. In the paying teller's drawer? A. I don't know.

Mr. Mott: Counsel is examining as to everything.

The Court: I think you are going a little far afield. The only question is whether this book was one of the books of the company used in the ordinary course of business.

Q. The total of sundries here is considerably in excess of the amount of this particular check, S-5, is it not?

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. OSBORNE,
(Seal) Judge.

Q. Are all these figures in your handwriting? A. Not all the figures that appear on that page are my handwriting.

Q. Which are and which are not? A. This list of checks here.

Q. The extreme left column figures is not in your handwriting? A. The left hand column of figures is not in my handwriting.

Q. And all the rest are? A. Yes, sir.

Q. Generally, what does that extreme left column of figures show? A. Those are the checks deposited in our bank during that day that are drawn on one of the other banks in Newark, and those are sent out from our bank to be collected the following day in the exchanges.

Q. (Indicating.) And this set of figures are checks drawn on your bank and deposited in some other bank?

Objected to.

(Question read.)

The Court: That is what this check was, a check drawn on his bank and deposited in some other bank. Show him that column of figures.

Witness: This check was certified on the 17th.

Mr. English: I object to that. I am not asking the witness anything about that check at all; I am asking him what column of figures or what figures in this teller's

proof book relate to those checks which are drawn on the Roseville Trust Company and deposited in some other bank and come back through the exchange.

Witness: Q. There is another column of figures; it is just a total.

Q. What is the total? A. Individual checks.

Q. In your handwriting? A. Yes, sir.

Q. And the figure opposite to that refers to all the individual checks drawn on March 17th by various depositors on the Roseville Trust Company which were deposited in outside banks? A. In outside banks and checks that were cashed during the day in our bank; that is a total of them.

Q. You can't undertake to sort out from that which is which? A. No, not from that book.

Q. Standing by themselves there is nothing in these figures that refer to check S-5 for identification? A. I would have to look at the book to see. That is what I wanted to look at the book for, in the first place.

Q. Isn't it true that if that check S-5 is in here at all, it is likely to be with other checks? A. This check, in the first place, did not come in on the 17th; it came in on the 18th.

Q. Do you know that? A. I don't know it positively, no, sir.

Mr. English: I move to strike that out.

The Court: It has been so long ago since the offer of the book that I have forgotten why he wanted to look at it.

Mr. English: He said that he had no recollection of having seen that check, and if he was permitted to look at some books he might be able to say. The prosecutor

produced this book and offered it in evidence. I have been trying to cross-examine to see whether it ought to go in evidence.

The Court: Confine your examination to the point, and that is whether that book ought to go in evidence.

Q. The question is whether there is any individual entry in that teller's proof book of March 17th which refers to this check S-5.

Mr. Guild: I don't consider that it has to be an individual item. That is an immaterial question.

Q. Is there an individual entry? A. With the assistance of another book, or possibly two more books, I think I can trace the check, as to just where it went.

Mr. English: I move to strike that out as not responsive to my question.

The Court: Can you answer that question? Can you tell by an inspection of that page whether there is anything in there concerning that check?

Witness: Yes, there is.

The Court: Your motion to strike out the witnesse's unresponsive answer is granted.

Q. Is there an individual entry in this proof book of March 17th relating to this particular check S-5 for identification? A. Not on March 17th, no, sir.

Mr. English: I object to the admission of the book in evidence.

By Mr. Guild: Q. Is there anything under any other date to indicate whether that check was paid by the Trust company? A. Yes, sir.

By the Court: Q. What date? A. March 18th.

Mr. English: I thought the entry was March 17th.

Mr. Guild: He said it was under date of March 17th.

Mr. English: Do you make a new offer?

Mr. Guild: Yes, sir.

Mr. English: I object to the full book.

The Court: I think your offer must be confined to such part of the book as relates to this transaction.

Mr. Guild: I offer so much of the book as appears under date of March 18th.

By Mr. English: Q. How much of the entry of March 18th is in your handwriting—everything excepting the extreme left-hand column? A. Yes, sir.

Q. Can you point me out the entry as to this particular check S-5 for identification? A. I can point out something—

Q. Just answer my question. A. No, sir; I cannot.

By the Court: Q. Is there nothing on that page concerning that check? A. There is something there.

By Mr. English: Q. Which points to that check? A. Yes.

Q. You point to an entry in a typewritten column? A. Yes, sir.

Q. Was that typewriting done by you? A. Ordinarily it was.

Q. Was it in this case? A. I don't know.

Q. Did you keep it on this date? A. Yes, sir.

Q. Who is the man that runs the adding machine? A. That is just what I don't know.

Q. You don't know that you didn't? A. I don't know that I didn't; I know that I did right along; I know I did most of the times run that adding machine for that purpose

By the Court: Q. Did you post that column of figures in there? A. Yes, sir.

By Mr. English: Q. Where did you get it from? A. Either I ran it up on the machine myself or had somebody else do it for me.

Q. You don't know it you ran it up from this particular check or not, do you? A. I don't know from that amount in that book, just from that record, no.

Q. You don't know whether that entry there relates to this check or some other check? A. Not by the amount of data I have before me, no, sir.

Q. That standing by itself means nothing as to connecting this check? A. Yes, sir, except that the amounts are similar.

Q. There has been an entry of other checks of the same amount? A. Yes, sir.

Q. Is there any connection with that and the names above it? A. No, sir.

Q That column means checks that came back through the exchanges? A. No, it means checks that came back through the exchanges or other checks that were held for any purpose, checks that were not charged up regularly, and we held them over night or for any length of time.

Q. Checks that would come through the window? A. Yes, checks that would come through the window, sometimes held in sundries over night.

Q. So that column means that it may relate to

checks which came through the exchanges or through the window and held in the receiving teller's drawer? A. Yes, sir.

Q. Except as that column or any item in that column may correspond with some particular check, there is no similarity between those? A. No, sir.

Q. Is there an entry there for the amount of that check it may relate to this and it may relate to any one of a dozen checks of that amount? A. Yes, sir; with that information before me I couldn't tell.

By the Court: Q. You could tell with the aid of other books? A. Yes, sir.

By Mr. Guild: Q. Do you need any other books? A. Yes, the return item book for March 18th.

Q. I show you a book marked Roseville Trust Company in 1913 in account with exchanges, February 27th to March 20, 1913, and ask you what book that is? A. The book I refer to as being the return item book for March 18, 1913.

Q. And contains what?

Mr. English: I object to that. The book speaks for itself Did he make it?

Q. Did you keep that book on March 18, 1913? A. Yes, sir

By the Court: Q. As part of your system? A. Yes, sir.

Q. And used necessarily in connection with these other books in order to explain this transaction? A. Yes, sir.

Mr. Guild: I offer the book in evidence.

By Mr. English: Q. Tell me how it is made up —you call it what? A. Return item book.

Q. How is that made up? A. Any checks having come up in the exchanges in the morning were turned back by the bookkeeper to the receiving teller to be returned to any of the down town banks had to be listed in that book there as a record.

Q. What do you mean by that? Take for example, a check which is drawn on your bank and deposited in some other bank and it comes to your bank through the exchange, when you get the check to the bank what do you do with reference to that book? A. Nothing with reference to this book. Immediately you send the check first to the bookkeeper.

Q. For what purpose? A. For the purpose, in the first place, of endorsement, looking at the endorsements to see whether they are correct and looking at the dates to see whether they are correct, and there are a dozen other reasons why checks are looked at in the exchanges before they are paid.

Q. Does the bookkeeper make any entry in reference to it? A. Not if it appears in that book.

Q. You say it went to the bookkeeper before it came to this book; does he make any entry in regard to it? A. He does make an entry—

Q. The bookkeeper doesn't keep this book the teller does? A. Yes, sir.

Q. You say the check, in the ordinary course of business, is given first to the bookkeeper; does the bookkeeper make any entry of it in any book? A. With reference to checks in general or the checks in that book?

Q. Checks in general. A. Checks in general the bookkeeper makes an entry.

Q. Checks that come back through the exchange? A. Yes, sir.

Q. Does he make an entry on the checks which appear in this book? A. No, sir.

Q. Why not? A. Because those checks are turned back to the receiving teller for one of a dozen reasons.

Q. Which one of a dozen reasons were the checks listed here on March 18th returned back to the receiving teller? A. I can tell you by looking at the book. (After examining book.) The checks on the first page there, some are returned for insufficient funds; there is one check, a treasurer's check—the treasurer's account is not kept in the individual ledger, but in the general ledger. The bookkeeper, in making it in the individual ledger, necessarily must turn it back to the receiving teller; that is listed there; certified checks are listed here, the names of the makers, of the signer; checks are listed here and the amounts appear in this book; there are other checks, one returned for signature and one for endorsement, and possibly half a dozen for insufficient funds.

Q. Those are the reasons which govern the entries in this book? A. Yes.

Q. Now, from what information or data did you make up the entries in this book? A. In the checks themselves.

Q. Do you say now there is an entry in this book relating to that check S-5?

Mr. Guild: He doesn't say anything about that; he simply has identified this check in a general way; he has not been asked whether there is anything there.

Mr. English: I think it is very material

as to whether this book should be admitted in evidence.

The Court: He says it is necessary to have this book for a particular purpose. It is narrowing down as to whether it is necessary, and of course, if it is not necessary, it would not be admissible. If there is something in there concerning this check it would be proper to admit it in evidence. He is asked specifically whether there is anything in the book that makes it necessary for him to have it. (To the witness.) When you answer that answer yes or no.

A. Yes.

Q. Did you make the entry? A. Yes, sir.

Q. Do you know whether you had the checks before you when you made the entry? A. I don't remember that.

Q. You can't swear whether the entry of $350 in that book refers to that check at all, can you? A. No.

Mr. English: I object to the offer of the book.

The Court: The book will be admitted.

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)

Books marked Exhibits S-9 and S-10.

Mr. Guild: It may be necessary for the witness to refer to what they call the certified check book.

By the Court: Q. Do you need any more books? A. Not in relation to the payment of the check, no— I beg your pardon. That certified book might help me—I don't say that it would, but it might.

Q. Can you determine that question? A. By looking at it, that is the only way I can determine it. (After examining book.) Yes, this is the one I want, but there is nothing in it to help me.

Q. Then with the two books can you answer the prosecutors's questions, the two books that you have already examined?

Mr. Guild: I withdraw the offer for the present.

The Court: The books are in evidence upon which the prosecutor desires to base his question.

By Mr. Guild: Q. I want to know whether that check was paid by the Roseville Trust Company, and if so, in what way and on what day?

Mr. English: I object, because he said he couldn't say, and when this book is offered in evidence he still says that there is nothing in the book that relates to this check, so therefore it is evident that he cannot answer this question.

The Court: You ask him specifically whether he could tell by looking at the book, an individaul book, whether it related to that check, and he said no, but he said taking them altogether that he can tell. Now, the question is taking both of these books and the check together, he can tell whether that check was paid. 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.

H. V. OSBORNE,
Judge.

(Seal)

A. No, I can't tell you that particular check was paid. The only thing—

Objected to.

Q. What do the books show? A. The books show—

Mr. English: I object. The books speak for themselves. They are now in evidence.

The Court: I think the witness may be asked to tell what the books show. 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.

H. V. OSBORNE,
Judge.

(Seal)

By the Court: Q. What do the books show, if anything, with regard to the payment of that check? A. In the return item book is shown a certified check of $350 that came to us to be paid on March 18th. The sundry items, meaning by that those items that were held in the receiving tellers' cash over night for any reason, that also shows a similar amount, $350; those amounts are the only things that lead me to believe—

Mr. English: I object to what the witness believes.

By Mr. Guild: Q. Was there any other certified check under that date of that amount? A. No, sir.

Q. You said that it was paid; how was it paid?

Objected to.

The Court: I do not understand that he said so.

Mr. Guild: Paid by the Roseville Trust Company, that is the question.

The Court: I understood him to say he couldn't tell whether it was paid or not.

Mr. Guild: I understood him to say that this check is the only check of that amount which was certified and came back.

The Court: I didn't understand him to say so.

Q. You say you find there a $350 check which came in the exchanges? A. Yes, sir.

Q. How was it paid?

Objected to.

The Court: That states a conclusion. He didn't say it was paid.

Q. How was that particular check paid that did come in that you find on your book?

The Court: He has not said it was paid. He has been asked to state what the book shows with regard to the payment of that check.

By the Court: Q. Did I understand you to say that the check had been paid? A. No, sir.

Q. Did I understand you to have said so? A. No, sir.

By Mr. Guild: Q. You will not say that that check has been paid?

Objected to.

The Court: The question is whether he is able to say that that check has been paid.

Mr. English: Yes or no.

By the Court: Has it been paid or not?

Witness: Yes, the check has been paid.

Mr. English: I move to strike that out. Your Honor asked him that. That is a matter for me to find out on cross-examination.

The Court: I will let it stand.

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. How was it paid? A. In the first place, it was certified.

Q. That does not pay it? A. Yes, sir, that obligates the bank to pay the check. Then it was deposited in the Essex County National Bank on March 17th to the credit of the Greylock Land Company, John B. Scarlett, Treasurer; while there is nothing to indicate that it came in on the 18th, still that would be the following day and that would be the day we would receive it ordinarily, and that following day, March 18th, in the return item book there are many other certified checks listed, an amount of $350, that being the only amount listed of that amount that day, and then the certified check—well, after that, after it had been listed in the return item book, it could take either of two courses, either the certified check—

Mr. English: I object. He has given one of two hypothesis; he has undertaken to answer a specific question.

The Court: He is trying to tell why he says this check was paid. 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.

H. V. OSBORNE,
Judge.

(Seal)

Witness: If this check has gone through the one course that I spoke of a charge slip, which is a white slip, would have been substituted for this check—I am wrong there—excuse me—that is done, in the first place, on March 17th that would be done, but this check would simply be taken and stamped paid and the charge slip which had been made out on March 17th would then be taken and be destroyed and this check substituted in its place, that is, in the file of John B. Scarlett's checks, and this check would be taken and put in there in substitution of a charge that had been made out on March 17th. That way has not been followed here. There is another way that check would be paid, and that is by being held in the sundries—that is, the receiving teller, after having had it returned to him by the bookkeeper, places it in the return book and also lists it among the sundries; that means that the check had been held over night, and that is why I say this check, or a check of similar amount, $350, which does not appear—there can be no check of a similar amount on March 18th, because it would appear in the return item book. That is the reason I am sure this check was held in the sundries on March 18, 1913.

By the Court: Q. Do you find anything in your sundry book? A. Yes, sir, a $350 check.

Q. And any other place? A. The receiving teller's proof book for March 18, 1913.

Q. The explanation you have given us is the reason you say that the check has been paid? A. Yes.

Q. Why wasn't it marked paid in some way? A. Because when the checks were held in the sundries they were not marked paid; the checks that went through regularly paid by the bookkeeper were all stamped with a rubber stamp that we had in the bank there cancelling the checks.

Q. Do you know why that check was held in the sundries? A. Why, no, sir, I don't know.

By Mr. Guild: Q. You took no steps to find out why it was held in the sundries over night, or can you recollect what steps you took? A. I can't recollect anything definite about the check, Mr. Prosecutor. I don't know definitely just what the reason was for it being held or anything about it other than the fact that the check would not be held in the sundries unless there was an order given to me to hold it in the sundries.

Q. And you have no recollection about having received any orders to hold it? A. No, sir.

Q. That check came to you through the exchanges? A. Yes, sir.

Q. Through which bank in Newark? A. Essex County National Bank.

Q. Directly to your bank? A. No, it wouldn't come directly to our bank, no, sir, it would go to the Union National Bank first off.

Q. Did you exchange through the Union Bank? A. Yes, sir.

Q. Did you explain what you meant by exchanging through the Union Bank? A. Yes, sir.

Q. Did you have an account there? A. Yes, we did. Any check exchanges—

Q. No, this check, I want to know. A. This check being deposited in the Essex County National Bank and the Union National Bank acting as our clearing house, the check would go to the Union National Bank first off on the morning of March 18th; the Union National Bank would then hold these checks, this check among others, this or any other checks, among others, until such time as we sent down for those checks; in other words, the Union National Bank just grouped our checks from the different banks, from the Essex, National, Newark Bank or any other checks which these other banks in the city had deposited or cashed the day previous, they all sent them in to the Union National Bank.

Q. How would you get them from the Union National Bank? A. We would send down for them.

Q. What would you send? A. A messenger.

Q. Wouldn't you pay anything for them? A. We would pay the same day—the custom was either to have the Union National Bank charge it to our account, charge the total of the exchanges to our account or to—that was done immediately, I presume, in the Union National Bank—

Q. Have you any way of showing whether on that date the Union National Bank did make a charge against you which included this check? A. That again would only be a matter of just simply similarity in amounts.

Q. Have you that item? A. That item, all it is, is just simply a small or large machine list, a list made up on an adding machine showing the in-

dividual items and then showing the total of the certain number of items. This item, if cleared through the Union National Bank, which it must have been, would appear in the Essex County machine list, that is, they would have listed it up—

Q. We are getting a good ways from my question. Will it not appear in your return item book—

By the Court: Q. How do you pay your bank that clears for you—did you send them cash or check? A. No, sir; we sent them a check.

Q. In other words. you owe them a certain amount of money and they owe you a certain amount of money depending on how many checks each bank holds? A. We don't strike a difference. We pay them a total for the exchanges.

Q. And whatever this list shows, which is made up by an adding machine, of checks, you send them a check for it on your bank? A. Yes. sir.

Q. I call your attention to the return item book under date of the 18th of March, 1913, and ask you what the figures $50,654.23 are as nearly as I can read them? A. That is the total of the exchanges that we received from the Union National Bank that date.

Q. I ask you whether that amount includes an item of $350? A. Yes, sir.

Mr. English: If he knows.

Witness: Yes, I do know.

By Mr. Guild: Q. It so appears in the book? A. Yes, sir.

Q. For how much did the Roseville Bank give a check to the Union National Bank? A. $50,-654.23.

Q. And that was on what date? A. On the 18th of March.

Q. 1913? A. Yes, sir.

Adjourned until tomorrow, Tuesday, March 16, 1915.

SECOND DAY

Essex County Oyer and Terminer,
Tuesday, March 16, 1915.

Continued pursuant to adjournment.
Present, counsel as before stated.

WILLIAM J. THOMPSON, resumes the stand:

Cross-examination (continued) by Mr. English:

Q. How old are you Mr. Thompson? A. Twenty-six.

Q. When did you leave the employ of the trust company? A. Some time after the close of the bank.

Q. You worked a while under the management of the banking department? A. I did, yes, sir.

Q. That continued until when? A. Some time in October, 1913.

Q. When did you first go into the bank? A. The time it was organized and opened for business.

Q. That was the beginning of the trust company? A. Yes, sir.

Q. That was back in 1908? A. December, 1908.

Q. Your first position was what? A. Bookkeeper.

Q. How long did you continue as bookkeeper? A. Until 1911, I think it was.

Q. And then what position did you ocupy after that? A. Receiving teller.

Q. Do you remember what date in 1911 you began as receiving teller? A. No, I do not. I was receiving teller on and off previous to the time that I was permanently apointed receiving teller.

Q. And then you became the genuine receiving teller some time in 1911? A. Yes, sir.

Q. Who had been receiving teller before that? A. Mr. Jennings.

Q. And he became paying teller? A. Yes, sir.

Q. What are the duties of a receiving teller? A. To receive all deposits.

Q. You stand behind the window and the checks and money are deposited with you? A. Yes, sir.

Q. And when a deposit is received what do you do with it? A. Well, you sub-divide the deposits if it happens to be checks and bills or checks and silver, whatever happens to be, divide the different parts of the deposits in sections and send the deposit ticket to the bookkeeper.

Q. Do you keep the deposit tickets that day or some time during the course of the day? A. Sometimes during the portions of the day, there are batches sent during the day, three or four times a day, to the bookkeeper.

Q. Every deposit is accompanied by a deposit ticket? A. Every deposit account sent to the receiving teller's window must have a deposit ticket.

Q. And the bookkeeper puts it in the individual ledger? A. Yes, sir.

Q. Who certifies checks? A. Do you mean generally or—

Mr. Guild: Are you speaking of this bank or some other bank?

Mr. English: About this bank.

Witness: There were three of us that had the authority to certify checks.

Q. You were one? A. Yes, sir.

Q. Who was another? A. Mr. Jennings, paying teller.

Q. Who was another? A. Mr. Smith.

Q. What was the practice of certifying checks, to make an entry in a check certification book or something of that character? A. Yes.

Q. Did the bank keep the check certification book? A. Yes.

Q. That was one of the books you asked for yesterday and then you said it didn't help you any? A. Yes.

Mr. Guild: You say that it didn't help you?

Witness: In that particular instance it didn't help me.

Q. In reference to this $350 check, the check S-5 for identifiaction. A. That didn't help me in that instance at all.

Q. Was the reason that the check wasn't entered in the check certification book? A. That was the reason.

Q. Then the usual practice wasn't carried out in that case? A. Not in that case, no, sir.

Q. Whose duty was it to enter in the certification book the entry of the certified check? A. Generally I entered the certified checks in the certified book.

Q. Were you doing that on the 17th of March, 1913? A. Yes.

Q. You didn't enter this one? A. Well, I—

Q. Did you? A. No, I didn't enter that, no.

Q. And that is the reason you didn't care to refer to that book or that is the reason that certified book did not help you in reference to this check? A. That is the reason.

Q. Normally, the first entry after a check is certified is to enter it in the check certification book? A. No, that is not the first entry; the first entry is the making out of a white charge slip, a white ticket, and from that white charge slip the entry in the certified book is made.

Q. Whose duty is it to make out the white charge slip? A. The person who certifies the check.

Q. Do you know who that was in this case? A. Yes.

Q. Was there any white charge slip made out in this case? A. That I don't know.

Q. So far as you know, the first requisite of the process of certifying a check, namely, the making out of a white slip, was not performed in this case? A. No.

Q. The second check, namely, the entry of the check in the check certification book was not performed in this case? A. No, sir.

Q. Presumptively, if a charge slip is not made out and an entry is made in the certified check book the check was never certified, isn't that right?

Mr. Guild: Objected to. He is examining about this check, and it shows on its face it was certified.

The Court: I think you had better deal with facts and not presumptions. 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. OSBORNE,
Judge.

(Seal)

Q. In the ordinary course of business, however, when a check is certified, there is a charge slip and there is an entry in the check certification book? A. Yes, in the ordinary course of business.

Q. And that is the practice when a check is certified? A. Yes, sir.

Q. What is the next record which is kept of the certified check in the ordinary course of business? A. The bookkeeper's record.

Q. And what kind of a record is that? A. The mere entry of the charge slip in the account.

Q. You mean in the individual ledger account?

A. In the individual ledger account, yes, sir.

Q. Is there any different notation made of a certified check than any other kind of a check? A. Usually there is a C marked opposite the amount of the entry.

Q. So that the ordinary course, where a check is certified, there is first the charge slip, second, the entry in the certified check book and, thirdly, the entry in the individual ledger account with a C after it? A. Yes, sir.

Q. And you expect to find those entries in the case of a certified check? A. Yes, sir.

Q. What is the next step, as far as the books go, in the ordinary case? A. That is the last record made of the certified check at the time the check is certified.

Q. That is the last record before the check goes out of the bank? A. Yes, that is the last record.

By the Court: Q. As I understand it, then, when the check is certified it is charged against depositor's account at that time? A. Yes, sir.

Q. And it differs in that respect from the ordinary check in that the ordinary check is not charged until it returns to the bank? A. Yes, sir.

Q. That is the only difference? A. That is the difference.

By Mr. English: Q. Will you turn to the individual ledger account of Mr. Scarlett and point out to me, if you can, where there is an entry in the ledger of this $350 check, this Exhibit S-5 for identification under date of March 17, 1913? A. There is no such entry.

Q. Of course, there is no entry to make of the C after? A. No, sir.

Q. The charge slip, the entry in the certification book, and the entry in the ledger were all omitted in this case apparently? A. Yes, sir.

Q. That class of entry is what happens in a normal case where the check is certified by the authority of the bank? A. Yes, sir.

Q. After this was done in the normal case the check leaves the bank? A. Yes.

Q. When does the bank next have a record of the check? A. When the check returns to the bank.

Q. Through the exchange? A. Through the exchange, yes, sir.

Q. What is the first book it goes in when it comes back through the exchange? A. The return item book.

Q. The book which the prosecutor says is the return item book, is that it? A. Yes.

Q. Just show me the page you referred to on your direct-examination. A. (Indicates in book.)

Q. There is nothing on this page to which you refer showing the name of the depositor? A. In some instances there is.

Q. I mean, in reference to the item of which you are talking about? A. No, there is no name there.

Q. There is nothing here at all to indicate that this return item book which you referred to in any manner refers to this check S-5 for identification except the similarity of the figures $350; is that all? A. That is all.

Q. And you said yesterday, I think, that you couldn't say positively that it referred to that check.

Mr. Guild: I don't think he said that.

The Court: He said that he could not say from that standing alone, by itself, disconnected from any other evidence or circumstance, that he could say.

Q. It is true, isn't it looking at this return item book S-10, standing by itself, there is nothing in the book from which you can say that the entry refers to this particular check, is there? A. No, not standing by itself.

Q. That is what I mean, standing by itself. What is the next entry in the next book after the return item book? A. In this case or in the ornary case?

Q. In the ordinary case. A. After being entered in the return item book there it is taken and the certified charge that has been made out in the beginning of the transaction, the white slip I spoke of before, that white slip is taken out of

the files of the depositor and this certified check is substituted.

Q. Who did that in the ordinary case in March, 1913? A. Either the bookkeeper or his assistant.

Q. When you say taken out of the files of the depositor, you mean they are supposed to be kept, in the ordinary case, by themselves? A. Yes, sir.

Q. And when those are balanced they show charges against the account? A. Yes.

Q. This check wasn't put with the depositor's check, was it? A. No, sir.

Q. As a matter of fact, the check was put in some private drawer of which Mr. Smith had the key, wasn't it?

Mr. Guild: I object to that as not cross-examination. I have not asked anything about what became of this check or where it went.

The Court: I do not recall anything in the conversation concerning the history of this check.

Mr. English: Not with reference to this drawer, no, sir, but your Honor will remember, at the close of his direct-examination, he gave his theory of the check and the history of the check and that it had been paid, and I think it bears directly on that theory at this time.

The Court: I do not know if the witness has any knowledge, and in the second place it is not cross-examination, and I cannot see its materiality at this time.

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. And therefore it was not substituted for any charge slip if such had, in fact, been made? A. No, sir, it wasn't substituted.

Q. As a matter of fact, there wasn't any charge slip made, was there?

Mr. Guild: Ask him whether he made any. How does he know?

Mr. English: If he doesn't know he will be able to say so.

The Court: He can say if he knows. It is true, when a witness is asked a question of this character, that he speaks of his own knowledge.

(To the witness): If you know.

A. I know of no charge slip that was made for this check.

Q. In a normal case what is the next step after the certified check is substituted for the charge slip? A. It remains in the files of the trust company under the name of the depositor until such time as the depositor sends his book in to be balanced.

Q. Then it is returned with the book? A. After the book has been balanced the checks are returned to him.

Q. Was it your duty to balance books? A. No, sir, not during the time I was receiving teller; previous to that it was.

Q. As a matter of fact, this check was never returned with the balance book, was it?

Objected to.

By the Court: Q. Have you any knowledge? A. I have no knowledge.

By Mr. English: Q. You remained in the bank after the bank was closed by the banking department? A. I did, yes, sir.

Q. Did you assist in balancing any books at that time? A. I did, yes, sir.

Q. Did you balance the book of Mr. Scarlett? A. No, sir.

Q. Do you know how many pass books were issued to Mr. Scarlett by the Roseville Trust Company?

Mr. Guild: This witness cannot go into the question of pass books.

The Court: I will admit the question.

(Question read.)

A. No, I do not.

Q. I show you here a pass book on the Roseville Trust Company account with Scarlett. Are any of the entries of that in your handwriting?

Objected to.

Objection overruled.

(Question read.)

Q. There is one entry here in my handwriting.

Q. Did you ever balance that book when you were bookkeeper?

Objected to.

Objection overruled.

(Question read.)

A. No, I did not.

Q. Do you know in whose handwriting the last balance was which was made in August, 1913, after the bank closed? A. No, I do not.

Q. Have you exhausted the history of the normal certified check after it comes back from the exchange? A. Yes.

Q. Goes through the return item book and then where does it go? A. Then it goes to the—

The Court: He has told us all this history.

Q. The last normal entry then is in the return item book and then it goes back to the depositor's account? A. Yes. Will you allow me to say that there is a pencil entry usually made in the certified book when the check comes in if the entry has been made in the certified book at the time the check is certified. At the time the check is returned a pencil entry is made of the date opposite the certification.

Q. In this case it wasn't done because there was no entry in the certification book? A. No.

Q. In an ordinary case, when a check has come back through the exchanges and is paid, it is perforated, is it not? A. No, sir—that is, it is all a question of whether you have a perforating machine or not; in this case we didn't have any.

Q. What kind of a stamping outfit did the Roseville Bank have? A. A rubber stamp.

Q. And that said what—"Paid"? A. Paid.

Q. So that in the ordinary case the Roseville Trust Company, when a check came through the exchanges and paid, was stamped "Paid," was it? A. Yes, sir.

Q. There is no such stamp on this check, is there? A. No.

Q. What is the system of carying checks in the teller's drawer as cash—is that what you spoke of yesterday? A. Yes, sir.

Q. As a sundry? A. Yes.

Q. You can't claim that this check was paid on the theory that it was paid and stamped paid, be-

cause it wasn't stamped paid, was it? A. No, sir; it wasn't stamped.

Q. That left you upon the theory of being carried in the cash as a sundry item? A. Yes.

Q. Now, then, tell me what that system was, if there was any system, of carrying the check in the cash in the sundry item? A. Well, when the check wasn't either regularly charged to the depositor's acount and had to be held for any reason the receiving teller held it in his cash as a cash item, as a sundry item, over night.

Q. And then the next day what was done with it? A. The next day it was turned over to the paying teller.

Q. Then the receiving teller took a receipt from the paying teller for what he turned over? A. No, there wouldn't be a receipt, he turned over everything to him, he starting off the following day with a clean slate.

By Mr. Guild: Q. A clean slate means an empty drawer, I suppose? A. Yes, sir.

By the Court: Q. The receiving teller turns over everything to the paying teller? A. Yes.

By Mr. English: Q. The practice with reference to holding a check in the sundry account was simply retaining the check in the receiving teller's drawer as so much cash for that day? A. Yes, sir.

Q. And the next day it was turned over to the paying teller, and whatever checks were held in that manner were accounted for as cash, regarded as cash? A. Yes, sir.

Q. Although some of it was cash and some checks? A. Yes.

Q. In the ordinary case, when the paying teller

got it, what would he do with it? A. In the ordinary case?

Q. Yes.

Mr. Guild: Isn't this rather for the other teller to inform us?

By the Court: Q. Are you familiar with the practice? A. Yes, sir .

Q. Sufficiently to tell us what it is? A. Sufficiently to tell you what it is, I think.

By Mr. English: Q. Tell us what the practice was in the ordinary case when the receiving teller, the following day, turned over to the paying teller the cash and checks in his drawer, which checks were regarded as cash? A. Why, they were held in the paying teller's cash until such time as the reason for the holding of the check was overcome; if the check was held for insufficient funds, then at the time the check was good it could then come back in the same way that it had gone to the paying teller, come back through the paying teller's cash to the receiving teller's cash and from him to the bookkeeper, and then charged up.

Q. In the ordinary case, if a check was held that way, the depositor would be notified of the fact that he required some funds to meet his check? A. He might or might not be notified.

Q. That is the ordinary practice in banking? A. It is the ordinary practice if the check is held for one reason, but if the check is held for other reasons it would not be the practice to notify the depositor of the holding of the check.

By the Court: Q. Would it depend upon the depositor? A. No, it would depend upon the reason for which it was held.

Q. You are referring now, as I understand it, to checks held for lack of funds? A. Yes.

By Mr. English: Q. Primarily I am referring to those checks held as cash, and I ask you why they were held you said that would be one reason; that is what you said? A. Yes.

Q. In the ordinary case, these checks which were carried as cash were not held very long, were they? A. That I don't know.

Q. You don't know about that? A. No.

Q. Now, you have no recollection of seing this particular check held in the cash or anything of that character, have you? A. I have no recollection, of it, no, sir.

Q. And you have no recollection as receiving teller as having had that check in your drawer, and as having turned it over to the paying teller as cash? A. I have no recollection of it, no, sir.

Q. And your whole ground yesterday for testifying about this check was the theory you had worked out from the similiarity of the figures $350 on the check and the figures $350 in the return item book? A. Why, that—

Q. Yes or no?

The Court: He is not obliged to answer it yes or no.

Witness: No, that wasn't the sole ground. The reason I said it was paid was the fact that that was the only $350 certified check that came in on the 18th of March.

Q. You don't know that? A. Yes, I do.

Q. It is not in the certification book? A. No, but it is in the sundry—

Q. Wait a minute. It is not in the certification book? A. No.

Q. No charge for it? A. No.

Q. No entry in the depositor's account? A. No.

Q. The prosecutor shows you a check which purports to be certified for $350, and you say without any other knowledge that that is the check?

Mr. Guild: I object. He didn't say he thinks; he said he knows.

The Court: I do not think you have the right to question him in such a manner.

(To the witness): Can you answer the question?

Witness: Yes, I can answer it.

The Court: You may answer it.

A. It is not only because the prosecutor shows me the certified check for $350; it is because of the entry in the return item book.

Q. That is what I say, that was just my question exactly. You take the $350 check and you see some entries in the return item book having the same figure? A. Yes.

Q. Without any name opposite it? A. Yes.

Q. Anything else? A. Yes, sir.

Q. And you therefore conclude that the two entries refer to the same thing, is that it? A. Yes.

Q. In spite of the fact that there is no other series of entries which would appear in the normal course if that had been the situation? A. In spite of the fact that there is no other.

Q. Your testimony as to this is your conclusion from these records which are before you? A. Yes, sir.

Mr. English: I think the witness's conclusion is not material and ought to be stricken out.

The Court: It is certainly responsive.

Mr. English: He testified yesterday, in response to a series of questions, giving a

series of facts which he now admits to be a theory which he has deduced from a certain set of entries or items, and I say that the conclusion of the witness is not evience, and when it appears that the testimony he gave yesterday is simply his conclusion from a set of entries, standing by themselves, which mean nothing, that therefore there is no legal evidence which is binding upon the defendant, and I therefore move to strike it out.

The Court: 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. OSBORNE,
Judge.

(Seal)

Q. At any rate, the only ground you have for your testimony yesterday was the similarity between the entry in the return item and the amount of the check? A. It wasn't the only ground, no.

Q. By whose direction would a teller retain a check in his drawer as cash?

Objected to.

Objection overruled.

The Court: You mean in the ordinary practice?

Mr. English: I will put it first in the ordinary course.

A. By the officer in charge, ordinarily.

Q. That was Mr. Smith? A. In this particular case Mr. Smith.

Q. In this particular case, you mean in connec-

tion with the affairs of the Roseville Trust Company? A. Yes.

Q. After the check has been held in the cash as you have described and thereafter the bank book is balanced, the check is returned with the bank book, isn't it? A. Let me understand you, if it has been held in the cash—

Q. And then the book is balanced? A. Well, while it is being held in the cash?

Q. That is why I am asking you; I don't know. Suppose a check was held in the cash for a week, and at the end of the week the depositor turned in his book to be balanced. A. Unless the check was charged up to the account the book could not be balanced and that check returned to the depositor.

Q. Wouldn't it be ordinarily charged up? A. Ordinarily it would be charged up, yes, sir.

Q. So that when your book comes back balanced you find this check among the others? A. This check, if it had been charged.

Q. Yes, I understand that? A. If the check had been charged to the account of the depositor, the book, when being balanced, would show this check, among other checks.

Q. Yes, that is what I say, and what I say further is, what I asked you further is, when the book is turned in to be balanced the check would be charged and sent back in the ordinary course? A. Not if the reason for which it was held had not been overcome.

Q. Who would pass on that—Mr. Smith or would you? A. No, I wouldn't.

Q. You wouldn't assume to hold up a voucher after a book had been turned in to be balanced? A. No; I wouldn't assume it, no.

Q. And when a depositor receives his book balanced in an ordinary case he has a right to think that that contains all the vouchers charged against him, doesn't he?

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. OSBORNE,
Judge.

(Seal)

Q. Now, apparently you had some messenger between your bank and the Union Bank to get the checks back that went through the exchange? A. To get the exchanges we had a messenger system .

Q. What you call the exchanges are checks drawn on the Roseville Bank and deposited at some other bank? A. Yes.

Q. Sort of a clearing bank? A. Yes.

Q. Who was the messenger in the matter? A. We had different ones. Ordinarily it was the janitor that we sent down with the exchanges.

Q. And who did that in March, 1913? A. I presume it was the janitor.

Q. But you don't know? A. I don't know.

Q. You say those checks were brought back whenever he was sent down? A. Yes.

Q. When the checks came back from the exchange they were entered up that same day in the various records? A. Yes, sir.

Q. I think you said that you never personally balanced Mr. Scarlett's pass book. Did you have

any knowledge of the fact that it was left for balance?

The Court: Did you say you never balanced it?

Witness: I said I never balanced this particular book.

Mr. English: Now, I asked him if he has any knowledge of the fact that it was left for balance at any particular time?

Witness: I have no knowledge that it was left at any particular time, no.

Q. Don't you know as a matter of fact, that this particular pass book which I showed you was turned in for balance and either lost or mislaid at the bank? A. I know that there was some difficulty—that is, there was some talk of a book having been lost or mislaid, or something having happened to it; whether that is the book or not I don't know.

Q. With reference to Mr. Scarlett's account? A. With reference to Mr. Scarlett's account.

Q. And don't you know that Mr. Scarlett was continuously complaining that his bank book had been lost and you couldn't get it back? A. I don't know that, no.

Q. Don't you know that some duplicate book was afterwards issued after a long lapse, in which an effort was made to turn up this other book? A. Yes, I know that.

Q. Do you know what became of that duplicate book? A. No, I don't.

Q. When did you last see it? A. I don't know as I ever saw it—yes, I do know that I saw it, but when I did see it I don't know.

Q. Since the bank was closed? A. I doubt whether I have seen it since the bank closed or not.

Q. About that time? A. No, I don't think I saw it about that time, either.

Q. When did you last see the pass book which I have showed you? A. Well, I can't remember having seen it at all, but my entry in that book would signify that I had seen it when I made the entry in the book. After that I don't know as I ever saw it.

Q. As a matter of fact you know it was balanced up after the bank was closed by the banking department? A. No, I don't know that.

Q. Do you know whose handwriting the entries are in, the last part of the book, particularly the date August 14, 1913? A. No, I don't know whose they are.

Q. Somebody in the bank? A. Yes, somebody in the bank.

The Pass book is marked Exhibit D-23 for identification.

Q. It is true, Mr. Thompson, is it not, that many of the entries which you made in the books were made under the direction of Mr. Smith?

Objected to.

The Court: Mr. Smith, as he has already said, was the officer in charge; he was evidently a subordinate. It is quite apparent that his whole work was done under the authority of Mr. Smith.

A. Some of them were, yes.

Q. And it is also true, is it not, that the records of the bank are inaccurate?

Objected to.

The Court: The objection is overruled. The State is relying on the records of the bank as part of its case.

Mr. Guild: But the question is so general. If he wants to call attention to any particular entry which he says is inaccurate there is no question of his right to do it, but I take it that a sweeping question of that character seems to me to be objectionable.

The Court: I think probably you should confine your question to some specific inaccuracies. I overrule the question in that form.

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. Is it not true that the entries in the individual ledger of Mr. Scarlett, are inaccurate? A. I know nothing of any inaccuracies in the account.

Q. Didn't you make some of the entries in there? A. I did.

Q. You think the account of Mr. Scarlett is accurate, do you?

Objected to.

Objection overruled.

A. I think what?

Q. The statement of the account of Mr. Scarlett in the ledger is accurate, will you say that? A. So far as I know, the account of Mr. Scarlett is —well, I won't say so far as I know, but so far as I have had anything to do with the Scarlett account the account is accurate.

Q. You think that whatever entries you made in it were accurate? A. I know whatever entries I made were accurate.

Q. You don't mean to say that the account as it stands on the book is accurate? A. I don't undertake to say that, no.

Q. You have pleaded *non vult* to an indictment for making improper entries, haven't you? A. No.

Q. For what? A. Failure to make an entry in the certified book.

Q. Have you been sentenced yet? A. I have not, no.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. You say that you have pleaded guilty to an indictment for failing to make entries in the certified book. Do you refer to checks that you have certified and didn't enter in the book? A. I do refer to that, yes.

Q. I show you Exhibit S-5 for identification and ask you whether the stamp, the bank stamp "Paid" is on the face of that check? A. No, it is not.

Q. You have said that before the check would be entered up in the individual ledger as a charge against the depositor's account it would have to be marked paid? A. Not before it was entered; after it was entered.

Q. After it was entered? A. After it was entered in the individual ledger as a charge against the depositor's account it would then be stamped paid.

By the Court: Q. You mean to say that would be a contemporaneous act, perhaps not done at the same time, but immediately after? A. Immediately after.

Q. It doesn't become charged until the entry is

made? A. It doesn't become charged against the depositor's account until the entry is made.

Q. Therefore it could not be charged before the entry is actually in the book, is what you mean? A. No, I mean that any checks that were charged to the depositor's account must necessarily be returned to him when the book is balanced and before returning a check to the depositor, after having passed through the records of the bank, it must be stamped paid so as to void the check.

Q. Would you enter a check in a depositor's account, charge account, if the account was not good?

Mr. English: I object to that. Is this a hypothetical question? Does that apply to an abstract case?

The Court: The question applies to the general practice.

A. No, not generally, I wouldn't enter a check in the account, in the depositor's account, if the check was not good.

Q. Are you able to say why this check Exhibit S-5 for identification was not charged to Scarlett's account?

Mr. English: Will the Court instruct the witness yes or no on that?

The Court: You can answer that yes or no, whether you are able to say; either you are or you are not able to say.

A. No, I am not able to.

Further CROSS-EXAMINATION by Mr. English:

Q. You say you would not enter a check in the ordinary abstract case in the depositor's account if it was not good; how would you, as the clerk

making the entry, know whether it was good or not? A. By looking at the balance of the account.

Q. That is the way you would find that out? A. Certainly.

Q. So, if the account showed a balance then you would take it that the check was good? A. Yes.

Q. Suppose the account did show a balance, would you then enter up the check? A. I would, yes.

Q. When would you do that, when would you make that entry—at any particular time? A. No, not at any particular time, no; the exchanges were entered after they came up in the morning, the exchanges were entered in the morning; sometimes it took until two o'clock to enter those things; sometimes earlier, sometimes a little bit later.

Q. You, as receiving teller, turned these checks over to the paying teller? A. I did.

Q. And you say you don't know what became of them after that? A. I don't no.

Q. If you turned them over to the paying teller what concern was it of yours of the entries? A. What entries?

Q. If you turned it over to the paying teller what concern was it of yours as to the entries as the receiving teller? A. What are you talking about?

The Court: Counsel is talking about the checks that were turned over to the paying teller, which were the sundry checks. I think counsel wants to know which class of checks you refer to.

Witness: Which entries does he refer to? You

are talking of the sundries; I presumed you were speaking of the checks; we were speaking a moment ago of ordinary checks.

Q. What is the situation with the ordinary case, how is that handled? A. The situation in the ordinary case, simply the check is received by the bookkeeper and charged to the account.

Q. In other words, it didn't go into the sundries? A. No.

By the Court: Q. Unless there is something the matter with it? A. Unless there is something the matter with it it goes directly through the bookkeepers.

By Mr. English: Q. As a matter of fact, were not the checks held in the sundries by order of Mr. Smith?

Objected to as not re-cross-examination.

The Court: It is not re-cross-examination.

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. English I think this is proper re-cross-examination.

Q. After a check has come back through the exchanges and has been entered against the account, then you say it is stamped paid? A. Yes.

Q. And that is a simultaneous act, the depositor is charged and the check is stamped paid? A. Yes.

Q. And of course, the reverse is true, the check

is not stamped paid until the account is charged? A. That is the idea.

JACOB SCHUNK, sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. What is your position with the Union National Bank? A. Pass book clerk, at present

Q. And what was it March 18, 1913? A. Check clerk.

Q. In that position would you have charge of checks that came in to meet the exchanges? A. Yes, sir.

Q. On March 18, 1913, was the Union National Bank the clearing house for the Roseville Trust Company? A. It was.

Q. I show you a check dated March 18, 1913, check No. 1375, Roseville Trust Company check, payable to the order of Union National Bank for $50,654.23, and signed by R. E. Smith, Treasurer, addressed to the Union National Bank, Newark, N. J., and ask you whether that check was received at the Union National Bank on or about that date? A. It was.

Q. And you can say what for? A. For settlement of the exchanges of that day.

Q. Of that date. Is the check marked paid? A. It is.

Q. Do you know the signature of Mr. Smith? A. I do.

Q. I ask you to examine the signature as to that check and say whether you recognize it as the signature of R. E. Smith, Treasurer of the Rose-

ville Trust Company? A. That is his signature, to the best of my knowledge.

Mr. Guild: I offer the check in evidence.

Mr. English: I object to it. In the first place, there is no connection at all between this check and the State's case.

The Court: Then it cannot hurt you very much.

Mr. English: It is immaterial.

The Court: I assume it will be connected.

Mr. Guild: That check is for the same amount of money that Mr. Thompson testified yesterday that the Roseville Trust Company had paid to the Union Bank to meet their exchanges of that date, and this is the check that made the payment.

Mr. English: That may all be true, but this other check has not been connected up yet.

The Court: Do you want to examine on that question of whether it is the check or not?

Mr. English: Yes.

CROSS-EXAMINATION by Mr. English:

Q. Did you ever see Mr. Smith write? A. I did not.

Q. You don't know whether that is the signature except as you have seen checks from the Roseville Bank with the name on? A. Yes, sir.

Q. Other than that you have no knowledge? A. No.

Q. Do you know what items went into this fifty thousand odd dollars represented on this check? A. Checks that came through the exchanges.

The Court: He has not been asked about that and it has nothing to do with the question of whether this is a check made in payment for exchanges on a certain day. You are not examining on the details of that check, but merely on the question of its admissibility. The question is overruled. It may be material later on, on cross-examination, but in this phase of it the question is merely whether this check was given for exchanges.

Mr. English: I object to the check on the ground that it is not connected with the State's case.

The Court: It will be admitted.

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-11.

Q. You don't know what items went into the total amount of that check, do you, Mr. Schunck? A. I do not.

Q. Have you any knowledge about it one way or the other? A. No, sir.

Q. Simply that the Roseville Bank paid your bank a check for that amount on that date? A. For the exchanges.

Q. And the Union Bank was sort of a clearing house for the Roseville? A. Yes, sir.

Q. And every day checks were exchanged between you, weren't they? A. Yes, sir.

Q. And that simply happened to be the amount

which the Union Bank had charged the Roseville Bank for that day? A. Yes, sir.

AUGUSTUS R. JENNINGS sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. Mr. Jennings, you were formerly in the employ of the Roseville Trust Company? A. Yes, sir.

Q. When did you go in their service? A. The time of the organization.

Q. And remained until what time? A. Some time in July, 1913.

Q. Then you were there March 17, 1913? A. Yes, sir.

Q. What was your position March 17, 1913? A. Paying teller.

Q. I show you a check marked Exhibit S-5 for identification and ask you whether you recollect having seen that check before? A. No, sir.

Q. Is there no way by which you can refresh your recollection? A. No, sir; I don't think there is.

Q. What did you say your position was? A. Paying teller.

Q. You don't remember having that check in your possession as paying teller? A. I can't absolutely say that I did, no, sir.

By the Court: Q. Are there any records of the bank that would refresh your memory or indicate whether or not you had had it in your possession? A. Not on that particular check, your Honor.

Q. By referring to any book I will ask you again, or record of the trust company, whether you could refresh your recollection about it? A. May I answer that by way of an explanation? That check was turned over to the paying teller from the receiving teller as a sundry item, evidently with several other checks in the machine list, and inasmuch as they were simply examined as to the correctness of the list and the amount I can't identify any check.

Q. Do you know that you held that as a sundry? A. I do not.

Q. Can you tell by referring to your book how much you received on that date in the way of sundries? A. I can by referring to the receiving teller's proof book, yes, sir. (Book handed witness.) A. $1688.69.

Q. That is the total? A. The total of the sundries.

Q. That you received on what date? A. On the morning of March 19th.

Q. That constituted all the business of March 18th? A. Yes, sir.

Q. $1688.69, that is the total of the sundries? A. Yes, sir.

Q. Did you check up that total? A. Yes, sir; I did.

Q. Did you find any record of your having checked it or data which you used in checking it? A. Yes, pencil marks alongside of it.

Q. What did you check it with? A. With the list turned over with the item.

Q. Did you see the list? A. No, sir; the list is destroyed; it is not kept.

Q. What is that typewriting, that typewritten

piece of paper pasted on? A. I didn't see that. That is Mr. Thompson's list, duplicate list that Mr. Thompson kept.

Q. Is that what you checked it up from? A. Not that particular list; checked it up from another list.

By Mr. Guild: Q. Is there an item of $350 on that list? A. Yes, sir.

By the Court: Q. The total of that typewritten list of figures which I understand from the testimony of Mr. Thompson represents the sundry lists correspond with the testimony you just gave us? A. Yes.

By Mr. Guild: Q. Are you able to tell how long you held that check in sundries? A. I cannot, no, sir.

Q. Do you know what became of it eventually? A. I do not.

Q. I mean, when it went out of your possession? A. I have no absolute knowledge.

Q. What knowledge you have. A. I haven't any.

By the Court: Q. Don't you keep any record of sundries that you carry from day to day after they are turned over to you? A. No record, no, sir; there is simply a list made up each night to keep a proof.

Q. Where is the list that is made over night? A. The paying teller's proof book.

Q. Would those items be carried from day to day until they— A. Until such time as disposition is made of them.

Q. Is it itemized or do you carry them as a total? A. Carry them as a total.

Q. There is nothing in the total to indicate what the items were? A. Nothing at all.

Q. It would be impossible then from this total to prove any particular check from day to day in order to determine how long you carried it? A. Yes, sir.

Q. And there is no way of doing that except by using your own recollection? A. Not according to the system that was in vogue up there.

By Mr. English: Q. You were in the habit of receiving checks and cash every morning from the receiving teller? A. Yes, sir.

Q. And that is all lumped as sundries, the total which you received is classed as a sundry? A. No, sir.

Q. What are the sundries? A. Sundries are simply checks, items that are held that day and turned over the following morning.

Q. The cash is separate? A. Cash is separate, yes, sir.

Q. In the ordinary course, when you received a check or checks from the receiving teller, what would you do with them? A. Are you speaking about the sundries?

Q. Yes, when you received checks or sundries what would you do with them? A. Put them in my own sundries.

Q. You had a set of sundries, too? A. Yes, sir.

Q. That is to say, you entered them up in another book? A. Made no entries whatever; they were simply put in the pigeonhole and carried there from day to day.

Q. How long would that continue? A. Are you speaking of any particular check?

Q. No. A. There were always sundries in the cash.

The Court: I understand it was continuous, that the items were put in and taken out.

Q. How long would any particular check stay in the sundries before it was taken out? A. Well, whatever the reason was for holding the check, the item.

Q. Who was the person who passed on that? A. According to the reason.

Q. Were you the person who passed on the sufficiency of the reason? A. Not in all cases.

Q. Mr. Smith? A. Not in all cases.

Q. Most cases? A. It was according to what the reason was for holding the item.

Q. At any rate, when the time arrived, whatever it was, the check would be charged against the depositor's account, wouldn't it? A. Not in every instance, no, sir.

Q. It was charged or carried as a sundry, wasn't it? A. No.

Q. It was never stamped paid until it was charged to the depositor's account, was it? A. No, no check was stamped paid until after it had been charged on the ledger.

Q. So it was either carried as a sundry or something else was done with it or it was charged and stamped paid; is that right? A. Yes, sir.

Q. You say you have no knowledge of this particular check at all? A. None whatever.

RAYMOND E. SMITH, re-called in behalf of the State:

Direct-examination by Mr. Guild:

Q. I show you check marked S-5 for identifica-

tion. Are you familiar with the signature of John B. Scarlett, the defendant in this case? A. I am.

Q. Have you seen him write? A. Yes, sir.

Q. I show you Exhibit S-5 for identification and ask you whose signature as the maker is attached to that check? A. That is the signature of John B. Scarlett.

Q. The defendant in this case? A. Yes, sir.

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

Q. I will ask you to look at the endorsement. How is it endorsed?

Mr. English: Isn't he getting the check in evidence?

The Court: The check is not in evidence.

Mr. Build: I want to prove the signatures on the check.

The Court: The signatures ought to be proved before it is offered in evidence. He has already proved the signature on the face of the check, and he is now asking about this signature on the back of the check. Otherwise, you would be getting evidence of a check and what is on the back of the check without the proper proof.

(Question read.)

A. It was endorsed by John B. Scarlett.

Q. Will you read the endorsement?

Mr. English: I object to that.

The Court: You mean, read it to himself?

Mr. Guild: He says it is endorsed by John B. Scarlett. It does not appear what name is on the back of the check.

The Court: What you want to know is in whose handwriting is the endorsement on the back of the check.

Mr. Guild: Exactly.

Mr. English: I have no objection to that.

The Court: Answer the question.

A. It is in the handwriting of John B. Scarlett.

Mr. Guild: I offer that in evidence.

Mr. English: I object to that, because I suppose the object of the offer is to show that it is the check mentioned in the indictment, and there can be no materiality to the check unless it was paid. He is charged in the indictment with overdrawing his account. There has got to be some connection between the check offered and the check in the indictment, and there is no evidence at all, apparently from this witness's testimony, that it is the check of Mr. Scarlett, but it has not been paid and never been charged to his account.

The Court: Why do you say that?

Mr. English: Because there is no evidence that it has been paid. It is plain by Mr. Thompson's testimony that when a check was paid it was stamped paid. There is no evidence that this check has been paid.

The Court: I think one of the witnesses testified that it was paid. I will admit the check.

Marked Exhibit S-5.

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 see that check at any time in the Roseville Bank? A. Yes, sir.

Q. While the bank was still doing business? A. Yes, sir.

Q. On or about what date did you see it? A. March 17, 1913.

Q. Did you see it after it came back through the exchanges? A. Yes, sir.

Q. Where did you take it from, if you took it? A. Where did I take it from?

Q. If you took it, in the bank? A. I took it from the paying teller's cash.

Q. What did you do with it? A. Put it in Box 55.

Q. What was Box 55? A. Box 55 was a safe deposit box where I kept a great many checks that had been paid over the counter and never charged to the various accounts of the makers of the checks.

Q. It has been paid by the bank? A. Yes, sir.

Q. That check Exhibit S-5 is certified, isn't it? A. Yes, sir.

Q. And under what date? A. March 17, 1913.

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

Q. That is, yourself? A. Yes, sir.

Q. Has the check been paid by the Roseville Trust Company? A. It has, yes, sir.

Q. Has the check been charged to the account of John B. Scarlett? A. It has not.

Q. Why not? A. May I refer to the ledger?

By Mr. English: Q. What are you referring to, the individual ledger? A. Yes. The check has not been charged to Mr. Scarlett's account because it was not good on the ledger.

By Mr. Guild: Q. The account was not good? A. Yes, sir.

Q. Wasn't good as of what date? A. March 17, 1913.

Q. Has it been good since that date? A. No, sir.

Q. What was the condition of his account March 17, 1913, as it appears by the ledger? A. There is a balance here on March 17th of $47.24.

Q. Oh, no, look again. A. I was mistaken about that. I had the wrong year. $1.30.

Q. That was his balance? A. Yes, sir.

Q. How did that check come to you in the first instance? A. In the first instance?

Q. Yes. A. It was sent to me by Mr. Scarlett, I believe.

By the Court: Q. It was sent to you by Mr. Scarlett? A. Yes, sir.

By Mr. Guild: Q. By messenger or by mail? A. By messenger.

Q. Was it accompanied by a letter? A. I think so.

Q. I show you a letter dated Newark, N. J., March 17, 1913, written on the letter paper of John B. Scarlett, and ask you whether that is the letter that accompanied that check? A. Yes, sir.

Q. Are you familiar with the handwriting of John B. Scarlett? A. I am, yes, sir.

Q. Is that letter in the handwriting of John B. Scarlett? A. It is.

Mr. Guild: I offer the letter in evidence.

By Mr. English: Q. Have you ever seen Mr. Scarlett write? A. Yes, sir.

Q. In your presence? A. Yes, sir.

Letter referred to is marked Exhibit S-12.

(Mr. Guild reads letter to the jury.)

By Mr. Guild: Q. On the receipt of that letter what did you do with reference to the check? A. I certified the check.

Q. What became of the check after you certified it? A. Sent it back to Mr. Scarlett.

Q. By whom? A. By his messenger.

Q. The letter says "I find it impossible to get by without a little additional help, as I spoke to you about last week." Had he spoken to you previous to the date of this letter about money matters? A. Yes, sir.

Q. What had he said to you, and fix the time as nearly as you can. A. I can't remember any special conversation just around that time. I had several conversations with Mr. Scarlett sometimes in my office, sometimes in his office.

Q. Previous to the date of this letter? A. Yes, sir, and sometimes over the telephone.

Q. What were they about? A. They were about his account, money matters.

Q. What about his account? A. Not necessarily his account, but about raising money for him.

Q. About raising money for whom? A. About his raising the money.

Q. His raising money? A. Yes, sir.

Q. Are you not able to say with more particularity what you talked about? A. Not with particular reference to that, no, sir, but I know very well—

Mr. English: That answers the question.

Q. Any time previous to March 17, 1913? A. There had been several times previous to that time when I had called Mr. Scarlett's attention to the fact—

Mr. English: I object to the conversation.

(Answer read.)

Q. To what fact? A. To the fact of the condition of his affairs with the Roseville Trust Company.

Q. What was the condition of his affairs with the Roseville Trust Company? A. There had been many checks drawn, some certified, without any money to cover them.

Q. Do you mean by that that he didn't have the money there? A. I do, yes, sir.

Mr. English: I object to that. I think we are concerned with one check, namely the one mentioned in the indictment.

The Court: Yes, we are concerned with that check, but that does not necessarily mean to segregate the testimony to one particular check. The conversation refers to money matters.

Mr. English: I would like the witness to say whether the check which he is talking about relates to this check or something else. That I think I am entitled to.

Mr. Guild: The letter does not say anything about the conversation regarding this check. This letter was sent with the check that he asked to have certified, and he says "I find it impossible to get by without a little additional help as I spoke to you about last week." What I desire to get at is what that talk was, what it was about.

Q. In this letter of March 17, 1913, Mr. Scarlett says "It is impossible to get by without a little additional help as I spoke to you about last week."

What I desire you to tell the jury is what it was he spoke to you about last week, or approximately last week, prior to the date of this letter? A. Well, the substance of that conversation, as I can best recall it, related to a little money that Mr. Scarlett needed.

By the Court: Q. Tell us what was said; give the conversation, as nearly as you can, and the language that was used. A. And as I far as I can recollect, your Honor, it was that he needed some money to meet certain interest charges that were past due.

Q. What did you say to that? A. I agreed to let him have it.

Q. I don't hear you. A. I agreed to let him have the money in view of the fact that he was all ready—

Mr. English: Is this part of the conversation or part of your mental process?

Witness: Part of the answer to the question.

By the Court: Q. Are you now telling us something that you talked about or are you telling us something that went on in your mind? A. I see what you mean.

Q. Was this matter about which you are about to speak a matter that you discussed between you? A. No, sir.

Q. It was the motive which induced you to consent to this? A. Yes. I have recited about all that was said, as I can remember it.

By Mr. Guild: Q. You agreed to let him have it? A. Yes, sir.

Q. Was any amount mentioned? A. I think so.

Q. How much? A. I think it was $350.

Q. Did you at that time have any talk with him

about the condition of his account with the Roseville Trust Company?

Mr. English: I object to that.

The Court: Objection overruled. It is refreshing the witness's memory and directing his attention to a certain phase of the conversation.

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 the Court: Q. Did you discuss the condition of his account at that time? A. Yes, sir.

By Mr. Guild: What did you say to him? A. I told him his account was in awful shape, but I had paid a great many checks that do not appear on his account at all, that I have been obliged to make entries of certain kinds to take care of his check, that it put me in a very mean position with the institution.

Q. What did he say? A. He said he knew I was running certain risks on his account and that he intended to make good; he had several irons in the fire, but he hoped to have payments made that would more than cover the items that I had taken care of.

Q. What items had you taken care of, what do you mean by that? A. I had taken—

Mr. English: I object to that as immaterial.

The Court: The witness says that Mr. Scarlett said to him that he would take care of certain items, they had some deals which

would cover certain items which the witness had taken care of; that is the statement that the witness says Scarlett made to him. He is now asked what those items were. That is competent, in my opinion, because it indicates knowledge on the part of the defendant, assuming it is true, of course, regarding the situation as to his account.

Mr. English: I think that it ought to appear that he called Mr. Scarlett's attention to these items in his conversation.

The Court: It appears from the testimony of the witness that Mr. Scarlett was the person who mentioned the items that he had taken care of; Scarlett himself, according to the evidence, is the one who said it. It is quite clear that the witness said that Mr. Scarlett said he had several deals which would enable him, Scarlett, to cover or take care of certain items which the witness had taken care of for Mr. Scarlett.

Mr. English: Wouldn't it be a simple mater to ask the witness if he mentioned certain matters to him?

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.

H. V. OSBORNE.
Judge.

(Seal)

(Question read.)

Witness: There were several checks that I had paid in the same manner that this check was paid.

I cannot state the amount of them without refreshing my memory.

Q. You say the same manner in which this check was paid? A. That were paid irregularly, yes, sir, that were not charged to his account.

Q. They were not charged to his account? A. No, sir,

Q. Why not?

Mr. English: He has gotten beyond the limitation set by your Honor; he has gotten past the conversation; he is talking about some internal performances in the bank.

(Question read.)

Mr. Guild: I will strike out "what do you mean by that?"

The Court: It is still part of the same conversation.

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)

Q. Why not? A. Because they were not good on the account.

Q. What do you mean, they were not good on the account? A. Because there wasn't sufficient balance to cover the checks.

Q. Do you mean he hadn't sufficient balance to cover the checks? A. Yes, sir.

Q. He says "We will send statement up this P. M.." Had you had any talk with him about a statement? A. Yes, sir.

Q. What statement? A. Financial statement of the general condition.

Q. Had you asked him for it? A. Yes, sir.

Q. More than once? A. I had asked him for it several times.

Q. Why?

Objected to.

Objection sustained.

Q. Had Mr. Scarlett borrowed money from the Roseville Trust Company?

Mr. English: I object, unles it is connected in some way with this check in question.

Mr. Guild: Connected with this letter.

The Court: I do not see how the question throws any light on it. It might and might not be connected. Objection sustained.

Q. What statement did you say you asked for from him? A. A statement of his financial condition showing properties that he owned and debts that he owed.

Q. You had asked him for it you say before? A. Yes, sir.

Q. Did you ever get it? A. I finally got a statement from Mr. Scarlett, yes, sir.

Q. Subsequent to the date of this letter? A. Yes, sir, afterwards.

Q. You say that you had a talk with Mr. Scarlett prior to March 17th about his financial relations with the trust company in which he said he appreciated that you had run risks in doing for him what you had done? A. Yes, sir.

Q. That he expected soon to be in funds with

which he could adjust those matters? A. Yes, sir.

Q. I show you a check dated Newark, N. J., March 4, 1913, No. 51, drawn on the Roseville Trust Company and I ask you whether that check is one of the items included in Mr. Scarlett's statement in your talk previous to March 17th? A. His verbal statement, you mean?

Q. Yes. A. Yes, sir, I think it is.

Q. Do you recognize the signature to that check? A. I do, yes, sir.

Q. Whose signature is it? A. It is that of John B. Scarlett.

Q. And it is a check drawn on the Roseville Trust Company? A. Yes, sir.

Mr. Guild: I offer this check in evidence.

Mr. English: I desire to cross-examine on the offer.

CROSS EXAMINATION by Mr. English:

Q. You say that this check was referred to in a conversation which you had a week previous to March 17th? A. I think it was.

Q. We don't want you to think; we want the fact. Do you swear to that? A. I think it was, sir.

Q. That is as near as you can come to it? A. Yes.

Q. You can't undertake to swear that this check was the subject of any discussion whatever between you and Mr. Scarlett weeks previous to March 17, 1913? A. I can only think that it was.

Q. You can't say that it was? A. No, sir.

Q. And you don't say that it was? A. No, sir.

Q. Where was this conversation had that you speak of? A. Probably over the telephone.

Q. You don't know whether it was in your office or his office or over the telephone? A. I can't tell you that; I don't think it was in my office.

Q. You think it was over the telephone? A. It was either over the telephone or else in Mr. Scarlett's own office.

Q. That is as near as you can come to that? A. Yes, sir.

Q. And you don't undertake to say which it was? A. No, sir; I don't.

Q. And you don't undertake to say that this check now offered was previous to March 17th? A. I think it was.

Q. I know you think it was, but you don't say so, do you? A. No, sir.

Mr. English: I object to it.

By the Court: Q. What makes you think it was? A. I think it because of the date of the check; it is within about a little over a week from the date.

Mr. English: Thirteen days, to be exact, ahead of the date of this letter.

By the Court: Q. Have you any recollection as to whether or not that check was good at that time? A. The check was not good at that time.

Q. Has your recollection on that point anything to do with your statement that you think it was one of the checks, the fact that the check was not good at all? A. My recollection of that fact?

Q. Whether it has anything to do with your statement that it was one of the checks you referred to in that conversation?

Mr. English: He says he thinks it was.

Mr. Guild: He has stated one reason why he thinks that is one of the checks referred to, that one reason is the date; he has already stated, in addition to that, that this check was no good, and I am asking in substance if he thinks this was an additional reason why he thinks it was not good.

Witness: Why, I don't think so.

Q. You do not? A. I don't think, no, sir.

By Mr. Guild: Q. If the check had been good you would have no reason to think it was one of the checks referred to? A. I probably misunderstood your question; I didn't quite get it; I didn't quite understand the question that was put to me the last time.

Mr. Mott: What do you say now then to the question?

Witness: I would like to hear the question, that is all.

By the Court: Q. The question is whether or not this check was one of the checks which you referred to in that conversation and you say you think it was and you attempt to give your reason for thinking so. A. I think so because it was dated about that time, a little bit previous to that time, and by the fact that it has not been paid against Mr. Scarlett's account.

Q. Has not been paid against his account—what do you mean? A. Not been charged up on the ledger.

Q. Has it ever been paid? A. Yes, sir, the check has been paid by the bank.

Q. Are there any other reasons you think that this is one of the checks you referred to? A. I think that is all.

The Court: The check will be admitted.

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 S13.

By Mr. Guild: Q. I show you a letter written on the letter head of John B. Scarlett, dated Newark, N. J., March 4, 1913, and ask you whether you are able to say who wrote that letter and whose handwriting it is? A. Mr. Scarlett's handwriting.

Q. Did that letter accompany this check S13? A. Yes, sir.

Mr. Guild: I offer the letter in evidence.

Mr. English: I object to this. I see no connection between this letter S12 and the check mentioned in Exhibit S12.

The Court: In comformity with the ruling I have already made as to the admissibility of testimony of this character I think the letter is admissible.

Mr. Guild: It is offered for the purpose of showing knowledge on the part of the defendant as to the character of his account, and no other purpose whatever.

The Court: It having first been brought home to him through this conversation.

Mr. Guild: And what he himself has written.

Marked Exhibit S14.

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)

(Mr. Guild reads the letter referred to to the jury.)

Q. Did you certify the check which accompanied that letter?

Mr. English: I object. That is outside of your Honor's ruling.

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.

H. V. OSBORNE,
Judge.

(Seal)

A. Yes, sir, I certified the check.

Q. What date? A. March 4, 1913.

Q. What did you do with the check? A. I sent it back to Mr. Scarlett.

Q. By whom? A. By his messenger.

Q. Was this check paid, S13, by the bank? A. Yes, sir.

Q. I show you check dated Newark, N. J., February 19, 1913, No. 49, drawn on the Roseville Trust Company, and ask you in whose handwriting that check is and by whom it was signed?

A. It is in Mr. Scarlett's handwriting and signed by John B. Scarlett.

Mr. Guild: I offer it in evidence.

Mr. English: I object. This hasn't any connection between what we are talking about; this is a whole month before the date of the conversation. I don't understand the witness to say that he refers to that in his conversation.

Q. Is that one of the checks to which your conversation with Mr. Scarlett referred?

Mr. English: Which conversation?

Mr. Guild: The one just prior to the writing of the letter of March 17, 1913.

A. I believe it is.

Mr. Guild: I offer the check in evidence.

By Mr. English: Q. You believe it is; you don't know that it is, do you?

The Court: He knows what he believes.

By the Court: Q. You say that you think this is one of the checks? A. I think it is.

Q. What is the reason you think so? A. I think it is because it is one of those checks that was paid irregularly.

Q. Before this conversation took place? A. Yes, sir.

Q. Do you remember whether there were any funds there at the time? A. There were no funds there to meet it—that is, not sufficient funds.

By Mr. English: Q. Was the check before you when you had this conversation? A. No, sir.

Q. Can you swear, in a conversation over the telephone, that you referred to any check of Feb-

ruary 19, 1913? A. I didn't refer to any special check.

Q. That is just what I asked you, whether you referred to this check? A. I referred to a number of checks.

Q. Did you refer to this check of February 19, 1913? A. I didn't refer to any of the checks individually.

Q. And a man who was the officer of a bank like you were, and dealing with checks, didn't pretend to have in mind a month afterwards a check dated a month before for any given amount, did you? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. You think that a month after this, or about a month after this, you could talk over the telephone to Mr. Scarlett and mention this check and the date and the amount and all about it? A. No, sir.

Q. So that you didn't have this in mind and didn't refer to it specifically? A. No, sir.

The Court: That calls for two separate answers.

Witness: I would like to qualify that answer.

The Court: Very well.

Witness: I have the check in mind, but I didn't refer to it specifically.

Mr. English: I object to it. He says he had it in mind and didn't give expression, but that certainly ought not to be binding on the defendant.

The Court: It is quite apparent that this check comes within the same category as the other. It will be admitted for the same reason.

Marked Exhibit S15.

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. I show you a letter dated Newark, N. J., February 19, 1913, written on the letter paper of John B. Scarlett, and ask you whether you recognize the writing in that letter and ask you whose it is? A. Yes, sir; it is John B. Scarlett's writing.

Q. And the signature on the letter is whose signature? A. John B. Scarlett's.

Q. Will you please look at that letter and say whether it accompanied the check of February 19, 1913, marked Exhibit S14, which is the $400 check? A. This check did accompany the letter, yes, sir.

Mr. Guild: I offer the letter in evidence.

Mr. English: I object. Assuming that the check was the subject of a conversation, and as I understand the theory of your Honor's ruling it is all supposed to be connected with this conversation, how is the letter a part of the conversation?

The Court: It accompanied the check.

Mr. English: He says so.

The Court: You may be in a position to deny that when you come to put your case in. The letter will be admitted.

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. Guild: I want it understood too, that the offer of these checks and ledger prior to March 17th are put in principally for the purpose of showing knowledge on the part of the defendant and the condition of his account and that he was asking favors.

The Court: And that knowledge is being brought home to him through those general circumstances which connects the exhibits with the defendant.

Marked Exhibit S16.

(Mr. Guild reads letter to the jury.)

Q. Did you certify the check which accompanied that letter? A. Yes, sir, I did.

Q. What did you do with it? A. I sent it back to Mr. Scarlett by his messenger.

Q. Was the check afterwards paid? A. Yes, sir.

Q. By the trust company, the Roseville Trust Company? A. Paid to the Roseville Trust Company.

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

Q. Why not? A. Mr. Scarlett's account was not good for it.

CROSS-EXAMINATION by Mr. English:

Q. You say that this check S5, which is the one

mentioned in the indictment, was certified by you personally? A. Yes, sir.

Q. Following a conversation with Mr. Scarlett. I am talking about the check of March 17, 1913? A. Yes, sir.

Q. Have you any specific recollection of it one way or the other? A. Of the check?

Q. Yes. A. I remember certifying the check.

Q. You remember that because you see your name on it? A. I remember certifying several checks for Mr. Scarlett.

Q. Have you any specific recollection of this check? A. No specific recollection, no, sir.

Q. Have you any specific recollection of any of the checks which have been admitted in evidence? A. Just what do you mean by specific?

Q. Just what I say. A. Do you mean any one of them alone?

Q. Yes. A. I remember certifying several of the checks, but I can't—

Q. But you haven't any recollection of any specific checks? A. No, sir.

Q. You have certified a great many checks in your bank experience? A. Yes, sir.

Q. And you can't attempt to keep these in your mind, can you? A. No, I don't think I can.

Q. You saw this check in your hand when you certified it. When did you next see it? A. I saw it after the bank had paid it.

Q. When was that? A. A few days after the date of the check.

Q. You saw it in the paying teller's cash? A. Yes, sir.

Q. Did you see it in the receiving teller's cash? A. I can't say that I did.

Q. Did the receiving teller ever carry checks in his cash without specific instructions from you? A. Yes, sir.

Q. Was that a matter of ordinary banking custom? A. It is according to what the checks are held for.

Q. Under what circumstances would the receiving teller keep on his own motion and retain a check in cash? A. If the checks were made out inaccurately, perhaps.

Q. What else? A. Dated incorrectly and endorsed incorrectly.

Q. Look at this check S-5 and tell me if there is anything on the face of it which shows that it is made out incorrectly or endorsed incorrectly? A. The check is made out correctly.

Q. Dated correctly and endorsed correctly? A. Yes, sir.

Q. So far as those details go there was no occasion for the receiving teller to act on his own motion, was there, in holding it in the cash? A. No, sir.

Q. Were there any other reasons which you directed the receiving teller to act on his own motion and hold a check in cash? A. Yes, sir.

Q. What? A. Certification.

Q. What about certification? A. The checks that are certified are usually treated as sundries; they are treated as return; we call them outs in the bank exchanges.

Q. Was it the bank's custom to hold all certified checks simply because they were certified? A. Not necessarily hold them, no, sir.

Q. That is what I am asking you about; I want to know the fact that this check was certified,

standing by itself, was sufficient authority for the receiving teller to hold the check in his cash? A. Yes, sir.

Q. Why? A. You couldn't very well return a certified check.

Q. Return it to whom? A. To the bank where he got it from.

Q. Apparently you and I do not understand each other. Here is a check drawn on your bank and which comes back to your bank and then is held in the cash. What was the necessity, for the simple reason that a check was certified, that held that in cash? A. It was really a certified check. The certification charge had not gone through regularly.

Q. You mean it had not been charged up in the certified check book? A. I mean it had not been entered in the certified check book.

Q. Is that the reason you held it? A. It was held out because the check—

Q. Answer my question. Is that the reason you held it, because it had not been entered in the certified check book? A. The reason I held it?

Q. The receiving teller. A. Yes, sir.

Q. On his own motion or instructions from you? A. He may have had instructions from me.

Q. Did he have a blanket instruction from you to hold out checks which had not been entered? A. Not blanket instructions.

Q. Had he had instructions to hold this particular check? A. This particular check?

Q. I am talking of checks which were entered in the certified check book. A. He had no instruction from me.

Q. Why did he presume to hold a check in his cash, a certified check, not charged in the certified

check book? A. Because a certified check is an obligation of the institution and cannot be returned for insufficient funds; it has got to be recognized as an obligation of the institution.

Q. So from that you assume that the teller seemed to hold it out on his own motion? A. Possibly.

Q. Didn't you tell this teller to hold out checks certified, which you had certified from time to time and were not charged up in the certified check book? A. I didn't tell him that, no, sir.

Q. What did you tell him? A. I can't remember telling him anything special about certified checks, because they knew that they had to be paid after they are once certified.

Q. The receiving teller says he turned it over to the paying teller and you say you took it out of the paying teller's drawer. When did you do that? A. I can't tell you that.

Q. Did you have any practice in regard to those checks you certified with reference to leaving them in the paying teller's drawer a certain length of time? A. A practice?

Q. Yes. A. A system?

Q. Yes. A. No, sir.

Q. You certified a great many checks which went through this process, didn't you? A. I certified several.

Q. More than several—were you in the habit, as treasurer of this trust company, of certifying checks on the accounts of various individuals and which accounts did not have sufficient funds, and having them go through this process of being kept in the teller's cash, and that sort of thing?

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. OSBORNE,
Judge.

(Seal)

Q. Do you remember when you took it out of the paying teller's cash? A. I answered that once.

Q. Please answer it again. A. I don't remember.

Q. When you did take it out what did you do with it? A. Put it in Box 55.

Q. That was your box? A. No, sir.

Q. It was a box of the trust company? A. Yes, sir.

Q. To which you had a key? A. I had one key to it.

Q. Who had the other key? A. I think the two keys were on one ring; there were two keys to the box.

Q. In whose pocket was the ring? A. They were not kept in anybody's pocket; as a rule they were kept in the drawer.

Q. Who else used to go to that box? A. I did.

Q. Did anybody else, as a matter of practice? A. I think one or two of the tellers might have gone to it a few times, perhaps not regularly.

Q. You think one or two of the tellers; which teller do you think and when do you think he did it? You can't fix any time, can you? A. I cannot.

Q. You can't fix any teller? A. I can't.

Q. You can fix then when he did do it? A. No, sir.

Q. And you haven't in mind any specific instance? A. I have not.

Q. So, as a matter of fact, you were the man who dealt with that box? A. Yes, sir.

Q. You say you kept in that box checks which have been paid over the counter and not charged; by that you refer to checks which had been cashed in a teller's window? A. Yes, sir; sometimes.

Q. By what authority would a teller cash a check at a window and not charge it? A. On my authority.

Q. On your authority? A. Yes, sir.

Q. And then when he had done that you would have him give you the check? A. No, sir; he would keep it in his cash.

Q. And then sometimes you would take it out of the cash and put it in this box? A. Yes, sir.

Q. And you had a great many checks of that character in this box at the time you left, didn't you? A. Which character?

Q. Of the character which had been paid at the window and not charged? A. Certified checks?

Q. Checks paid at the windows and not charged. A. I had a great many, yes, sir.

Q. When was it you left town? A. Which town?

Q. This town, following the discovery of your discrepancies up there in July or August, 1913? A. I went out of town on the 13th of August.

Q. When did you come back? A. The 13th of September, 1913.

Q. At the time you went off did you leave the key in the box? A. I don't remember that.

Q. You took it with you, didn't you? A. I don't know.

Q. Don't you know the banking department of

the state had to pry it open some way or another? A. That doesn't say I took it with me.

Q. You didn't leave it in the box? A. Not inside the box; and I couldn't lock the box.

Q. I mean in the lock, the lock? A. No, the key was not in the clock.

Q. In the practice of the bank it was always customary to have some kind of a voucher to show a charge, wasn't it? A. I don't quite understand you, Mr. English.

Q. If there is a charge against a depositor's account there is a voucher to show for it, either a charge slip or a check? A. There had to be.

Q. If there is any transfer of any check or charge slip from one department to another there is always something to show that, isn't there? For example, when the receiving teller turns over the cash to the paying teller don't he take a receipt of some kind or another? A. No, sir.

Q. There is an entry made of some character? A. The entry is already made.

Q. The sundries or whatever you call it and the entry of the cash? A. Yes, sir.

Q. That amounts to a charge then, or at least a record of charge? A. Do you mean the sundries?

Q. Yes and the cash. A. It doesn't go in as a charge.

Q. It is put in a record? A. Yes, sir, a record; it is on the teller's proof.

Q. When cash, or the checks held as cash, were taken out of the paying teller's drawer, what was put in as the corresponding voucher, if anything?

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

After recess.

RAYMOND E. SMITH, resumes the stand:

Cross-examination (continued) by Mr. English:

Q. (Question read.) A. Yes, cash.

Q. Maybe I ought to refresh your recollection. When we adjourned I was talking about the record or voucher which took place on any change of cash or check held as sundries and you had said that when the checks held as sundries and classified as cash were taken from the receiving teller's drawer and put in the paying teller's drawer an entry was put in the receiving tell's proof book? A. A record.

Q. That is what I mean. Now, I ask you, the check which is held in the sundry account as cash is taken out of the paying teller's drawer and a record or notation is put in place of it? A. There is simply a record on the paying teller's proof book as a sundry.

Q. Which sundry? A. Receiving teller.

By the Court: Q. In other words, when you take paper out of the drawer, as you say you took this certified check out of the paying teller's drawer, did you leave any record of that, did you make any record anywhere or direct him to? A. No, sir.

Q. Simply took it? A. Yes, sir.

By Mr. English: Q. When they were put in the paying teller's drawer you say you took it out. What did you put in to show it is gone? A. I couldn't tell you what I put in.

Q. Did you put anything in? A. Yes, sir.

Q. There has got to be something to keep the record straight? A. Certainly.

Q. When you personally took this check out and put it in your box 55 you had to put something in the paying teller's book or else there would have been a muddle? A. Yes, sir.

Q. What did you put in to take care of it, to take the place of it? A. Sometimes there would be a charge to some other account of some kind.

By the Court: Q. You mean a slip of a paper with a memorandum on saying "Charge account with so and so with such an item"? A. Yes, sir.

By Mr. English: Q. You might have taken this out of Mr. Scarlett's account and put in a charge in John Jones's account? A. That might be so.

Q. That is an example of the way you manipulated the thing? A. Yes sir.

Q. And you might also have taken a check on some other person's account out and put a charge in Mr. Scarlett's account; is that true? A. No, sir.

Q. Why would you take a charge out of Scarlett's account and charge it to John Jones and not vice versa? A. Simply the account I charged would be good for the charge.

Q. You picked out some person you thought had some money in the bank and charged against him some indbtedness of some other depositor whom you didn't think ought to know? A. Not always an individual; sometimes a bank.

Q. That is the system you used? A. Yes, sir.

Q. That is the way you successfully manipulated the record of the bank some little time? A. Yes, sir.

Q. When you took this check S-5 out of the paying teller's drawer and put it in your box 55 did you put in a charge against some other account? A. I think so.

Q. Well, you must have, else the teller's records would have gone all awry wouldn't they? A. Yes.

Q. So you did? A. I may have substituted the cash for it.

Q. Instead of charging it to some other depositor or bank you may have simply deposited cash to that account? A. No, sir.

Q. To what account? A. To no account, put it in the drawer of the paying teller.

Q. I don't understand this. You say you may have substituted cash for it? A. Yes, sir.

Q. In other words, you took out a check, say, for $350, out of the paying teller's drawer and in the drawer you put in cash $350? A. Yes, sir.

Q. And that would make the teller's record balance? A. Yes, sir.

Q. Where would you get that cash from? A. I can't tell you that.

Q. Well, you took it either from your bank or from some deposit which had been made to the credit of some other depositor in cash didn't you? A. Yes, sir.

Q. In other words you stole the money and put something in the paying teller's drawer in the place of the check you took out? A. I don't say that.

Q. Soften it a little. You appropriated the money, then? A. I probably got it from some other account where it should not have been charged.

Q. So that if John Jones, for example, came in with a cash deposit of $350 you would simply, instead of crediting that or having that money credited to his account, put it in the teller's drawer in place of the check which you took out; is that

right? A. I don't quite understand that whole question.

Q. You say you might have taken, or you did take, the money of some depositor—you might have in some of these cases, I am still using this for an example—the money from the depositor would come in accompanied by a deposit slip, would it not? A. I wasn't referring to that kind of a transaction.

Q. Tell me what kind of a transaceion you were referring to? A. I was referring to the fact that I might have charged it to some other account or might have put the money in place of the check.

Q. I see. In other words, there would be $350 in the bank; you would take that $350 and you would put it in the teller's drawer and you would take out a check for $350 and then your records would balance? A. Yes, sir.

Q. And you would charge a depositor with that $350 that you had put in the teller's drawer? A. Not necessarily.

Q. That is one of the methods, I understand you? A. It wouldn't occur on the same day.

Q. I don't care what day it was on but that was one of the methods? A. No, sir; I don't see that clearly at all.

Q. You went to the teller's drawer and took out a check which on his record was the equivalent of cash amounting to $350; that is right; now you say you put in something which would take the place of that in the teller's drawer; that is true? A. Yes.

Q. What you put in in place of this was actual cash, we will say? A. Yes.

Q. Where did you get that actual cash from? A. I may have drawn the money from my own account.

Q. From your own personal account? A. Yes, sir.

Q. In a case where you didn't do that, where would you get it from? A. It would have to come from somebody else's account originally.

Q. And then you would charge that to somebody else's account with money that you took away from them? A. Not for the same amount, perhaps.

Q. You would conceal it by mixing that in with some other or larger amount? A. I didn't mean it that way; I mean it might have been charged before that, a larger amount, to cover some other transaction.

Q. But you would so manipulate it that it would even up? A. Yes, sir.

Q. So that when you took this check out of the paying teller's drawer it was replaced by either a check or cash drawn on some other deposit or some other bank and an appropriate charge made; it that correct? A. Yes, sir.

Q. So then the actual money which paid the check was the money of some other depositor or some other bank? A. Yes, sir.

Q. And that unfortunate person, whoever he was, who had that much money, was the real person who paid the check? A. No, sir.

Q. How would you manipulate it further then? A. Why, the bank paid it.

Q. Why are you able to say that? A. Why, the bank was responsible for any entries made against anybody's account.

Q. Here is a depositor who has an account with your bank; he is charged $350 to pay some other depositor's check; doesn't his money pay that other depositor's check? A. The bank's money.

Q. Isn't his account debited that much? A. Yes, sir.

Q. So he has got that much less money in the bank? A. According to the books, yes, sir.

Q. His credit with the bank is reduced just that much? A. Yes, sir.

Q. And he is relieved of just that much money? A. Yes, sir.

Q. Do you say it was the bank's money because ultimately the bank, as between it and its depositors, was responsible for the money it received from them? A. Yes, sir.

Q. And the bank in this case was relieved of a large sum of money by you, isn't that right? A. I didn't quite understand what you mean.

Q. Didn't you, as a matter of fact, Mr. Smith, embezzle a large amount of the bank's money—didn't you? A. What do you mean by embezzle?

Q. Appropriate to your own use? A. No, sir.

Q. Appropriate to other people's use? A. Yes, sir.

Q. So that you took it out of the bank? A. Yes, sir.

Q. And that money which you thus relieved the bank of disenabled the bank to pay its various depositors' accounts; isn't that correct? A. Yes, sir.

Q. And that is the reason you say that the bank paid it? A. The bank paid it.

Q. That is why you say the bank paid these checks? A. Yes, sir.

Q. As far as individual depositor's account is

concerned, when you took the check out of the paying teller's cash and put it in Box 55, your lock box, no entry was made of the check at all? A. You mean a check was taken out of the cash?

Q. Yes. A. No, sir

Q. Take this Scarlett check for $350; you took it out of the paying teller's cash and you substituted another depositor's money or your own money, as you say? A. Yes, sir.

Q. And you put the check in your Box 55 so there was no charge at all made against the Scarlet account? A. No, sir.

Q. So far as the records of the bank were concerned that check was not a charge upon it, isn't that true? A. A charge upon the Scarlett account?

Q. A charge upon the Scarlett account. A. No, sir.

Q. That is true? A. That is true.

Q. And the only person in the bank who knew of that situation was yourself? A. I can't say that.

Q. Well, who else in the bank knew about it, what officer of the bank besides yourself knew about it? A. No other officer.

Q. So you were the only person of the bank who knew about it then? A. You mean by officers, directors?

Q. I mean officer now. A. No other officer knew about it.

Q. Did any of the clerks know about it? A. I don't know whether they knew about it or not after the items were finally taken care of.

Q. You mean in some cases those checks would be actually charged to the depositor's account? A. Yes, sir.

Q. After they had waited for some time? A. Yes, sir.

Q. That would be after you had manipulated some more funds around to take care of the account? A. I don't qnite get that, the last question, I didn't understand it.

Q. After you had manipulated some more funds around to take care of that particular account, or would it be after the depositor had actually made the deposit? A. I mean after the check left the drawer and the paying teller's cash.

Q. After the check had been stamped paid some of the clerks knew about it? A. The check wasn't stamped in this case.

Q. You said no officer or clerk knew about it until after the check had been taken care of, some clerk might know about it? A. I say I don't know how many would know about it after the check was taken out of the teller's cash.

Q. If they did know about it they didn't say anything to you about it? A. No, sir.

Q. This check S-5, in other words, was still reposing in your drawer when you left town in August, 1913? A. It was in Box 55.

Q. I mean Box 55. A. Pardon me. That wasn't my box.

Q. We will call it 55. When you left town in August, 1913, this check dated away back in March previous was still in Box 55? A. Yes, sir.

Q. And had never been charged to the Scarlett account? A. No, sir.

Q. And, therefore, as far as the records of the bank are concerned, had never been paid by the bank? A. It had been paid by the bank, yes.

Q. I say as far as the records of the bank are

concerned? A. We have a record of payment of the check.

Q. No, Mr. Smith.

Mr. Guild: That is an answer to your question.

Mr. English: I want to know, at the time the witness left in August, 1913, if there were any records in the bank to show that check S-5 in evidence here had been paid?

The Court: By the bank?

Mr. English: Yes, sir.

Q. What records? A. There was a record of it coming to the bank on a certain day in March, and the check was paid that day.

Q. The check was certified that day, wasn't it? A. It was certified the first day it came up; it came up a day or two later and was paid by us.

Q. You haven't any record of that? A. I think we have.

Q. Will you please point to a record showing that check was paid? A. I can show you something, I think, that will convince you that the check was paid.

By Mr. Guild: Q. What book do you want? A. I want the draft of the Union National Bank, fifty thousand odd dollars.

By Mr. English: Q. Will you please point to a record in your bank which you can swear that there is included in that check of fifty thousand odd dollars which is in evidence as S-11, the sum of $350 represented by S-5.

By Mr. Guild: Q. What books do you want? A. The return item book, for one.

The Court: You can have any of those records that you need, if you will just indicate what they are.

Witness: I would also like to havxe the A to L debit and the N to Z debit showing the checks that were paid and charged up to the different accounts on the 18th of March, 1913.

(Book handed to witness.)

By the Court: Q. Are these the books you asked for? A. Yes, sir, they are.

By Mr. Guild: Q. Can you say what books they are? A. I have here the A to L debit cash book running from November 18, 1912, to April 22, 1913; also the M to Z debit cash book from November, 1912, until April 23, 1913.

Q. Those books are part of your system of bookkeeping in the Roseville Trust Company? A. Yes, sir.

By Mr. English: Q. Who keeps the books? A. The check clerk.

Q. Who was that? A. I don't know who it was at that time without referring to the books.

The Court: You may look at the books for the purpose of refreshing your memory or ascertaining who kept them.

Witness: Mr. Murray was the check clerk at that time.

The Court: You may look at the books now for the purpose of refreshing your memory. The witness now refers to certain books which he says are the bank's record.

By Mr. English: Q. Tell us what books you referred to to answer that question? A. A to L and M to Z debit book.

The Court: Mr. English wants you to point out the particular items which you say you used in making that statement, that that $350 was paid back.

Q. It was March 18th. A. The various items that go to show the payment of this $350 check and to show that that check of $350 is included in that amount are all these checks and all the checks represented on this page.

Q. Just count the pages you point to. What date? A. March 18, 1913.

Q. And you refer to how many different pages? A. One, two, three, four, five, and six and down to there (Indicating.).

Mr. Mott: Six pages and five lines on the next page.

Mr. Mott: Just indicate it in the book. (Witness indicates in book.) Six full pages and so much of the next page down to the line the witness draws.

Q. You point to these half dozen pages when you say something in there is a record that the check of $350 was included in the check to the Union National Bank? A. Yes, a part of the record.

Q. What part of those pages refer to that check? A. All of them.

Q. How are you able to say that? A. —

By Mr. English: Q. Which check do you mean? A. I am referring to the $350 check; it refers to the payment of it.

By Mr. English: Q. I am asking you now how you can say that in the check to the Union National Bank S-11 you can tell that that $350 was included in that check; I am asking you what item refers to this S-5? A. It is not one item; they all refer to it.

Q. All refer to this $350 check, you mean the check of the Union National Bank? A. The check

to the Union National Bank and the $350 check, too.

Q. You can't point to any single item? A. No, sir; all of them.

Q. So far as appearences go, you can point to any pages here, and you say that because you had a check to the Union National Bank on March 18th, there is some comparison there? A. The total of these half dozen pages has a good deal to do with it.

Q. Does the total of these pages come to the amount of the check of the Union National Bank fifty thousand odd dollars? A. No, sir.

Q. Tell us how this book is made up that you refer to ? A. The first lot of checks that go in the debit book during the day are checks received through the exchanges, through different banks.

Q. Then you are assuming that your bank received through the exchange on March 18th the $350 heck and on that assumption you are further assuming that it was entered somewhere on these half dozen pages, is that right? A. No, sir.

Q. Tell us what is the basis of your statement? A. I am trying to prove to you the payment of the $350 check and on that assumption you are furproof in the exchange and the exchanges each time.

The Court: Mr. English wants you to show us that without making it necessary for him to question you particularly. Won't you indicate in these books something that will convey that to the lay mind?

Witness: The six pages that I pointed to represent checks received in the exchanges on the

morning of March 18th—represent part of the checks, I should say.

Q. Where is the other part? A. There is another part, in the M to Z.

Q. I suppose you will point to another heading headed March 18th and say it is in there?

The Court: That is not a question.

By the Court: Q. Show us, if you can, where there is any thing in these books which you can identify as being connected with that $350 check?

The Court: The witness is now examining the rest of the alphabet.

By Mr. English: Q. That is M to Z. Show us where it starts and where it ends? A. March 18th starts right here; the pages are not numbered so I can't give you the number of the pages.

By the Court: Q. Do you find in this book on the pages which you have just indicated any reference to a $350 check? A. No, sir.

Q. How can you tell that that $350 check was included in that group of items? A. I have to go about it in this way, your Honor, to prove the payment of this large check of $50,654, by the proof of our exchanges on the 18th of March.

Q. Just explain that in your own way. A. The checks that come through to us in the exchanges in the morning are sorted up alphabetically, they are sorted by the bookkeeper alphabetically and he posts them in his ledger, whatever checks are not good, or for any reason held out, are given back to the receiving teller; these checks that are held out, of course, have to be counted in his proof of the exchanges, as those checks are already included in the written list of checks that we get from the Union National Bank; checks that are good are put in the cash

book and footed up, A to L and M to Z; the footing of the two debit books, A to L and M to Z, plus the footing of the return item book which contains all checks that are held out for any purpose whatsoever and are not charged in the debit book, the footing of those two books, plus the footing of the return item book, should equal the total amount in the exchanges for that day.

Q. You have the return item book in your hand? A. Yes, sir.

Q. Look at that and see if you find any references to a $350 check on that day? A. Yes, sir, your Honor; there is a check here for $350.

Q. Is there anything to indicate whose check it was? A. No, sir.

Q. Just an item? A. Yes, sir.

Q. Is there only one item of that character on that day?

Mr. English: You mean the return item book?

The Court: Only one return item of $350?

Witness: A. Yes, sir.

Q. Can you then total those two debit books together and tell us whether it corresponds in total with the check of fifty thousand some odd dollars? A. I think I can. I have the total.

Q. You have made your calculation? A. Yes, sir.

Q. What is the amount? A. The amount of the M to Z debit is $36,688.59; the A to L debits, $9,254.87. The exchange fees of that day amount to $4710.77.

Q. Making a total of? A. Making a total of $50,654.23.

Q. I ask you to look at Exhibit S-11, S-11 being the exchange check for that day drawn on your bank to the order of the Union National Bank and read me the amount of that check. A. The amount of this check dated March 18th, $50,654.23.

Q. Is that the same total that you have just read? A. Yes, sir.

Q. Is there anything else in the book except what you have just referred to through which you are able to say that that check was paid by the bank? A. Simply this, your Honor—

Q. I mean, in the book; I don't want your deduction in your answer to this question; I want to know if you have laid before us everything in the book which leads you to reach a certain conclusion that you have, anything that you know of? A. That is all—I think of none other at all.

Q. Then do we understand you to say that because of the fact that you find a $350 check on a certain date, and a group of items in these books which you have just examined and referred to, and a check of corresponding amount payable on the Union National Bank by your bank representing the exchanges, in addition to your own knowledge of the situation as you have testified to it here, that that check has been paid by your bank—is that the reason you say it or are those the reasons that lead you to say that this $350 check has been paid by the Roseville Trust Company? A. Yes, sir.

By Mr. English: Q. I show you this book A to L marked for identification, the pages you refer to. Why don't you take in the rest of the day on March 18th and cross down to where March

19th begins? A. That part of the work has nothing to do with the exchanges at all?

Q. What does it have to do with? A. It represents checks that are paid over the counter, either through the receiving teller's window or paying teller's window

Mr. English: I will ask to have marked for identification those half dozen pages A to L, and including the lines on the second page, which the witness has just identified.

Marked Exhibit D-24 for identification.

Q. I call your attention to the other half of this same book, as I understand it, the book M to Z. Just point out to me the pages you refer to there and count them. (Witness indicates in book.) You point to four and about three-quar- of a fifth page. A. Yes, sir.

Q. Will you put a line on the place where you stopped, and this is the page you begin (indicating)? A. Yes, sir.

Marked Exhibit D-25 for identification.

Q. As I understand it, Mr. Smith, you take these two books, D-24 and D-25 for identification, and you take the return item book, S-10, in evidence, and you say that in these three books at the places you have indicated are set forth the checks going to make up the check S-11, for fifty thousand odd dollars? A. Yes, sir.

Q. And that they represent checks which come to your bank through the exchange? A. Yes, sir.

Q. Meaning that they are checks drawn on the Roseville Trust Company, but deposited in other banks and sent to you by the Union National Bank.

Q. And you say further that check in question S-5 was paid that day because you find an entry of $350 in the return item book, S-10? A. Yes, sir.

Q. And your sole ground for saying that is the similarity of the amount? A. And that there is no other item of that amount on that day.

Q. When you say that you refer to all these books that I have referred to—A. No, sir, not necessarily, not to the cash books, not to the debit books.

Q. You think, that if there are other checks for $350 entered in the debit books without any name, you can sort them out? A. Yes, sir, but those checks all go through regularly that are charged on the debit book.

Q. What do you mean by that? A. I mean that a check that has been certified would not appear in the A to L or M to Z debit book; it would have to necessarily appear on the exchange out book.

Q. What checks are on this A to L and M to Z book? A. Checks that come through the exchanges and are good when presented.

Q. Drawn on your bank? A. Yes, sir, and which have not been certified.

Q. You make that distinction? A. Yes, sir.

Q. You think all the checks, you mean checks not certified? A. Yes, sir.

Q. All the checks in the return item book represent certified checks? A. Not all of them; only those marked certified are certified.

Q. Is there anything opposite this $350 check, in the book, S-11, to indicate that it is certified? A. Yes, sir, there is.

Q. Where? A. Right here, certified—"Cert."

Q. That is opposite a check for $236.96. A. It meant for all of those checks.

Q. It means all of the others are certified? A. Yes, sir.

Q. What is that writing you point to? I see the words "Cert," but I see something ahead of it? A. It looks to me like W and L; it probably stands for Willett and Lawrence.

Q. W and L—Willett and Lawrence? A. I don't know that that is what it means, but I think that is what it means.

Q. Do you see just the word "Cert." without anybody's name? A. Yes, sir.

Q. Those checks refer to Willett and Lawrence? A. Only this one, if any.

Q. You said a moment ago that everything there had the same notation like it.

Mr. Guild: He didn't say that.

The Court: He said that everyhting below a certain point indicated by him represented certified checks.

Q. What I am asking you now is whether these blank spaces under the words "W and L" "Cert." practically amount to a ditto? A. Yes, sir.

Mr. Guild: That is not what he said, Mr. English.

Q. Now, from these records you figure out that the books of the bank show that the $350 check was charged, or rather, was paid by the bank; is that correct? A. Yes, sir.

Q. Now, when a check is paid by the bank it is ordinarily charged to somebody's account, isn't it? A. Ordinarily, yes, sir.

Q. Will you point to some records which show to whose account this $350 check was charged?

it appears that it was not charged to Mr. Scarlett's account; to whose account was it charged? A. It wasn't charged to anybody's account the day it was paid.

Q. After that when was it charged? A. I couldn't tell you that.

Q. It was in fact charged to some account when you took it out of the paying teller's cash; isn't that true? A. Yes, sir.

Q. Now, I ask you to point to the record and show to whose account it was charged. A. I can't do that.

Q. All you can say is that it was charged to somebody's account? A. Yes, sir.

Q. And not Mr. Scarlett's account? A. Yes, sir.

Q. And it was charged to some depositors; isn't that true? A. It might be some depositor.

Q. You said a moment ago that you might have charged this to your own account; did you have a private account with the trust company? A. I don't think I said that.

Q. I am very sure you did. You might have said you paid it yourself. A. I think that is the term I used.

Q. Did you have a private account in the Roseville Trust Company? A. Yes, sir.

Q. When you said you may have paid it yourself, did you mean that you might have paid it by having it charged to your own personal account? A. Not necessarily, no, sir.

Q. That might have been one way? A. Yes, sir.

Q. How could you otherwise have paid it yourself? A. With cash.

Q. Cash which you deposited to the account of

the person by whom the check was drawn? A. No.

Q. How? A. Not necessarily.

Q. Understand that this is not exactly in every case, but I am just trying to find out the possible means. You could have paid it by charging it to your own personal account; that is one way? A. Yes, sir.

Q. You could also have paid it by depositing cash to the account of the depositor, the amount of the check? A. Yes, sir.

Q. How else? A. Putting money in the drawer in place of the check.

Q. I am asking you when you paid it yourself? A. I could have done it that way.

Q. You could have put your own money in the drawer in place of the check? A. Yes, sir.

Q. When you say you might have paid it yourself you refer to one of these three methods by which it could have been done? A. Yes, sir.

Q. And when you said you may have placed the money in the drawer did you mean your own money or some depositor's money that you had appropriated? A. I meant my own money.

Q. Have you any recollection by which method this check S-5 was paid? A. I have not.

Q. It was either one of two ways, either having been charged to somebody else's account or having been paid by yourself in the way you have indicated? A. It may not have been charged directly to somebody's account; it may have been paid by cash.

Q. It would be either a depositor or a bank, wouldn't it? A. Yes, sir, but what I mean to say is this, that it might have been represented by a charge made previous to the payment of the

check and there may have been money enough in drawer 55 to pay the check.

Q. Where did the money in drawer 55 come from? A. Charging different accounts that I have stated before.

Q. Was it your money or some of the depositors' money? A. Most of it was depositors' money.

Q. And that was money which you had borrowed yourself, so to speak, at the expense of a depositor, wasn't it? A. Not quite that way, no, sir.

Q. Well, you had taken it out of the bank and charged it up to some depositor? A. Yes, sir.

Q. And therefore you say it might have been paid by taking out of Box 55, which previously had been taken out of somebody's account and charging to him? A. Yes, sir.

Q. So it comes down to what I said; in the last anaylsis it comes down to what I said, that some time it was paid by money that belonged to some depositor or some bank or by you yourself? A. Yes, sir.

Q. If you paid the money yourself that wasn't the first time you had done that, was that?

Mr. Guild: You mean with reference to Scarlett's account?

Mr. English: I am going to ask the question as it stands now.

Mr. Guild: I object to the question.

The Court: 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. OSBORNE,
Judge.

(Seal)

Q. If you paid this particular check S 5 with your own oney was that the first time that you had ever advanced your own money to Mr. Scarlett? A. March 17, 1913?

Q. This particular check is dated March 17, 1913. A. It is the first time I advanced money to Mr. Scarlett?

Q. Of your own personal moneys? A. I think not.

Q. But you, in fact, personally loaned Mr. Scarlett $300 in December, 1912, did you not? A. I believe I authorized a deposit to his credit that day.

Q. Your money? A. I don't know.

Q. And is it not true that you had personal financial dealings with Mr. Scarlett quite apart from your capacity as treasurer of the trust company in which he loaned you money? A. No, sir, it is not true.

Q. Or in which he gave you security? A. No, sir.

Mr. English: I ask the State to produce the check of R. E. Smith to the order of John B. Scarlett, October 25, 1912, for $4,200.

Mr. Guild: I object to this demand at this time for the reason that it is going into the defendant's defense and this is cross-examination.

Mr. English: All I want to do it to use it for identification.

Mr. Guild: If it is limited to identification I have no objection.

(Paper handed defendant's counsel.)

Q. Now I show you a check signed R. E. Smith, dated October 25, 1912, to the order of John B.

Scarlett and I ask you if that is your personal check? A. Yes, sir.

Q. For the amount of $4,200? A. It is.

Marked Exhibit D 26 for identification.

Q. Hadn't you, just shortly prior to that

Q. Hadn't you, just shortly prior to that

date, loaned other moneys to Mr. Scarlett personally? A. No, sir.

Mr. English: I ask the State to produce a memornadum in Mr. Smith's handwriting dated October 25, 1912, showing the details of a certain loan from Smith to Scarlett.

Mr. Guild: I have no such paper.

Mr. English: Will your Honor permit me to examine the paper which they didn't produce in response to the request I made?

The Court: They say they have not produced it because they say they have not got it simply because the prosecutor produced one paper, how can I say to the prosecutor "You have it," or how can I say to the prosecutor "You must turn all your papers over to the other side to see whether they are telling the truth or not. Just because they happen had a piece of paper, or several pieces of paper, on the table, which may be entirely different from what you ask, I can not ask him to turn them over to you on the demand for another paper.

Mr. English: I will ask the prosecutor to produce any paper signed by Mr. Smith on or about October 25th showing loans from Smith to Scarlett.

Mr. Guild: We have no such paper.

Mr. English: I ask the State to produce any paper in Mr. Smith's handwriting dated October 25th, showing a memorandum of loans between Smith and Scarlett.

Mr. Guild: I have a paper. I can't say in whose handwriting it is. If I may be permitted to show it to Mr. Smith—

The Court: Is it a memorandum of loans?

Mr. Guild: It may or may not be.

The Court: You may show it to the witness and see whether it is in his handwriting or not.

By Mr. Guild: Q. I show you a paper here and ask you whether that is in your handwriting? A. Yes, sir; it is.

Mr. Guild: I am willing to submit to the Court whether or not this is a paper or a memorandum relating to what he wants.

The Court: I think this may fairly come within the description of what counsel is attempting to secure. Whether, in fact, it will turn out to be such an instrument as he indicates in his characterization of it is another question, but I think it is quite apparent that inasmuch as it is approximately the date and referring to certain money transactions, it is the paper he desires. Is that the paper you refer to, Mr. English?

Mr. English: That is exactly the paper I refer to.

By Mr. English: Q. Now, I show you a paper dated October 25th, purporting to be signed

John B. Scarlett, in the presence of W. J. Thompson. You say that is in your handwriting? A. Yes, sir.

Q. And that is Mr. Scarlett's signature? A. Yes, sir.

Q. And that is Mr. Thompson's signature? A. Yes, sir.

Q. He was the receiving teller at the bank? A. Yes, sir.

Q. And this was signed in your office? A. Signed in the institution somewhere.

Q. And you asked Mr. Thompson to come in and witness it? A. I did.

Marked Exhibit D 27 for identification.

Q. Isn't it true that prior to the date of that letter you had loaned certain sums of money to Mr. Scarlett?

Mr. Guild: I object to any examination referring to this paper. It is not in evidence.

Mr. English: I just referred to the paper to fix a date.

The Court: When you say to that letter, what do you mean?

Mr. English: The letter D27 for identification.

(Question read.)

Q. You personally, I mean? A. No, sir.

Q. On that date you did give him this check for $4,200, D 26 for identification? A. Yes, sir.

Mr. Guild: I object to that. He is examining on papers that are not in evidence, and I renew my objection.

The Court (After discussion): That question at this time is excluded, with

leave to ask it later, if you can show it is proper cross-examination.

Q. Now, I show you Exhibit D23 for identification, which is the bank book of John B. Scarlett in the Roseville Trust Company, and ask you if you ever saw that before? A. Yes, sir.

Q. And when did you see it first, do you think? A. I should say about December, 1909.

Q. That is about when the account was opened or shortly after? A. About six months afterwards.

Q. When did you see it last, do you think, previous to today? A. I should say about—I don't know— I don't know what year that is there; probably the following December.

Q. Isn't it a fact that this book was left for balance and either lost or mislaid by the trust company for some considerable time? A. I don't know that to be the fact, no, sir.

Q. Don't you know that to be the fact, that Mr. Scarlett complained about that, that his bank book had been turned into the bank and not returned? A. I remember his telling me that he lost his bank book at one time, mislaid it.

Q. And didn't he say in connection with that that the last time the bank book had been heard of was when it was turned into the Roseville Trust Company? A. I don't remember that part of it.

Q. But you know that he did complain that his bank book had been lost or mislaid? A. He didn't put it in the manner of a complaint; he simply stated that it had been lost or mislaid.

Q. That was the subject of the conversation between you, that it had been lost or mislaid? A. Yes, sir.

Q. Didn't he also say to you that he had made deposits for which the bank had given him no credit? A. I don't think so.

Q. I want you to be sure about it. A. I don't remember that part of it at all.

Q. Didn't he say then that there was a serious discrepancy between his book and those of the bank's? A. No, sir.

Q. Nothing to that effect? A. Not that I remember.

Q. Didn't he say further that he couldn't straighten that out until that bank book turned up? A. I don't remember that at all.

Q. Or words to that effect? A. No, sir.

Q. You say that wasn't the conversation or you don't remember it? A. I don't remember any such conversation.

The Court: When is this conversation supposed to have taken place?

Mr. English: I will ask the witness.

The Court: He says he doesn't remember.

Mr. English: Sometime after December 20, 1910, which is the last time that book was balanced until it came back, after the bank had closed.

Mr. Guild: That is a period of about three years.

Mr. English: It is about three years.

By the Court: Q. Do you remember that during that interval you had any of these conversations about fixing the date, in order to refresh your memory? A. What kind of conversation—about the bank book?

By Mr. English: Q. Yes, about the bank book and the discrepancies. A. I don't remember, no.

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Q. Do you remember that Mr. Scarlett was given a duplicate pass book some time after, a long time after the last balance, December 20, 1910? A. I think I do remember a second pass book.

Q. Do you remember that book did not show the real balance, but simply some old balance carried forward? A. I didn't know that, no. sir.

Q. And don't you know that that duplicate pass book was left for balance about the month of June, 1913? A. No, sir.

Q. And never returned to this day? A. I do not.

Q. You know, as a matter of fact, that Mr. Scarlett's account was not credited with all the deposits that we made to his account, don't you? A. I don't know that to be a fact.

Q. You don't know that to be a fact? A. No, sir.

Q. Did you keep the individual ledger? A. I did not.

Q. When you say that you refused to charge up a check because there were no funds against which to credit it, did you consult the individual ledger to ascertain the fact? A. Yes, sir, as a rule.

Q. So the basis of your action in failing to charge up any given check was what you found to be the situation from the individual ledger? A. Yes, sir.

Q. And because you say the individual ledger in Mr. Scarlett's case failed to show a balance sufficient to meet the checks, checks S13 and check S15, therefore you failed to charge them up for that reason?

Mr. Mott: I think he should see the checks.

By the Court: Q. Do you want to see the checks? A. Yes, sir.

By Mr. English: Q. (Handing witness papers.) Look at the checks A. That was the individual ledger, was it not?

Q. (Question read.) A. That is the reason they were not charged.

Q. Because the ledger, the individual ledger account, failed to show sufficient funds? A. Yes, sir.

Q. So you went by the ledger account as it stood on the books of the bank? A. Yes, sir.

Q. Don't you remember that Mr. Scarlett brought to your attention from time to time the fact that there was a discrepancy between what your bank claimed was credited to him and what he claimed should be credited to him? A. I don't remember any such thing at all.

Q. Don't remember that. And don't you remember because of the fact that you said to him, pending the location of the bank book in the straightening out of the matter, that you would personally loan him any funds that he might need? A. No, sir.

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

Q. And didn't you say to him that you were making a considerable sum of money in the Oakland Automobile Company and that you were in funds and could make such loans to him? A. No, sir.

Mr. Guild: What do you mean, that you don't remember it?

Witness: I mean I never said that; that is what I meant for the answer.

Q. Isn't it a fact that you did loan Mr. Scarlett a considerable sum of money for which you took some security in October, 1912?

Mr. Guild: I object to that as not cross-examination and having absolutely nothing to do with this matter up to this point. If it is a matter of defense, all right.

Mr. English: Of course I can't show that the conversation in March referred to the situation in October.

The Court: You have not even attempted to show that it related to the general business affairs rather than to the particular overdraft. The difficulty seems to be this misunderstanding as to the scope of the direct-examination between yourself on one side, and the State, on the other, the State claiming that that conversation, as I understand it, refers to only certain overdrafts and the condition of Mr. Scarlett's account, you claiming that it referred to a general business relation, making that claim a basis for broadening your cross-examination to include their general business relation. If you can lay a foundation by showing that you are right, you may do so.

Q. Mr. Smith, when you in March discussed with Mr. Scarlett what you have described as money matters, didn't you refer to the general financial situation which existed between you personally and him? A. No, sir.

Q. They were in fact personal financial transactions between you, were they not? A. No, sir.

Q. In the course of which you had loaned him

money and he had given you security? A. No, sir.

Q. I show you a paper to which is subscribed, among other signatures, the name Raymond E.—

Mr. Guild: What I want to avoid is getting on the record the contents of this paper until the paper has been admitted in evidence, and it is going into the so-called private transactions of this gentleman, and that I think has no place in this case at all. If it is a matter of defense it is all right.

The Court: Finish your question and the witness must not answer it if there is an objection.

Q. I how you a paper dated October 25, 1912, to which, among other signatures, is the signature Raymond E. Smith, and I ask you if that is your signature? A. That is my signature.

Q. Do you know the other two signatures on there? A. I do.

Q. Were they signed in your presence? A. No, sir.

Q. But you know them? A. Yes, sir; I don't think they were signed in my presence.

Q. Will you tell me whose signatures they are? A. The first one—

Mr. Guild: I object to that. It is simply endeavoring to get on the record something that should not be there, in my judgment.

The Court: All he has done so far is to ask the witness to identify the signatures on a piece of paper. Objection overruled.

Q. The question now is, who is the first signature? A. The first witness of the document is Nicholas R. Sica.

Q. And the second signature? A. John B. Scarlett.

Q. And the third? A. Raymond E. Smith.

The paper referred to is marked Exhibit D28 for identification.

Q. That paper was in fact executed in triplcate, wasn't it? A. I don't know.

Q. Didn't you retain a copy? A. I believe there was a copy at the bank, yes, sir.

Q. Did you keep it in Box 55? A. I don't know; it was kept in one of the boxes in the institution.

Q. Do you know where your copy is now? A. No, sir.

Q. Is it in the hands of your trustee in bankruptcy? A. I presume so.

Q. Do you know where he got it? A. Probably out of my safe deposit box.

Q. Or out of your private residence? A. Possibly; I don't know which.

Q. I show you another duplicate of the same paper, just like that, and see if it is not a duplicate of the original paper you have already identified? A. I couldn't tell you whether it is a duplicate or not.

Q. It is signed like the original, in the same way? A. It is signed the same as the other.

The Court: Is that a duplicate?

Mr. English: Yes.

The paper referred to is marked Exhibit D29 for identification.

Q. I show you Exhibit S16, which refers to note of J. H. Long; that is correct? A. Part of it refers to that, yes, sir.

Q. That note referred to in that letter S16 was a renewal note of a previous note of J. H. Long, was not? A. I believe it was.

Q. And do you remember when the original of that series of notes was given to you? I remember when it was given to the institution, yes, sir.

Q. I didn't ask you that; I asked you if you remembered when that note was given to you? A. The original note was not given to me.

Q. Did it come to your personal possession? A. No, sir.

Q. When did it first come to your possession? A. My personal possession?

Q. I don't care whether it is personal or impersonal; when it came to your physical possession? A. It came in my possession as treasurer of the institution some time in July or August, 1912.

Mr. English: I move to strike that out. He is trying to qualify and make some answer different than what the question calls for.

The Court: He has a right to qualify so as to prevent him from being misunderstood. All he has to do is to give the date.

Mr, English: He gave more than the date, and I ask to strike out more than that.

The Court: 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. OSBORNE.
Judge.

(Seal)

Q. You say this note came to your possession when? A. Some time in July, 1912.

Q. You say this note came to your possession when? A. Some time in July, 1912, I said.

Q. There was a renewal from time to time? A. Yes, sir.

Q. And this note referred to in this letter Exhibit S16 was a renewal of that original note? A. Yes, sir.

Q. Do you remember the amount of the note? A. The original note?

Q. Yes. A. $2500.

Q. Do you remember when the last renewal was made? A No, sir; I can't remember that I know the notes were often held after they were past due if they were not taken care of, and I had to often stir him up on it.

Q. But there was still a note, or a continuation of this same note, at the time the bank was closed was there not? A. I think so.

Q. Where did you keep that note? A. The note was in, I think, the regular purchase paper of the institution.

Q. Was that in Box 55? A. No, sir.

Q. Are you sure that is where it was kept? A. I think it was in the regular purchase paper.

Q. But that you don't know, and you have no recollection about it now? A. The renewal note you mean?

Q. Yes. A. I couldn't say yes or no to that. I believe it is in the regular purchase paper.

Q. What about the original note, where was that kept? A. It was kept with the original purchase paper of the institution.

Mr. English: I will ask the State to produce this note referred to by the witness, being the note signed by John H. Long for the sum of $2500.

Mr. Guild We have a note signed by Sica to the order of Long and endorsed by Long.

Q. I show you here a note dated February 29, 1913, signed Nicholas R. Sica, to the order of John H. Long, and endorsed by him; is that the note that was referred to in that letter S16? It is dated the day following the letter? A. The date don't agree.

Q. The letter says, "The note will come up the next day;" the note is dated the next day; is that the note that is referred to? A. I took that date for the 12th. It is the 19th.

Q. It is the same note? A. I presume it is; I don't know.

Paper referred to is marked Exhibit D30 for identification.

Q. Now, the predecessor note of this D30 was in existence at the time the paper D28 for identification was signed by you, was it not? A. It was in existence, you say?

Q. Yes. A. I think it was.

Q. And isn't it true that the amount of that note was one of the items which went to make up the total stated in paper D28?

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. OSBORNE.

(Seal) Judge.

Q. When you had this conversation with Mr. Scarlett in March, 1913, did you not refer, among other matters, to the subject matter of this note for $2500, D-30 for identification? A. I think not.

Q. Would you be positive about it? A. Subject matter, you said?

Q. Is not this identical note, the predecessor note? A. May I see that?

(Paper is handed to witness.)

Q. When I refer to that note D30 I also refer to the series of notes that preceded it, all for the same amount? A. No, sir.

Q. We will say that if you didn't refer to this identical note, to the matter represented by that note or previous note? A. I did not.

Q. Will you be positive about it? A. Yes, sir.

Q. Didn't you in this same conversation of March, 1913,—

Mr. English: I would like to have the note of Andy Spinoza, N. R. Sica, for $1247.76. That note was the note which was renewed from time to time, the one dated nearer to March 17, 1913.

(Paper handed to counsel.)

Mr. English: Then I ask the prosecutor to produce all the notes of this series.

Mr. Guild: There are no more.

Q. I show you a note dated May 12, 1913, produced by the State on the demand of the defendant, for $1247.76 to the order of N. R. Sica, signed Andy Spinoza, and endorsed N. R. Sica, Did you ever see that note before? A. (No answer.)

Adjourned until tomorrow, Wednesday, March 17, 1915, at 10 o'clock, a. m.

THIRD DAY

ESSEX OYER AND TERMINER

Wednesday, March 17, 1915.

Met pursuant to adjournment.
Present: Counsel as before stated.

RAYMOND E. SMITH resumes the stand.

Cross-examination (continued) by Mr. English:

(Last question read as follows: "Q. I show you a note dated May 12, 1913, produced by the State, on the demand of the defendant, for $1247.76 to the order of N. R. Sica, signed by Andy Spinoza, and endorsed N. R. Sica. Did you ever see that note before?")

A. Yes, sir, I think I did.

Q. What date? A. I can't tell you the exact date.

Q. That is a continuation of an earlier note or series of notes, is it not?

Objected to.

The Court: I suppose that this is all in the same category of questions and the purpose is to show the witness the note for the purpose of identification?

Mr. English: Yes.

The Court: I think when you have shown him the note and he identifies it you have gone far enough.

Mr. English: It is one of the series re-

ferring to the same note for the same amount.

The Court: That can be shown when you go into the note yourself on your case and the circumstances surrounding it. It will appear then whether it is a continuation or not. It does not seem to me that that fact is necessary in order to identify the note. 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. OSBORNE,
Judge.

(Seal)

Q. Where did you keep that note, Mr. Smith, the one that you have identified?

Objected to.

Mr. English: Your Honor is permitting me to cross-examine, as I understand it, with reference to the conversation between the witness and the defendant on the question of their personal financial relationship. He testified yesterday in answer to a question about the note that he kept, that he kept it with the other notes of the bank. I ask the same question about this note for the purpose of pursuing that inquiry, whether it bore on their financial relationship.

The Court: Could you not meet the situation by asking him directly whether it was regarding personal financial relations?

Mr. English: This is a hostile witness.

The Court: He has answered your question. He has not shown any hostility.

Mr. English: I will change it to the word adverse, and I make the same argument on that ground.

The Court: I do not see that that gives you any reason for asking this particular question.

Mr. English: I think it is a very material matter. It tends to show that their relations were personal and not in this gentleman's official capacity.

The Court: I have indicated that you can lay a foundation for this question by asking him whether this note was connected with his personal affairs or whether it was a bank matter.

Mr. English: If I ask him that he will say no, and then I want permission to cross-examine further on that.

The Court: I will sustain the objection to this 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. OSBORNE,
Judge.

(Seal)

Q. Was this note given, or the predecessor of this note given, in connection with the personal relationship, financial relationship between you and Mr. Scarlett? A. No, sir.

Q. Where did you keep this note after it was delivered to you or the predecessor note which began in this series?

Objected to.

The Court: Did I understand him to say that it was not a personal matter?

Mr. English: He said no, as I anticipated.

The Court: The objection is that it is not a matter of cross-examine, but a matter of affirmative defense.

Mr. English: The earlier conversation of yesterday morning I spoke about financial matters and raising money, tending to show, as I claim, that there was a personal relationship. That is the thing that I am trying to cross-examine about.

Mr. Guild: The note that Mr. English is inquiring about is a note that is not in evidence and has been offered for the purpose of identification, and he is necessarily limited in his examination of this witness as to that note. That is the principal ground of my objection.

The Court: 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. OSBORNE,
(Seal) Judge.

The paper referred to is marked Exhibit D-31 for identification.

Q Don't answer this question until an objection is passed on. Wasn't it customary to keep a record in the bank of notes which were given to the bank and received by you in your capacity as treasurer?

Objected to.

The Court: I think that goes to the gen-

eral custom of the bank that you have already gone into.

Objection withdrawn.

A. Yes, sir.

Q. And where was that record kept? A. A record of all notes purchased by the institution was kept in the bills purchased book.

Q. Were not notes purchased brought up and passed upon at the meeting of the directors following the day of purchase? A. Some of them were.

Q. What notes did you differentiate between? Those that were entered in the bills purchased book and those entered in the minutes of the board?

Objected to as not cross examination.

The Court: I think the direct examination was confined to the practice of the bank with particular reference to checks certified which went through the bank, came to it through the exchange bank. I do not recall any examination whatever as to the practice of the bank with regard to the discounting of notes.

Mr. English: I think your Honor is right with reference to the testimony of Mr. Smith. One of the earlier witnesses, Mr. Mindnich, was asked by the prosecutor whether notes were sometimes put through the bank without any deposit slip being turned in. He said after October, 1912, that practice was pursued. While not particularly cross-examination of Mr. Smith, it is cross-examination on the State's case with reference to that alleged

practice. It is in the discretion of the trial Court.

The Court: I will sustain the objection.

Q. You say this note or the predecessor's notes were given in your capacity as treasurer?

Mr. Guild: I don't think he was asked about any notes previous to this.

The Court: I think all he said was that this was not a personal matter.

Mr. English: Yes, that is all he said.

Q. Did you receive this note, or the previous predecessor notes in your capacity as treasurer?

A. I did.

Q. Did you discount the note or the predecessor note?

Mr. Giuld: I object to that question on the ground that it is not cross-examination.

The Court: He was not asked anything about discounting any notes. Why not ask him if this was to be placed to the credit of Mr. Scarlett?

Mr. English: I think it is cross-examination. He said that he failed to charge to Mr. Scarlett's account the check mentioned in the indictment because Mr. Scarlett's ledger account showed that he didn't have money enough to meet the amount of the check, and I am pressing this question on what Mr. Scarlett's ledger account ought to be and whether he did not, as a matter of fact, have enough money to meet the check. If he discounted the note that Mr. Scarlett tendered to him and he didn't give him credit for it, it is very important. My contention, to be

perfectly frank, is that this note was given to him in his personal capacity as bearing on the relation of these two men. He said it was given to him as treasurer. If it was given to him as treasurer it ought to have been placed to his credit.

The Court: Counsel seems to be giving his own views and not indicating to the Court how it is cross-examination. If, on cross-examination, you desire to ask a question of very doubtful competency you should disclose to the Court in order to enable me to pass upon it intelligently just what you propose to show, not that you are simply going into all these matters which may or may not be relevant or competent, but that you have some definite purpose. The difficulty is I asked you to state whether it was your contention that this particular note should have been credited to the account of Mr. Scarlett, and you say you are not prepared to show that, but you want to find out from this witness. That does not assist the Court very much.

Mr. English: My contention is that I have a right to find out if the witness's statement is true on cross-examination.

Q. You received this note from Mr. Scarlett, did you not, or the predecessor note? A. I did.

Q. Was that note received by you for the purpose of discount to the credit of Mr. Scarlett on the books of the bank?

Objected to.

Objection overruled.

(Question read.)

A. May I go into detail?

The Court: If necessary to answer the question.

Mr. English: I think first he ought to answer yes or no.

The Court: Perhaps the question is not susceptible of being answered yes or no. Can you answer it yes or no?

Witness: I cannot, your Honor.

Q. Why can't you answer yes or no, that it was given to you for discount to the credit of Mr. Scarlett? What is there about that question that requires qualification? A. I can say this, that that note was not given for the purpose of—in the first place we don't discount paper; we purchase paper.

Q. I don't care about your general custom; I am asking you about this particular note.

Mr. Mott: The question is compound. Was this note given to you for discount and to be put to the credit of Mr. Scarlett?

A. Because we don't discount paper.

Q. That is your answer? A. Yes.

Q. You do take notes? A. We purchase notes, yes sir.

Q. What is the method of purchasing notes as between the trust company and depositor? A. The method is very much the same as in a national bank, except we purchase it.

Q. If I was a depositor in your bank, when I get a note discounted you give me credit for it in my account? A. That is one of the methods.

Q. Was this note D-31 for identification handed to you as treasurer for purchase by the trust company in that way? A. Purchased to be credited to an account?

Q. Yes. A. No, sir.

Q. Was the note D-30 handed to you for purchase to the credit of an account? A. That is a renewal note.

Q. Well, the predecessor note, then? A. The original note was given to be purchased not for credit to any account, but to be cashed.

The Court: Is not the real question whether it was credited to the account of Mr. Scarlett?

Mr. English: I was leading up to that.

The Court: Why ask two questions when one will do? What you want to find out is whether it should have been placed to the credit of Mr. Scarlett, or somebody else's account.

Q. Was the note, or the predecessor note represented by D-31 for identification, ever placed to the credit of Mr. Scarlett? A. May I ask what that note is?

Q. That is the $2500 note. (Paper handed to witness.) A. It was never placed to Mr. Scarlett's account.

Q. The original note of that series was handed you by Mr. Scarlett? A. It was sent to me by Mr. Scarlett.

Q. Well, it came from him? A. Yes, sir.

Q. Was the note D-31 or the predecessor note ever placed to the account of Mr. Scarlett? A. Not in his account, no, sir.

Q. I want to direct your attention a moment to this conversation which you say you had in March, 1913, previous to the check which was mentioned in the indictment. You have no distinct recollection of that conversation now, have you? A. All that I know that it was—

Q. No, just answer my question, whether you

have any distinct recollection of it at present time? A. I can't recollect the exact conversation.

Q. That is two years ago, isn't it? A. Yes, sir.

Q. And you discussed this Roseville matter many times since? A. Which Roseville matter?

Q. This Roseville Trust Company matter in reference to the Scarlett account, some time since? A. Oh, sometimes.

Q. You have talked it over with the bank department representatives? A. I have.

Q. And with the representatives of the prosecutor? A. Yes, sir.

Q. And at various times ever since September, 1913? A. Various times?

Q. Yes. A. Not various times, no, sir.

Q. Well, several times then? A. A few times recently.

Q. Is only recently the first you have ever mentioned the subject to any representative of either the banking department or the prosecutor's office? A. Once before, I think.

Q. And you have talked over other phases of the Roseville Trust Company situation with reference to other depositor's accounts, have you not? A. I have.

Q. And you had a great many conversations at various times while you were treasurer with reference to the certifying of checks and with reference to accounts and matters of that character with different depositors, didn't you? A. Yes.

Q. Do you think now, two years after the fact, after all these conversations and events, you can recollect accurately what you said at that time? A. I can't testify exactly what was said, no, sir.

Q. And you can't tell where the conversations took place?

Mr. Guild: I think counsel should direct his attention to some particular conversation.

The Court: The question, I take it, related to the conversation which the witness's attention was drawn to on direct examination, a conversation or series of conversations in March immediately preceding the $350 transaction, which the witness said related to the certification of that check.

A. Why, I think it took place over the telephone.

Q. And you can't tell when it took place exactly? A. Not the exact day, no.

Q. And you have had many other conversations with Mr. Scarlett, both before that date and shortly after that date with reference to financial matters? A. I did.

Q. Were all of those conversations over the telephone? A. Not all of them, no, sir.

Q. Were any of them at the banking house of the Roseville Trust Company? A. A few of them were.

Q. Were any of them in the presence of anybody except yourself and Mr. Scarlett? A. I think perhaps one of them might have been.

Q. When was that? A. I don't know just the exact date.

Q. Who was the person? I think Mr. Scarlett had a gentleman with him—I don't know his name.

Q. Mr. Dotto, Mr. Eugene Dotto, a lawyer? A. I think he was there, yes, sir.

Q. And that conversation related to the personal financial arrangement between you and Mr. Scarlett, did it not? A. No, sir.

Q. I have forgotten whether you told me yesterday when you had last seen that duplicate pass book which you say was issued? A. I think it was December, 1912; I am not positive.

Q. That is the last you saw it? A. That is the last I remember seeing it.

Q. Do you remember when it was last left for balance? A. No, sir.

Q. And don't you know that after it was last left for balance it never came back?

The Court: Make that question clear. Came back to whom?

Q. Never went back to the depositor from the bank? A. I don't remember that.

Q. You said the first day that you were on the stand that you were serving a sentence in State's prison growing out of an indictment in connection with your conduct as treasurer of the Roseville Trust Company? How long is that sentence?

Objected to.

The Court: Objection sustained. That is a matter with which we are not concerned.

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.)

RE-DIRECT EXAMINATION by Mr. Guild:

Q. You have stated, Mr. Smith, that the notes

marked D30 for identification and Exhibit D31 for identification, or the originals of these notes—I understand these notes are renewals? A. Yes, sir.

Q. You have stated that the original notes, of which these are renewals, were not placed to the credit of Mr. Scarlett? A. They were not.

Q. Why not? A. There are two reasons why the notes would not be placed to Mr. Scarlett's account.

Mr. English: The question was the reason why, as a matter of fact; not a theory as to why they would not be. The witness, from his words, indicated that he was advancing a theory and not a fact.

The Court: The question is why they were not placed to the credit of Mr. Scarlett. He says two reasons.

Mr. English: I would ask to have the answer stricken out. The witness should answer and not speculate.

The Court: Strike out the answer.

By the Court: Q. You may answer as to why they were not placed to his credit, if you know. If there are two reasons, you can give them. A. In the first place, they were not endorsed by Mr. Scarlett; Mr. Scarlett's name did not appear on the notes; in the second place, if they were to be placed to Mr. Scarlett's account, according to law, he would be obliged to make an application in writing to the Board of Directors or executive committee for the credit of such note.

Q. Did he do that? A. No sir.

Q. You say that because he was a director at the time? A. Yes, sir.

Q. The original of those notes were received by the Roseville Trust Company? A. They were.

Q. And negotiated there? A. Yes, sir.

Q. Did the Roseville Trust Company purchase them? A. Yes, sir.

Q. Were checks given for the proceeds of the purchase? A. May I see the notes?

(Paper handed witness.)

There was a check given for the original note for which Mr. John H. Long's signature appears.

Q. To whom? A. To John H. Long. There was no check given for this note.

Q. Which one is that? A. A note of Andy Spinzo to N. R. Sica.

Q. It is marked how? A. D51.

Q. You say the bank purchased it? A Yes, sir.

Q. What did they do with the proceeds? A. The proceeds took care of a certain check of Mr. Scarlett's.

Q. Do you remember the amount of the check? A. The amount of the check was the exact amount of the note, $1247.76.

By the Court: Q. What is the date? A. May 12, 1913.

Mr. Guild: Your Honor will keep in mind that these are renewals.

Q. You say that the proceeds of the note for $1247.76 took care of the check of Mr. Scarlett's for that amount; you mean the original note did that? A. I mean the original note.

Q. Of which this note, which we have here, is a renewal? A. Yes, sir.

Q. If the $350 check in the indictment had not been paid by the Roseville Trust Company when

it came there through the exchanges what would have become of the check? A. It had to be paid.

Q. I know, but if it had not been paid? A. It would have been returned to the bank from where it came.

Q. That would be what bank? A. The Union National Bank or the—it would either go to the Union National Bank or the bank it was used in; I don't remember which bank that was; I think it was the Essex County.

Q. I show you the note. A. Yes, sir; that would go back to the Essex County National Bank.

Q. Where it was first deposited? A. Yes, sir.

Q. Did that check continue in the possession of the trust company up to the date of the closing of the bank? A. Yes, sir.

Mr. English: He has already answered that. He said in Box 55. It is for the jury to say whether that was in the possession of the trust company or not.

Q. Continuously. That is what I want to get at. A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. English:

Q. You say if the check had not been paid it would have been returned to the Essex County National Bank. So far as the Essex County Bank is concerned, it would not make any difference how it was paid? A. No, sir; I presume not.

Q. It could have been paid by you personally or by being charged to some depositor's account or any other method, couldn't it, so far as the connection between the check of the Essex County National is concerned? A. It wouldn't make any difference to the Essex county.

Q. So as long as it was paid somewhere, that is all there is to it? A. Yes, sir.

Q. Referring to this note of Mr. Long, which you say was purchased for $2500, was the proceeds of that note credited to somebody's account? A. No, sir.

Q. That is the customary method, isn't it, of discounting a note in this indirect way in which a trust company does discount a note? A. We purchase notes in two ways.

Q. One by crediting the account? A. Yes, sir.

Q. And the other how? A. By giving a treasurer's check.

Q. Right over the counter? A. Not necessarily giving a treasurer's check, and if a man banks in any bank he can draw it from there, draw on it.

Q. Do you remember how that Long note was paid? A. Yes, sir, a treasurer's check.

The Court: What check is that?

Mr. English: The $2500 note.

The Witness: That is the original note.

Q. Yes, we are talking about this note as covering the original. Do you know to whose order that check was drawn? A. Yes, sir.

Q. Mr. Long's? A. John H. Long, I believe.

Q. Now, you say the note for $1247, D31, or its predecessor note, was not paid for in that manner; is that right? A. No, sir; it was not.

Q. It wasn't paid for by the giving of a treasurer's check? A. No, sir.

Q. Was it paid for by crediting it to anybody else's account? A. No, sir.

Q. What other method can it have been paid

for by the bank? A. The note was purchased by the Trust company.

Q. You said that.

The Court: Wait a moment. The question is perfectly clear and he started to answer it when he was interrupted by you.

Q. (Question read.) A. This particular note for $1247.76 was charged to bills purchased account.

Q. I am not enough of a banker to know what that means.

Mr. Guild: He will tell you.

Q. Can you tell us? A. May I go in detail?

The Court: If it seems to be necessary.

Witness: On a certain day in 1912—I can't tell the month now from memory—this note of $1247.76 was sent up to me from Mr. Scarlett's office by him to take care of a check which he said he had to give in payment of taxes for a like amount; I couldn't place that note to Mr, Scarlett's account for the reason which I have stated, and when the check appeared for payment at the Roseville Trust company I simply made a charge against the bills purchased account and filed the note with the bills purchased regularly, and the charge to bills purchased account took care of the check; in other words, the check was received through the exchanges and treated as an exchange out; the check goes in the sundries and in place of that check there was a charge, bills purchased account, and I had the note in file to take the place of the charge.

Q. You treated the note as the equivalent of cash against which to charge the check? A. Yes, sir, the equivalent of cash.

Q. Against which to charge the check? A. Yes, sir.

Q. Can you point out on the individual ledger the charge of that check to Mr. Scarlett's account? A. No, sir.

By the Court: Q. Didn't I understand you to say it was not charged to his account for the reason that you have just given? A. I meant to say that it was not charged to Mr. Scarlett's account.

By Mr, English: Q. You are speaking of the check now? A. Yes, sir, the check.

Q. There are no records in the book to show that Mr. Scarlett's account was charged with that check? A. No, sir.

Q. Isn't it a fact, Mr. Smith, that that note was turned over to you by Mr. Scarlett for your personal use pursuant to your personal relations with him to secure him for personal moneys which you had advanced to him? A. No, sir.

Q. What was the date of that original note, do you remember, approximately? A. I can't remember that.

Q. Was it in the summer of 1912? A. I think it was.

Q. It was prior to October of 1912? A. I think so, yes, sir.

Q. Isn't it a fact that the total which is stated in the paper D28 for identification which you identified yesterday includes the amount of the note?

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. OSBORNE.

(Seal.) Judge.

Q. And isn't it a fact that the total mentioned in the letter in your handwriting signed by Mr. Scarlett and marked D27 for identification includes the same amount of that note?

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. OSBORNE.
Judge.

(Seal.)

Q. And isn't it a fact that the $2500 note D30 for identification or rather, the amount of that note, is included in the total just stated in those two exhibits for identification D27 and D28?

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. OSBORNE
Judge.

(Seal.)

By Mr. Guild: Q. You have stated that the original note represented now by Exhibit D31 for identification, $1247.76, that that note was purchased by the bank? A. Yes, sir.

Q. And the proceeds were used in paying a check for the same amount of money? A. Yes, sir.

Q. Which you say Mr. Scarlett needed and used to pay taxes? A. Yes, sir.

Q. Is that right? A. That is right, yes, sir.

Q. I show you a check dated September 13, nineteen hundred, the balance of the figures not appearing, No. 38, drawn on the Roseville Trust Company by John B. Scarlett to the order of H. J. Stanley, tax collector, $1247.76, and ask you if that is the check which you say was paid by the proceeds of that note in the manner in which you have described? A. Yes, sir, that is the check.

Q. I ask you whether that check was paid by the Roseville Trust Company? A. Yes, sir; it was.

Q. Out of the funds of the Roseville Trust Company? A. Yes, sir.

Q. I ask you if the check was certified? A. Yes, sir, it was.

Q. Under what date? A. September 13, 1912.

Q. Are you able to trace the course of the check by endorsement, giving the date? A. The check was used by H. J. Stanley, collector; the stamp reads "Pay Irvington National Bank, Irvington, N. J. or order, H. J. Stanley, Collector;" the stamp of the Irvington National Bank on September 14, 1912, "Pay Merchants National Bank of Newark, N. J. September 16, 1912."

Q. You say that check was not charged to Mr. Scarlett's account? A. No, sir, it was not.

Q. His account had not been credited with the proceeds of the note either? A. No, sir.

Q. And for that reason he was not charged on the books with this check? A. That is the reason, yes, sir.

Q. Do you recognize the signature to that check? A. Yes, sir.

Q. As being whose? A. John B. Scarlett's, the defendant in this suit.

By Mr. English: Q. Is this check stamped paid by the Roseville Trust Company? A. It is not.

Q. So it was paid in the same way as the check mentioned in the indictment was, either by your personal money, by being charged to some depositor's account, or charged to some bank? A. It was paid by the note.

Q. Answer my question.

Mr. Mott: I submit that that is an answer.

The Court: He has answered your question.

Q. You say this check was paid by the Roseville Trust Company, is that what you say? A. Yes.

Q. Now, I ask you if it was paid in one of the ways in which you said the Exhibit S5 was paid, which was either by your personal money or by the money of some other depositor or by being charged to the account of some other depositor or to some other bank?

Mr Mott: I object. The witness has already testified that that check was paid by the proceeds of the note.

The Court: 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. OSBORNE.
Judge.

(Seal.)

Q. When a check is paid by a trust company it is stamped paid, is it not? A. In the regular course, yes, sir, if it is paid in the regular course.

Q. Do you say it was paid by the note? A. Yes, sir.

Q. You say that because you took the cash which it represented and substituted the cash in the paying teller's drawer for the note? A. No.

Q. How was it paid by the proceeds of the note? A. I explained that awhile ago, it was paid by a charge to bills purchased account for $1247.76, the amount of the note.

Q. You charged the bills purchased account? A. Yes, sir.

Q. What did you charge the check against? A. A. The charge took the place of the check.

Q. So one way in which you could put a charge on the books of the bank for any given check was instead of charging a depositor, charge the bills purchased account? A. If I have something to show for the charge it is perfectly legitimate.

Q. I am not asking you that; I am asking you if that is one way you could do it? A. Yes, sir.

Q. And that is what you did in this case? A. Yes, sir.

Q. If the check was paid in that way why wasn't it stamped paid? A. Because checks are not stamped paid, as a rule, unless they are charged to a man's account.

Q. In the last analysis a check is not paid until it is stamped paid? A. Yes, sir.

Q. And it is not stamped paid until it is charged to a depositor's account, is it? A. Not as a rule, no, sir.

By Mr. Guild: Q. In this case you say the check was paid? A. The check was paid, yes, sir.

Mr Guild: I offer it in evidence.

Mr. English: I object to the admission of

that check in evidence on the ground that the check has not been paid by the company.

The Court: It will be admitted 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. OSBORNE
(Seal.) Judge.

Marked Exhibit S17.

Q. Does the check correspond with the amount of the note? A. Yes, sir.

Q. The note D31? A. The original note of $1247.76.

By Mr. English: Q. You kept the minutes of the bank? A. Yes, sir; I kept the minutes of the trust company.

And the minutes show all bills purchased by the bank, do they not? A. Not always, no, sir.

Q. Supposed to show that? A. Supposed to, yes, sir.

Q. Can you point out to me any record of the purchase by the bank of the note or predecessor note of either D30 and D31? A. I don't know.

Q. Try. A. (After examining book.) $1247.76 is not. D31?

Q. Yes. A. I don't find it on the minutes.

Q. Did you find the other one, D30? A. I didn't look for it.

Q. You know that it is not there, don't you? A. I don't know that it is not there, no, sir. It may be entered at some of the following meetings when we had renewals of the same.

Q. Those minutes begin with March, to the effect that "Following is the bills purchased during the week?" A. Yes, sir.

Q. And you don't find any record of that note? A. No, sir.

Q. Nor the other note?

Mr. Guild: He said he didn't look for it.

A. I haven't looked for the other notes.

Q. Take time to look for it, if there is any doubt about what I say. A. Let me see the original note.

Q. (Paper handed witness.) A. This is not the original.

The Court: Have you the original? He wants to know the date so he can begin somewhere.

Mr. English: I understood from your testimony that it was the summer of 1912.

Mr. Guild: I presume the original note was surrendered when the renewal note was given.

Mr. English: I suppose so. This is a continuation, understand.

Q. What is your answer? A. I fail to find it.

Q. And wasn't it customary to have a renewal note listed in the same manner as a brand new note? A. Yes, sir, as a rule.

Q. Don't you remember, Mr. Smith, that those things were given to you to enable you to personally secure yourself for a personal loan which you made to Mr. Scarlett? A. No, sir.

By Mr. Guild: Q. I should like to call the attention of the witness to a couple of records in reference to this $1247.76 transaction which I overlooked and should have put in. I call your atten-

tion to two books and ask you what they are? A This book is the bills purchased book

Q And was that used in the regular course of business at the bank? A Yes, sir.

Q What is the other one? A. General cash book.

Q. Is that used in the general course of business of the bank? A. Yes, sir.

Q. Look at the bills purchased book and see if you can find any record of the note of $1247.76 under the date of September 17th? A. Yes, sir, there is a record of such a note here.

Q. Will you read it? A. Maker's name, Andy Spinoza, endorsed N. R. Sica, due September 23, $1247.76.

Q. Does that refer to the original note? A. I think it does,

Q. Of which we have the renewal? A. I think it does, yes, sir.

Q Was there any other note of that amount made by that party? A. On that same date?

Q. Yes. A. There is no other note here of that amount, no, sir.

Q. Under what date is that entered? A. September 17th.

Q. Which is how many days after the date of the original note? A. That was four days after, I think.

Q. Can you account for the difference in date? A. Probably the 17th was the presentation of the check; that is the date it came up in the exchanges, from the Merchant's National Bank.

Q. Do you find any entry in your cash book relating to this transaction? A. Yes, sir.

Q. Under what date? A. September 17th.

Q. The same date that appears in the other record? A. Yes, sir.

Q. What did you find there? A. Find a charge to bills purchased account, Spinoza, $1247.76.

Q. Are you able to say whether that refers to this note? A. Yes, sir; it does.

Mr. Guild: I offer those two records in evidence.

By Mr. English: Q. Is the cash book a sort of ledger for the bills payable book—which is the big book in front of me? A. Bills purchased book.

Q. The one you read from, the bills purchased book? A. Yes, sir.

Q. And the other is a cash book? A. Yes, sir.

Q. Is the cash book a sort of a ledger for the bills purchased book? A. Not ledger exactly; the bills purchased book just simply gives you a description of the note.

Q. What does the cash book do? A. The cash book shows the entry.

Q. Entries for what purpose? A. It shows what course the note takes.

Q. Does it say who it is charged to or anything like that? What is the object of making the entry? You have one entry in the bills purchased book; why another entry in the cash book? A. This is simply a book—

Q. You mean the bills purchased book? A. The bills purchased book is simply a book showing the maker and endorser and due date.

Q. I understand what the bills purchased book is; what is the intention of the cash book you have got the record of the bills purchased book. Why the cash book? A. The cash book shows the entry—that is the entry that is put through for the

note which appears on the bills purchased book.

Q. Are all notes purchased by the bank supposed to be entered in the bills purchased book? A. Yes, sir.

Q. That is the first thing you do with your note when you get it, you enter it in the bills purchased book? A. Yes, sir.

Q. What is the next step in the ordinary course? A. Enter it in the cash book.

Q. In the bills purchased book, you simply write out a history of the note, the maker, the endorser and the amount and the due date? A. Yes, sir.

By Mr. Guild: Q. How long was that note given for? A. Ten days, I believe.

Q. That would make it about on the 23d? A. 23d.

By Mr English: Q. After you have made your entry in your bills purchased book then what entry do you make in your cash book? A. Make a charge to the bills purchased account for the amount of the note.

Q. Who is it charged against? A. Bills purchased.

Q. It is just sort of a bookkeeping entry? A. Yes, sir.

Q. What is the object of it; you have got the history of it in the other book? A. The general charges in the general cash book, they have to go in to make up the amount of bills purchased and banks and so forth, all go through the cash book; they are the record.

Q. They are a record to check against? A. Yes, sir.

Q. So where it is entered in the cash book it

is to be treated as the equivalent of cash? A. The equivalent of cash, yes, sir.

Q. And then you turn to the cash book to see how much cash you have, or the equivalent of cash, isn't it? A. Yes, sir.

Q. Point out to me the entry of this particular note, to Spinoza. What name goes in that column, where that name Spinoza is? A. The maker of the note.

Q. In this bills purchased book there are parallel columns of names; what name goes in the extreme lefthand column? A. Sometimes the maker and sometimes the endorser.

Q. How do you determine what to put in? A. As a rule, the name in the first column is the name credited, if it is credited to anybody's account.

Q. Then in the middle and third columns, whose name goes in there? A. Maker's name.

Q. In the third or righthand column, what goes in there? A. The name of the endorser.

Q. The name of Spinoza appears as maker? A. Yes, sir.

Q. And the name of Sica appears as endorser? A. Yes, sir.

Q. And the name of N. R. Sica also appears in the extreme lefthand column which you say is the column containing the name of the person against whom the note is charged? A. No, sir.

Q. Credited? A. It signifies sometimes the man who gets the credit for it, not always.

Q. Did Mr. Sica have an account in the bank? A. No, sir; I don't believe he did.

Q. Why does his name appear in that column as

getting credit? A. I suppose he was the man who brought the note to the bank.

Q. Is that the way you did with your bills purchased book, credited it up to the person who happened to be the messenger who physically brought up the note? A. Not necessarily, no, sir.

Q. That is what you did in this case, you think? A. Yes, sir.

Q. Any reason for that? A. Well, I don't know any particular reason for putting Mr. Sica's name there or Mr. Spinoza's, as far as that is concerned in this case.

Q. Who made the entries in that book? A. Mr. Jennings.

Q. Under your direction? A. Yes, sir.

Q. Would he enter up the name of a fictitious depositor on his own motion? A. In a case like this?

Q. Yes. A. No.

Q. You told him to do that? A. I didn't tell him to do that; it is a perfectly natural thing to write Mr. Sica's name there.

Q. Mr. Sica had no account? A. No, sir.

Q. And he was simply the person who brought up the check? A. Yes, sir.

The Court: What do you mean by a fictitious depositor?

Mr. English: Depositors not in existence

By the Court: Q. Mr. Smith, do I understand you to say that the name in the first column is the name of a fictitious depositor? A. No, sir, it is not it is not the name of any depositor.

Mr. English: That is what I meant by the use of the word depositor.

Page 228 of the bills purchased book is marked Exhibit S18.

The general cash book is marked Exhibit S19.

By Mr. Guild: Q. Was the trust company in the habit of purchasing notes other than depositors'? A. Sometimes, yes, sir.

Q. Hasn't this note Exhibit D31 for $1247.76 been paid? A. I believe not; I think not.

Q. On September 13, 1912, what was Mr. Scarlett's balance in the Roseville Trust Company as shown by his ledger account?

Objected to as immaterial.

Objection overruled.

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.)

A. The ledger shows a balance on that date of $15.67—I beg pardon—no, that is wrong. $1.30.

Q. For how long a time prior to September 13, 1912, had that balance stood? A. Since August 9th

Q. And down to what date after September 13th, 1912? A. To December 23rd.

Q. What year? A. 1912.

Q. Calling your attention again to Exhibit D30 for identification, being the note for $2500, for N. R. Sica, endorsed John H. Long, dated February 20, 1913, is this the original or a renewal? A. That was a renewal.

Q. Are you able to give us the date of the original note? A. July, I think, 1912, some time in July; I am not positive of that date.

Q. You have before you two books. What are they? A. This is the bills purchased book and this is the general cash book.

Mr. English: The same books as before?

Mr. Guild: The same books that have been offered in evidence and marked Exhibit S18 and S19.

Q. If you will look at the bills purchased book S18, see if you can find any record of that note of $2500? A. There is a record here of such a note.

Q. Under what date? A. July 22, 1912.

Q. Give us, please, what the record shows? A. It shows the maker's name, W. H. Reynolds, and the endorser as J. H. Long.

Q. Well, the note Exhibit D30 for identification is the note made by Nicholas R. Sica? A. Yes, sir.

Q. How do you explain the difference in the names of the makers? A. Why, I believe Mr. Reynolds and Mr. Sica both were in Mr. Scarlett's office and Mr. Sica took Mr. Reynolds' place on the note.

Q Do you know whether in the meantime Mr.. Reynolds had died? A I think so; I think that was the reason for it.

Q. You are satisfied, are you, that Exhibit D30 for identification represents the original which was made by Reynolds? A. It is a renewal of that note, yes, sir.

Q. Does it appear for what length of time the original note was given? A. Two months; it was due on December 22d.

Q. Do you find any record on your cash book of this note; if so, under what date? A. Yes, sir, there is a charge here to bills purchased account.

Q. Give us the particulars, please. A. Bills purchased is charged with $2500, Reynolds, on the 22d of July.

Q. Is that the date corresponding to the entry in the bills purchased book? A. Yes, sir.

Q. I show you another book and ask you what that book is? A. This is the treasurer's check book.

Q. And I understood you that this original note of $2500, Reynold's note, endorsed by Long, had been purchased by the trust company? A. Yes, sir.

Q. What, if anything, did the trust company give for the note? A. Treasurer's check.

Q. Can you produce the check?

Mr. English: What is the date of it?

Mr. Guild: July 22, 1912.

A. I have a check here dated December 22d.

Q. What year? A. 1912, drawn to John H. Long for $2475.

Q. Will you take the check out and we will see if it goes back. A. (Witness produces check.)

Q. This check which you produce you say was given in purchase of the original Long and Reynolds's note? A. Yes, sir.

Q. And the check bears date the same date that your records of the transactions refer to? A. Yes, sir, the same date, July 22d 1912.

Q. Was this check paid? A. Yes, sir.

Q. Is it so marked? A. Yes, sir.

Q. And it is the regular treasurer's check of the Roseville Trust Company drawn by you as treasurer? A. It is, yes, sir.

Q. And is made to the order of John H. Long? A. Yes, sir.

Q. Does it bear his endorsement? A. Yes, sir.

Q. How do you account for the difference between the amount of the note and the amount of the check, which is less than the note? A. The check was given for the proceeds of the note; $25 was taken off for two months interest of $2500.

The check referred to is offered in evidence and marked Exhibit S20.

Q. I am not certain whether you stated how you came to purchase this note, at whose request, if any one? A. We purchased this note at the request of Mr. Scarlett.

Q. I understood you to say that Mr. Reynolds, the maker of the note and Mr. Long, were in Mr. Scarlett's office? A. I believe they were in his employ, yes, sir.

By Mr. English: Q. You refer to the bills purchased book showing Mr. Reynolds as maker and Mr. Long as endorser of that $2500 note? A. Yes, sir.

Q. And what name is written in the column where you say the depositor whose account is ordinarily credited is written? A. J. H. Long.

Q. Was he a depositor of the bank at the time? A. No, sir.

Q. Did anybody besides yourself, any other official of the bank besides yourself, know that you had signed this check which is now in evidence as Exhibit S20? A. Any other officer?

Q. Yes. A. I think not.

Q. Signed by you? A. Yes, sir.

Q. Signed by you alone, I mean. Going back to the $1247 note, if you had credited to Mr. Scarlett's account the proceeds of that note, the account would have shown sufficient funds to have

met the check Exhibit S17, would it not? A. If the proceeds of that note had gone to Mr. Scarlett's account?

Q. If the proceeds of the note had been credited to Mr. Scarlett's account then the account would have shown a balance sufficient to meet this check S17, would it not? A. Why, certainly.

The Court: What is the date?

Mr. English: September 13, 1912.

Q. Going back now to the $2500 note, what did you do with the proceeds of that note? A. With the proceeds of the note?

Q. Yes. A. Credited it to the treasurer's check account.

Q. Who got the benefit money? A. Mr. Long got the money from the institution.

Q. I know that, but the note was taken in purchase by the Roseville Trust Company? A. Yes, sir.

Q. Who got the benefit of the note? The note was treated as so much cash, wasn't it? A. Treated as a bill purchased.

The Court: You mean who got the proceeds of the check which the trust company gave for the note?

Mr. English: No; I understood the witness to say a moment ago the bills purchased and the cash book combined show a record of cash, what they consider cash, equivalent of cash. Now I ask the witness who got the benefit of this note which was equal to cash, whose account?

By the Court: Q. Who got the benefit of the proceeds of that note? A. It went to nobody's credit.

Q. Who got the benefit of it? A. John H. Long.

By Mr. English: Q. John H. Long left the note with you? A. Yes, sir.

Q. Was it credited to anybody's account? A. No, sir.

Q. Then it became one of the assets of the trust company? A. After the proper entries had been made and Mr. Long had drawn the cash for it.

By the Court: Q. You don't know what Mr. Long did with the money, do you? A. No, sir; I don't, your Honor.

Q. Did Mr. Long take that check away with him? A. No, sir.

Q. Was it endorsed in your presence? A. It was.

Q. And simply left with you? A. No, sir.

Q. Well, he didn't take it away with him, you say? A. It wasn't simply left with me.

Q. Was it retained in your physical possession? A. No, sir.

Q. What was done with it? A. It was cashed by the paying teller.

Q. And to whom did the paying teller give the cash? A. Mr. Long.

Q. Are you sure about that? A. Yes, sir, I stood there; I was there at the time.

By Mr. Guild: Q. This note of $2500, Exhibit D30 for identification, has it been paid? A. I think not.

Q. Was it in the possession of the bank when the bank closed? A. I think it was.

Q. Was the note Exhibit D31 for identification in possession of the bank when it closed? A. I think so.

By Mr. English: Q. And you don't know what has become of them since they went out of your jurisdiction? A. No, sir.

By the Court: Q. Mr. Smith, you referred a few moments ago to a note and said that if that note had been placed to the credit of Mr. Scarlett a certain check would have been good; is that the $2500 note or the other one? A. This is a renewal of that $2500 note that they were talking about; we haven't the original note. The original note was made July 22d.

Q. The original note which you referred to was made July 22d? A. Yes, sir.

Q. The check was dated September 13th? A. Yes, sir.

Q. How can you say then that if the proceeds of that note had been placed to the credit of Mr. Scarlett in July that this check would have been good in September?

Mr. Guild: I don't think he said that.

Mr. English: I didn't ask him that. The question was, if the note had been credited on the account then the account would have showed enough to pay the check.

The Court: I do not know how the witness can say that.

Q. How can you say that an account good two months prior to the date of the check is going to be good when the check is presented two months later. A. Of course, that is provided nothing came in in the mean time; of course, that is what I meant.

Mr. Guild: Does your Honor understand that this original note and the check was a contemporaneous transaction, not this

note, because the note you have before you is a renewal of the original note.

The Court: Yes, I understand that the original note was dated in September—

Witness: We are talking about the $2500.

The Court: I am talking about $1247.76. My difficulty was that I understood the witness to say, in response to a question, that one of those checks would have been good on a certain date provided a certain note had been credited to the account, and my impression at the time was that nothing appeared to indicate that the date of the discount of the note and the date of the check were about the same.

Mr. Guild: Yes, sir, that is the testimony that the $1247 note was received the date of this check, September 13, 1912, but the check drawing it did not get in the books until two or three days later.

The Court: Is that the way you testified?

Witness: I thought the question pertained to the $2500 note.

Mr. Guild: The check and note that the Court is asking you about is the $1247 transaction.

The Court: Your statement then clears up that $1247 transaction. What is the situation with regard to the $2500 note, that check S20 and the original of D30; was that one transaction?

Witness: Yes, sir; it was one transaction.

Q. At about the same time? A. July 22, 1912, the date of the original note was given, and that check was given for the proceeds of the note.

The Court: So that that answer would apply in both instances, if the note had been credited to Mr. Scarlett's account then that check would have been good?

Witness: Yes.

Mr. Guild: Unless, as the witness said, something else had come in in the meantime to take it out.

HARRY J. STANLEY sworn in behalf of the state.

Direct-examination by Mr. Guild:

Q. Mr. Stanley, where do you live? A. 132 Ellis avenue, Irvington, New Jersey.

Q. And do you at the present time occupy any official position there? A. I do.

Q. What? A. Commissioner of Streets and Public Improvements.

Q. September, 1912, did you occupy an official position in that town? A. I did, as tax collector.

Q. I show you a check marked S17, being a check for $1247.76, bearing the name of John B. Scharlett, payable to H. J. Stanley, tax collector, and ask you whether you have seen that check before?

Mr. English: I object to that as immaterial. It is not the check mentioned in the indictment.

The Court: The check has been used and this is merely part of this history. I admit the question.

Defendant's counsel prays an exception

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

H. V. OSBORNE,
Judge.

(Seal)

A. I recognize the stamp on the back of it as being received by me.

Q. What was it received for? A. It may have been received for 1910 taxes, 1911 taxes, and possibly several assessment bills; it would cover the taxes and assesments of the Ridgewood Land Company, John B. Scarlett, and Scarlett's property.

Q. Was the check deposited by you?

Mr. English: I object on the same grounds.

The Court: Objection overruled and an exception will be allowed to this whole line of testimony.

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)

A. It was.

Q. Where did you deposit it? A. The Irvington National Bank, Irvington, N. J.

Q. So far as you were concerned, in your account as collector of taxes of Irvington was the check paid? A. Yes.

CROSS-EXAMINATION by Mr. English.

Q. When you say the check was paid, you mean you never heard of it again? A. No, sir.

Q. You put it in the bank and that in all you heard of it? A. Yes, sir.

Q. It didn't come back to you? A. No.

RAY E. MAYHAM, sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. What is your business? A. State Bank Examiner.

Q. You were connected with the department how long? A. Since June, 1912.

Q. Were you assigned by your department to the investigation of the Roseville Trust Company? A. I was.

Q. Do you remember when? A. On the 14th of August, 1913.

Q. Were you authorized to have special charge of the institution? A. I was not.

Q. What had you to do with the work there? A. I had charge of several bank examiners who went there on that date.

Q. I show you a check bearing the signature of John B. Scarlett, drawn on the Roseville Trust Company for $350.00, marked Exhibit S-5, and ask you whether in your examination of the affairs of the Roseville Trust Company you came across that checks? A. I did.

Q. Where did you find it? A. I found that in the safety deposit box 55.

Q. And was that box secured in any way, locked? A. The box was kept in my possession, yes, sir.

Q. How long was that check S5 in your possession? A. It was in my possession for a number of months; it was taken down to the bankruptcy court and it was returned by them to me; it was exhibited there and not kept in their possession and it was finally turned over by me to the prosecutor's office.

Q. Who did you deliver it to? A. Delivered it to the prosecutor, or Mr. Hargan, of the prosecutor's office.

Q. And as far as you know, it has been in the possession of the prosecutor since that date? A. Yes, sir.

Q. I show you Exhibit S13, being a check for $500.00, bearing the signature of John B. Scarlett drawn on the Roseville Trust Company, and ask you whether you have seen that before, and if so, where you found it? A. I have seen this check before and found it in safety deposit box 55.

Q. Of the Roseville Trust Company? A. Of the Roseville Trust Company.

Q. What did you do with it? A. I kept that check in my possession and afterwards turned it over to the prosecutor's office.

Q. I show you Exhibit S15, being a check for $400.00, bearing the signature of John B. Scarlett, and ask you whether you have seen that check before, and if so, where you found it? A. I found this check in safety deposit box 55 of the Roseville Trust Company and kept it in my possession until I turned it over to the prosecutor's office.

Q. I show you a check bearing the signature

John B. Scarlett, of $1247.76, and marked Exhibit S17, and ask you if you have ever seen that before? A I found this check in Mr. Smith's desk in the Roseville Trust Company and kept that check in my possession until I turned it over to the prosecutor's office.

Q. I show you a note dated Newark, N. J., February 20, 1913, for $500.00, signed by Nicholas R. Sica, to the order of John H. Long, and bearing the endorsement of John H. Long, being Exhibit D-30 for identification, and ask you if you have sen this note before? A. I found this note in the wallet containing the bills purchased notes of the Roseville Trust Company.

Q. And what, if anything, did you do with it? A. I returned it to that wallet, and that is all I had to do with it, except that on one occasion I took it to the bankruptcy court.

Q. I show you note dated Newark, N. J. May 12, 1913, a note for $1247.76 bearing the maker's name, Andy Spinoza, payable to the order of Nicholas R. Sica, bearing the endorsement, N. R. Sica, being marked Exhibit D31 for identification, and ask you if you have ever seen that paper before? A. I found this note in the wallet containing the bills purchased notes of the Roseville Trust Company.

By Mr. English: Q. The same wallet as the other one? A. Yes, sir.

By Mr. Guild: Q. And after that you don't know what became of it? A. I returned it to that wallet after entering it in a book.

Q. Did you enter both of them in a book? A. Both of those notes were entered in a book.

Q. A record that was kept by you of what you

found? A. Either entered by me or under my direction. I was present at the time they were entered.

Q. They were entered by your department? A. They were records that we kept in the conduct of the winding up of the bank.

CROSS-EXAMINATION by Mr. English:

Q. Mr. Smith says that note was left by him in Box 55. Are you sure it was found in a wallet?

Mr. Guild: He didn't say that.

A. I found those two notes in a wallet.

Q. You are sure of that, whatever he may have testified to? A. Yes, sir.

Q. The only thing you have identified as being in Box 55 were the checks S5 for $350.00 and the two checks S13 and S15, respectively? A. What were the amounts of that?

Q. $500.00 and $400.00. A. Yes, sir.

Q. How did you get into that box? A. I had a safe wrecker come and break the box open.

Q. And you found a good many other things besides those things you have mentioned? A. I did.

Q. Did you find in that box any or all of the letters in evidence Exhibits S12, 14 and 16 respectively? A. I did not.

Q. Were those letters found by you in another part of the banking house? A. They were not.

Q. You didn't see these until after they came into the possession of the prosecutor? A. I believe that is the first I saw them; I may have seen them, however, when they were in the possession of Mr. Roszel or Mr. Furst, who were Mr. Smith's receivers in bankruptcy.

Q. They may have had them? A. Yes, sir, they may have had them when I saw them.

ALFRED J. HARGAN, sworn in behalf of State:

Direct-examination by Mr. Guild:

Q. Mr. Hargan, you are connected with the prosecutor's office in this county? A. Yes, sir.

Q. In what capacity? A. Prosecutor's detective.

Q. You have been connected with the office how long? A. Ten years.

Q. I show you Exhibit S5, S13, S15, S17, and ask you if you have seen those papers before? A. Yes, sir, I have.

Q. Where did you get them? A. I received those from Mr. Mayham, of the Department of Banking and Insurance in the latter part of December, 1913, at the office of the prosecutor.

Q. And he is the witness who just preceded you? A. Yes, sir.

Q. And have those checks been in your possession ever since that? A. They have.

Q. I show you Exhibit D30, D31 for identification and ask you if you have seen those papers before? A. I have.

Q. Where did you get them? A. I received those a few days ago from Mr. Conger, treasurer of the Mutual Bank. They are part of the assets of the Roseville Trust Company turned over to the Mutual Bank up there.

CROSS-EXAMINATION by Mr. English:

Q. You are the detective in the prosecutor's office who lived with this case, so to speak? A. I believe so, yes, sir.

LA RUE VREDENBURGH, re-called in behalf of State:

Direct-examination by Mr. Guild:

Q. Mr. Vredenburgh, you have already been sworn? A. I have.

Q. I show you Exhibit D-30 for identification and D31 for identification and ask you if you have seen these notes before? A. I have. They have numbers on that were put on at my instance for identification.

Q. What are the numbers by which you identify them? A. The blue pencil figures, 30,005 and 30,025

Q. Where did you first see the notes? A. Very shortly after after I took possession of the Roseville Trust Company.

Q. Where? A. In the files of the company.

Q. Do you remember particularly where you found them? A. No, I don't remember particularly where they were, except I think they were in a portfolio in the safe, if that is with sufficient particularity.

Q. Was there any mark on the portfolio as to what the contents were? A. The examiners had been there the previous day at work, and to them had been turned over the notes for examination. These are part of them.

Q. You merely saw them in the portfolio? A. Yes, sir, as a part of the assets of the trust company that had been given to them by the employees of the company, Smith or somebody, for them to prove up, to prove the assets item of bills purchased in the general ledger, and when I asked for the notes this same portfolio was turned over to me.

Q. Did you ever do anything with the notes? A. They were sold to the Mutual Bank and delivered to them pursuant to that sale.

Q. By you? A. By me, acting for the commissioner, with the approval of the Court of Chancery of New Jersey.

CROSS-EXAMINATION by Mr. English:

Q. Were you present when Box 55 was opened? A. Yes.

Q. Was the box opened before you first saw these notes or afterwards? A. Afterwards.

Q. You took charge of the bank officially for the banking department on what date? A. That is a little difficult to say.

Q. Well, approximately? A. The examiners took possession on the morning of the 14th of August, and I was one of them, acting for the department. While we acted together, the official notice was given by one of the other examiners who had ben engaged in an examination the previous day; that day I was appointed by the commissioner.

Q. In an official capacity you were there from the 14th on? A. Yes, sir; I came the morning of the 14th, and at that time I was appointed by the commissioner as special assistant deputy, and

then as special assistant deputy I was in charge.

Q. And there wasn't any break in physical possession from that time to the present time? A. No.

Q. In that official capacity, you went thoroughly through the papers in the bank? A. Personally myself, in some respects, and my assistants in other respects.

Q. Do you remember locating, or having brought to your attention as being located, the deposit book of Mr. Scarlett marked D23 for identification?

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

Mr. English: I don't think it is cross-examination. I will make him my witness as to the subsequent question.

(Question read)

A. I have seen this book. I think I saw it in the custody of Mr. Scarlett first.

Mr. Guild: With the exception of reserving the right to offer in evidence these notes, and possibly some checks that have been offered by the defence for identification, which I would like to reserve the privilege of offering later as state's evidence, we rest.

Mr. English: May I make a motion to direct a verdict without prejudicing my right to put in my defense? I ask your Honor as a matter of discretion.

The Court: You may make the motion. I think, however, this is a motion that should be made and argued in the absence of the jury.

(The jury is excused.)

Mr. English: I move the Court to direct a verdict of acquittal on the State's case, and for these reasons: the indictment is an indictment for an overdraft. The State accuses the defendant of having overdrawn his account, and of course, the only ground of an overdraft, of a case of an overdraft theory, is that the bank was compelled to pay the money which the depositor drew by his check and which ought to have been paid by him. If I have an account with the bank of $20, and draw a check for $100, and that check is paid by the trust company, then there is an overdraft, because the trust company has advanced moneys for my benefit which I did not have, but if I draw that check and my friend is good enough to come in and hand the trust company $80 for my benefit or say to the trust company, "You can charge my account to make up this difference" there is no overdraft between me and the trust company because the trust company is not out a dollar.

The Court: (After argument.) The appliction to direct a verdict will be 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. OSBORNE,
Judge.

(Seal)

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

After recess.

Mr. Guild: I will now offer on behalf of the State, Exhibit D-30 for identification and D-31 for identification.

The exhibits referred to are marked Exhibit S-21 and Exhibit S-22 respectively.

State rests.

Mr. English opens for defendant.

JOHN B. SCARLETT, defendant, sworn in his his own behalf.

Direct-examination by Mr. English:

Q. Mr. Scarlett, you are the defendant in this matter? A. Yes, sir.

Q. Where do you live? A. Forty-seven Johnson Avenue.

Q. Newark? A. Yes, sir.

Q. How long have you been a resident of Newark? A. All my life.

Q. And you are now how old? A. Fifty-one.

Q. You are a married man? A. Yes, sir.

Q. And your family consists of what? A. My wife and three girls and a boy.

Q. How old are your girls and boys respectively? A. I think the oldest girl—I never keep very much track of their ages—the oldest girl is abount twenty-four or twenty-three; the next one is about sixteen or seventeen, and the boy I know is fourteen, and the little girl is six.

Q. And you and your wife and family on Johnson Avenue? A. Yes, sir.

Q. In March, 1913, and prior to that time what business were you in? A. Real estate.

Q. Where was your office in March, 1913? A. We moved; we must have been at 674 Broad Street.

Q. And you say your line of business was real estate. What companies or business interests did you have prior to that time? A. I was the president and treasurer of six or eight different land companies and I was interested in the Stevenson, Rye Company of New York.

Q. What was their business? A. They were importers of straw goods and braids and merchandise for making ladies hats.

Q. And any other concern? A. And also in the Middlesex Hat Company; they had a factory in Metuchen.

Q. And that business was what? A. Making winter goods, beaver hats and velour hats and so on.

Q. Did you in 1909 become a depositor in the Roseville Trust Company? (Showing witness book.) I show you a book which seems to be an account in the name of John B. Scarlett. A. Yes, sir. In 1909.

Q. And that is the book you received when you opened your account? A. Yes, sir.

Mr. Guild: I would like to cross-examine a little on this book.

By Mr. Guild: Q. I notice on page 3 of this book some entries in lead pencil and ask you if you know anything about them? A. I think those entries were made by me after this book was re-

turned to me by Mr. Vredenburgh after the bank was closed in an endeavor to ascertain the status of the account.

Mr. English: They are no part of the original book. I am perfectly willing to rub them off.

By the Court: Q. Will you say those are your figures or is there any doubt about it? A. No, sir; there might be one or two that are not mine, but I think they are all mine. It looks as if one of these is not my writing, but I will take the responsibility for it all.

The Court: The question is where you got the information from which those entries were made.

By Mr. Guild: Q. Where did you get that informaton?

Mr. English: I don't think they are any part of the record.

The Court: No, I do not think they are. They do not offer those figures, as I understand it. If it was not their intention to offer those figures I do not think, in that situation, it is subject to cross-examination, if the defense removes the figures.

Mr. Guild: Then there is no objection to its going in evidence.

The book referred to is marked Exhibit D-23.

The Court: Can you give me the date when that account was opened?

Mr. English: July 30, 1909.

The Court: Will you ascertain whether that is the book which was lost or mislaid?

By Mr. English: It appears by this book, Mr. Scarlett, that it was balanced, I take it, in December of 1910, is that correct—previous to the last balance, I am speaking of.

Mr. Guild: Q. Is that the first balance or next to the last balance or what? A. Yes, it appears to be balanced December 20, 1910.

Q. That is the first balance, is it not, as appears from the book? A. Yes, sir.

Q. Then did you after that date turn it in for balance? A. Yes, sir.

Q. And when did you next get it back after having turned it in?

Mr. Mott: When did he put it in for balance?

The Court: Before you ask that question ask him when he turned it in for balance.

Q. Do you know when it was turned in for balance, approximately? A. I would like to make a statement, that the book was not turned in December 20th; it was turned in after the first of the year, but it appears to be balanced down to December 20th.

Q. And then it came back to you? A. I beg pardon. I didn't turn the book in for balance until February, 1911. The fact that it is balanced down there to that date I never knew.

Q. Then you turned it in for balance in February of 1911? A. Yes, sir; that is my recollection.

Q. When did you next see it after that? A. When Mr. Vredenburgh handed it to me in October, 1913.

Q. Had you tried meanwhile to get it? A. Yes, sir.

Q. And to whom had you applied? A. I had

called up the bank several times and I was informed each time—

Mr. Guild: One minute.

Q. Who did you talk to on any of those occasions? A. Well, now, I can't recall. I think it must have been the bookkeeper I asked for, but I don't remember at this time recognizing the voice over the telephone.

Q. But it was the Roseville Trust Company you had on the 'phone, somebody in the bank? A. Yes, sir.

Q. And you asked what?

Mr. Mott: This is a telephone conversation where he says he did not recognize the voice.

The Court: I do not think it is competent. The State is not bound by a conversation even if he did recognize the voice.

Q. Did you ever talk to Mr. Smith about the book? A. Yes, sir.

Q. Over the telephone or face to face? A. Yes, sir.

Q. When you talked to him did you recognize his voice? A. Yes.

Q. Tell us when you talked to Mr. Smith about the time, when was it first? A. That would have been a few days after the book was left for balance; that, I think would have been around the latter part of February, 1911.

Q. Did you ever have more than one conversation with him with reference to locating the book? A. Yes sir, three or four.

Q. After the date of February, 1911? A. Yes, sir.

Q. Were they over the telephone or face to face or both? A. One was face to face.

Q. And the others? A. Were over the telephone.

Q. And as a result of those efforts did you ever get the book back? A. No, sir.

Q. Until after it came from Mr. Vredenburgh? A. No, sir.

By the Court: Q. Did you examine this book in an effort to ascertain what date the last deposit was made? I can't understand the figures. Can you tell me what the date of that last deposit was? A. It looks as though it was January 18, 1911. The deposit ahead of that, if your Honor plesae is 1/ 16/ 11, and this seems to be—

Q. That would fit, then, between the balancing in December, 1910, and the turning in of the book by you in February? A. Yes, sir.

By Mr. Guild: Q. January 18, 1910, is the last deposit in the book? A. Yes.

By Mr. English: Q. And after you had turned this book in in 1911 you got a new pass-book from the Roseville Trust Company? A. After several weeks or three or four months had elapsed and it seemed to be hopeless to find the old book—

Mr. Mott: I don't like to interrupt, but I ask to have those words "it seemed to be hopeless" stricken out.

The Court: That is a conclusion. Let them be stricken out.

By the Court: Q. You didn't get this book back and you got a new book? A. After three or four months.

By Mr. English: Q. Did that book show the complete balance? A. No, that book started on a balance forward.

Q. Presumably from the ledgers of the bank? A. Yes, sir.

Q. Did you get your vouchers back or anything like that? A. No.

By the Court: Q. What balance did that start with? A. I don't remember.

Q. How did you strike that balance? Did you confer with any authority of the bank or was it put arbitrarily there? A. It was put there by the bank.

Q. Did you object to it? A. I didn't object.

Q. You mean you got the book with that balance in? A. Yes, sir.

Q. And you don't know how much it was? A. I can't tell exactly whether it was $184 or $4.42; I don't know which one of those items; it was either that $4.42 or a hundred and eighty some dollars.

By Mr. English: Q. There was a balance of $4.42 stated somewhere in the general ledger. Did you ever, after you got that book, turn it in for balance? A. The second book?

Q. Yes. A. Yes, sir.

Q. When? A. In June, 1913.

Q. Did you get that book back? A. No, I never have seen that book since.

Mr. English: I ask the State to produce that book if that have got it.

Mr. Guild: We have never had it.

Q. Did you try to get that back? A. The bank was closed and when I went up there to ask to have my pass-book handed to me to my very great surprise Mr. Vredenburgh—

Mr. Guild: Never mind your surprise.

Witness: Mr. Vredenburgh handed me this original pass-book.

Q. This D-23? A. Yes, sir.

Q. And the other pass-book never showed up at all? A. No, sir.

Q. When your pass-book was handed back to you did it have included as a voucher this Exhibit S-5? A. No, sir.

Mr. Guild: You mean the last time?

Mr. English: I mean when it was handed to him by Mr. Vredenburgh. That is the only time it came back to him, according to his testimony.

The Court: He says he has no recollection of it having been balanced the first time.

Q. This S-5 didn't come back as a voucher? A. No, sir.

Q. I ask you the same question with reference to the Exhibit S-13 and S-15 for $500 and $400 respectively. A. No, those vouchers were not returned to me.

Q. And I ask you the same question with reference to S-17 for $1247.76. A. No, sir; that was not returned.

Q. Did you, in the year 1910, in November of 1910, make deposits or send to the bank for deposit to your account any checks? A. Yes, sir.

Q. I show you a check which is marked D-20 for identification, being a check of the Middlesex Hat Company for $1000 to the order of Stevenson, Rye & Company, and endorsed by them, and also endorsed by you to the Roseville Trust Company, and ask you if you sent that check to the bank for deposit? A. Yes, sir.

Q. I also show you another check for the same amount, drawn in the same manner and endorsed in the same manner, dated November 19, 1910,

and marked D-21 for identification. Did you send that to the trust company for deposit to your account? A. Yes, sir.

Mr. Guild: Do you mean that they both went in the same deposit?

Q. Did they both go up the same time? A. Yes, sir.

Q. And those checks, as appears from the perforations, are paid? A. Yes, sir.

Checks referred to are offered in evidence and marked Exhibits D-20 and D-21 respectively.

Q. Did you also during November send to the bank for deposit to your account a check of Knauth, Nachad & Kuhn dated November 21, 1910, for $2000, and endorsed "For deposit" and marked P-19 for identification? A. Yes, sir.

Mr. Guild: Can't you give us the date of the deposit?

Q. Can you give us the date that it was sent up for deposit?

Mr. English: Before I ask him that I will ask the State to produce Mr. Scarlett's check-book, which I understand is in possession of the safe.

(A book is handed to counsel.)

Q. Can you remember when you sent it up or do you want this check-book?

Mr. Guild: You are obliged, as I understand it, to put it in evidence if you use it.

Mr. English: I have no objection to doing that.

The Court: You are asked if you need this book.

Witness: No, sir, not in this instance.

Mr. Guild: What is the witness reading from now?

Mr. English: D-19 for identification.

Q. When was it sent up? A. November 21, 1910.

The check referred to is offered in evidence and marked Exhibit D-19.

Q. And as the check appears it shows that it was perforated "Paid"? A. Yes.

Q. Did you also in November deposit any other checks of the Middlesex Hat Company? A. Yes, sir.

Q. Do you remember how many and for what amount? A. There was two other checks for $1000 apiece that were deposited.

Q. Do you remember whether or not those turned out to be good checks or bad? A. They were returned for nonpayment.

Mr. Guild: If he has the checks will he produce them?

Mr. English: We haven't got them.

Q. Do you remember on what date they were sent up? A. Yes, sir.

Q. When? A. Either the 15th or 16th.

Q. Of what? A. Of November, 1910.

Q. You say they were protested. Did you receive notice of protest of those two checks? A. Yes, sir.

Q. I show you two notices of protest. Do they relate to the checks referred to? A. Yes, sir.

Q. What is the amount of protest fees charged in each case as appears on the bottom? A. $1.68 on each item; $3.16 for the two.

The two papers referred to are offered

in evidence and marked Exhibits D-32 and D-33.

Q. So that, as I understand your testimony, you sent up in November checks in all amounting to $6000, of which $2000 turned out to be bad checks? A. Yes, sir.

Q. Leaving $4000? A. Yes, sir.

Q. I draw your attention to the ledger account which is in evidence as Exhibit S-6, and I call your attention to a credit appearing in November, 1910, of $2000, and a debit of $2000, and another debit of $3.16. Do you see that.

Mr. Guild: I object to this witness testifying from this book.

Mr. English: It is in evidence in the case.

Mr. Guild: He doesn't know anything about how it was kept.

The Court: He may not know anything about the system of keeping it, but he can read figures.

Mr. Guild: He may say what he sees.

Q. (Question read.) A. Yes, sir.

Q. Is there any credit in the ledger in November of the additional checks aggregating $4000?

Mr. Mott: How can this witness testify what is a credit or what is not?

The Court: It does not appear that he can. Mr. English can pursue the other course and have him tell what he sees. He cannot draw conclusions that certain figures are credits unless it appears that he knows something about that ledger and the system of keeping books.

Q. I call your attention to the ledger entries in

November, 1910, being S-6, and I ask you if there are any figures there amounting to $4000?

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. OSBORNE,
Judge.

(Seal.)

Q. I call your attention to the ledger S-6 and to that part of it referring to entries in November, 1910, and I ask you to read the figures where indicated there for the month of November, 1910.

Objected to.

Question withdrawn.

Q. I ask you whether you made any other deposits in February, 1911—to be exact, February 8, 1911—and to enable you to answer that question I show you a duplicate deposit slip which is marked D-17 for identification. A. Yes, sir.

Q. Now, at that time where was your bank-Book? A. I believe it was up at the bank.

Q. And did you on February 8th send up for deposit checks aggregating $5700? A. Yes, sir.

Q. And did you receive back from the bank a duplicate deposit slip marked here Exhibit D-17 for identification? A. Yes, sir.

Q. (Handing witness paper.) Is that the duplicate deposit slip that you received back? A. It is.

The paper referred to is offered in evidence and marked Exhibit D-17.

Q. I see on that duplicate deposit slip D-17 an item of $3000, and I show you a check which is

marked for identification D-18, being dated February 8, 1911, signed by you, to your own order, drawn on the National State Bank "For deposit Roseville Trust Company," and ask you if that is the check referred to? A. Yes, sir.

Q. And that check appears as certified and paid? A. Yes, sir.

The paper referred to is offered in evidence and marked Exhibit D-18.

Q. It appears from the deposit slip D-17 that there were two other items, namely, $1000 and $1700, respectively. Were they checks drawn by you on some account of your own or the checks of outside persons? A. I think they must have been some outside checks.

Q. You haven't got them? A. I haven't got any memorandum of that.

Q. When was the first time that you complained to anybody in the bank of your inability to get back your pass-book? A. It must have been toward the middle or latter part of February, 1911.

Q. What was the occasion of that complaint?

Mr. Guild: To whom?

Q. What was the occasion of that complaint? A. I wanted to get the book back in order to check up my balance.

Q. For what particular reason at that time did you want to check up your balance? A. I am quite sure there was an item that was returned, or else my attention was called to an item that would be returned if I didn't send up the money to take care of it, and my bookkeeper claimed that the balance was considerably—

Mr. Guild: I move to strike that last part out.

The Court: Strike it out.

Q. Who was your bookkeeper at that time? A. Mr. Reynolds.

Q. Is he now living or not? A. He is dead.

Q. When did he die? A. December, 1912.

Q. And he at that time had charge of the details of your bank books and what not? A. Yes, sir.

Q. At any rate, it was represented to you by the bank that there was some discrepancy in your account?

Mr. Guild: That is not what he said at all.

Mr. Mott: That is objected to as leading, for one reason.

The Court: Objection sustained.

Q. Who, on behalf of the bank, called your attention to any trouble with your account along in February of 1911? A. Mr. Smith.

Q. And what did Mr. Smith say? A. There was some item that needed some money to make it good—

Q. That is what he said? A. To take up an item.

Q. That is what he said? A. Yes.

Q. What did you say to him, if anything? A. I says "I know you are mistaken, Mr. Smith, the account is good for considerably more; there must be a mistake somewhere."

Q. And then did you take the matter up with your bookkeeper, Mr. Reynolds? A. Yes, sir.

Q. Was it following that that you sent the book up to be balanced? A. Yes, sir.

Q. And then following that this deposit of $5700 was made which you have referred to? A. Yes, sir.

Q. Who kept the run of your check-book? A. Mr. Raynolds.

Q. Up to the time of his death? A. Yes, sir.

Mr. Guild: When was it he died?

Mr. English: December, 1912.

Witness: December, 1912. I couldn't fix it exactly, but it was around the 1st of December.

Q. Along in 1910 what was the condition of your personal financial affairs? A. Well, this difference in the account embarrassed me very much indeed.

Q. That was 1911? A. Early in 1911. In 1910 my financial condition was better.

Q. And did your financial difficulties continue following a period after 1911? A. Yes, sir.

The Court: I do not reconcile the two questions as to his financial condition.

Q. In 1911 you say you began to have financial difficulty?

Mr. Mott: Has he said that?

The Court: I have not heard him. Objection sustained.

Q. What was the condition of your personal finances in 1911? A. They became rather embarrassing in 1911.

Q. And that continued on after this date? A. Yes, sir.

Q. Did you ever bring to Mr. Smith''s attention the fact that you needed whatever money you were entitled to to your credit in the trust company?

Objected to as leading.

The Court: That can be answered either affirmatively or negatively. Objection overruled.

A. Yes, sir.

Q. And approximately when was that? A. That was in the spring of 1911.

Q. And what, if anything, in connection with that was said about the loss of the pass-book? A. Mr. Smith claimed to have returned the pass-book to Mr. Raynolds, and I came down to see Mr. Raynolds—or I saw him in the office—and I asked him why he had—

Objected to.

The Court: Do not tell us any conversation with Raynolds.

Q. Did you make an investigation in your office A. Yes, sir.

Q. Did you find the pass-book? A. No, sir.

Q. Did you go back to Mr. Smith again? A. Yes, sir.

Q. What did you and he say about this pass-book? A. I told him the difference in this account was very embarrassing to me indeed, that I needed the money, that there was something wrong somewhere.

Q. Did you make any representation to him about what you thought your deposit ought to be? A. I said several thousand dollars in excess of what I was credited with.

Q. What did he say to that? A. He said he was sure that the bank was right, there was no mistake there.

Q. You didn't look over the books of the bank at that time, did you? A. No, sir.

The Court: That was in the spring of 1911?

Mr. English: That is what he said.

Q. In connection with that, or shortly after, was there any conversation between you and Mr. Smith in reference to any personal loans by

Smith to you to tide over this then existing situation? A. Yes, sir.

Q. What was it? A. Mr. Smith, when I spoke to him about it, said that he was sorry, that he was sure there was no mistake in the bank, and he said "However, if you find you run too short and need some assistance come and see me, Mr. Scarlett, and I will help you out."

Q. Did he indicate to you that he had financial means apart from his salary at the bank?

Mr. Mott: It does seem to me that this witness, like any other witness, should relate the conversations.

The Court: These questions suggest the answer; they suggest the subject matter and detail of the conversation. That may be proper after you have exhausted the witness's memory, to refresh it, but until that time you should ask him for the conversation. Objection sustained.

Q. What else did Mr. Smith say in reference to his offer to personally help you?

Mr. Guild: He didn't say personally. He said "If you will come to me, if you need help come to me and I will try and help you out."

Mr. English: I will adopt that language.

Q. What, if anything, did Mr. Smith say in connection with that conversation as to how he would help you? A. Mr. Smith told me that he was making a great deal of money out of his automobile business, that his sales of the Oakland car for that season had run to about three hundred machines; he said that the average commission or profit of each car was approximately $300; that after paying all expenses, sub-com-

missions and rents, he had made a profit of between $30,000 and $40,000 out of his Oakland garage.

Q. Did you at that time avail yourself of his offer? A. No, sir.

Q. When did you, if at all? A. It must have been three or four or five months after that time.

Q. Are you speaking now of the year 1911 or 1912? A. I am speaking of the year 1912.

Q. It must have been some time after that? A. Yes; it must have been; my recollection is that the first time I got any assistance from Mr. Smith after that time was the latter part of 1912.

Q. How long was that after this conversation? A. This conversation was in 1911.

Q. The spring of 1911? A. The spring of 1911.

Mr. Guild: You said you didn't get any assistance until the latter part of 1912?

Witness: The latter part of 1912.

Q. Did Mr. Smith, in fact, loan you any moneys? A. Yes, sir.

Q. Prior to October, 1912? A. Yes, sir.

Q. Do you remember approximately how much prior to 1912? A. Yes, sir.

Q. How much? A. There were two or three items aggregating a thousand dollars.

Q. Did you in October, 1912, borrow any further money from Mr. Smith? A. Yes, sir.

Mr. English: I ask the State to produce the check which was marked as an exhibit yesterday, a check for $100.

Q. Prior to your borrowing this money in October of 1912 had you given to Mr. Smith any

notes—if not your own notes, other persons notes? A. Yes, sir.

Q. I show you exhibit in evidence S-21 which has been referred to as the Long note for $2500 and I ask you whether that is a continuation of any note which you gave, or caused to be given, to Mr. Smith prior to October of 1912? A. Yes, sir.

Q. I also show you the note which is in evidence as S-22 and is known as the Sica note for $1247.76 and ask you whether that is a continuation of any note which you gave, or caused to be given, to Mr. Smith prior to October, 1912? A. Yes, sir.

Q. And what was the object on your part of giving to Mr. Smith the predecessor notes of these exhibits? A. The agreement I had with Mr. Smith was that those notes were to be discounted by him outside of the Roseville Trust Company altogether and he would place the money to my credit.

Q. Did he say that he had facilities outside of the trust company for—

Objected to.

Q. What did he say, if anything, with reference to any facilities which he had for raising money on notes in that way? A. Mr. Smith said he could handle the notes outside.

Q. Now, along in October, 1912, what, if anything, did Mr. Smith say with reference to any security which he wanted? A. I went to see Mr. Smith about getting some money and Mr. Smith asked me what security I could give him—

Mr. Guild: Will you fix that date?

Witness: That was on October 24, 1912. I told Mr. Smith that there was a couple of loans

that were going through from which I believed I could repay him shortly.

Q. And, generally, what was that class of loans? A. That was some building and loan.

Mr. Guild: Is this his conversation with Smith?

Mr. English: Yes.

Q. Did he name the kind of loans? A. Yes, sir, I told him exactly what they were. I would like to have that letter to refresh my mind.

Q. (Handing witness paper.) I show you Exhibit D-27 for identification in connection with this question which I have asked you, which has been referred to as a letter signed by you, written out in the handwriting of Mr. Smith and dated October 25, 1912. That paper was signed by you? A. Yes, sir.

Q. Does that refresh your recollection? A. Yes, sir.

Q. Now, the question is what kind of loan you mentioned to Mr. Smith in your conversation? A. Loans that were being made by the Mutual Benefit & Loan Association and by the Central Building & Loan Association of Belleville.

Q. You told him that you expected those loans to come due. What else was said about security? You said you thought those loans were going to mature?

Mr. Guild: He said they were going through.

The Court: Yes, that is what he said.

Q. Going through. What else, if anything, was said about any security to Mr. Smith? A. I told Mr. Smith if these loans didn't go through, or whether they did or not, I would secure him by

deeding to him the premises 47 Johnson Avenue.

Q. That is your private residence? A. Yes, sir.

Q. And what did he say about that, if anything? A. He said that would be perfectly satisfactory.

Q. Was there any discussion as to how the deed should be made out? A. Yes, sir.

Q. What did he say about that, if anything? A. I told Mr. Smith that I would deed the property to him.

Q. What did he say? A. Mr. Smith replied, "Oh, no, that will not do. You know I have had family troubles and there is a suit between myself and my wife and therefore that would only complicate the matter, it will have to be arranged some other way."

Q. What was suggested in your conversation, if anything? A. I then suggested if it might be satisfactory to Mr. Smith if the property was deeded to a trustee to hold the title in trust for the benefit of Mr. Smith, the trust agreement to recite that when I paid Mr. Smith—

Objected to.

Q. Is this the conversation? A. Oh, yes, this is the conversation. —that the trust agreement was to recite that when I paid Mr. Smith the money that he loaned me personally then the trustee was authorized to deed the property back to me.

Q. As a matter of fact, was a deed given and a trust agreement drawn up?

Mr. Guild: I suppose the best evidence is the production of the deed and the agreement.

The Court: It is on the record that that transaction was consummated. We cannot tell until we see the paper whether that was the same transaction.

Witness: I haven't finished the conversation.

Q. Was there anything else said in this conversation? A. Yes, sir. Mr. Smith said that it would be satisfactory. I then asked Mr. Smith to name the trustee to whom the property should be deeded. He said, "Any one will be satisfactory to me that you name. You name the trustee." I said, "No, Mr. Smith, you are loaning the money; it is proper that you nominate the trustee." He said, "That don't make any difference, Mr. Scarlett, the trustee that is satisfactory to you will be satisfactory to me." I then suggested that we should make Mr. Nicholas R. Sica the trustee, as Mr. Smith was acquainted with Mr. Sica, and I was acquainted with Mr. Sica, and I thought very highly of him and I had an idea that Mr. Smith did. Mr. Smith said that Mr. Sica would be perfectly satisfactory—

Mr. Guild: When did all this happen?

Q. Was this all at the same time, in the one conversation? A. No, not exactly the same time. The negotiations relative to the loan had been going on for a month.

Q. Is the Mr. Sica you name the same gentleman who appears in this note S-22 as N. R. Sica? A. Yes, sir.

Q. Now, I show you D-28 for identification, the signatures to which have been already identified by Mr. Smith, and ask you if that paper was signed pursuant to the conversation which you have described?

Mr. Guild: Do you propose to offer these in evidence?

Mr. English: I do.

A. Yes sir; that is.

Q. That was signed pursuant to that conversation? A. Yes, sir.

Q. How many duplicate copies of this paper were made? A. It was signed in triplicate, three copies.

Q. One was kept— A. By Mr. Smith.

Q. One by— A. Me.

Q. One by— A. Mr. Sica.

Q. I show you D-29 for identification, which is a duplicate of the same paper. Look at it and see if it is. A. That was my copy.

Q. (Showing witness another paper.) Do you know whose copy that was? A. That was Mr. Sica's copy.

Mr. English: I ask the State to produce, if they have it, Mr. Smith's copy.

Mr. Guild: I will say that the paper which you say you delivered to Smith and which you say is a copy of that, is not an exact copy?

Mr. English: I ask the State to produce the duplicate copy and have the Court rule on it.

A paper is produced by the prosecutor which is marked S-23 for identification.

Q. I show you S-23 for identification just produced at my request by the State and ask you if the signatures there are original signatures, to your knowledge? A. Yes, sir.

Q. And they are the signatures of whom? A. Nicholas R. Sica, John B. Scarlett and Raymond E. Smith.

Q. Will you look at the signatures on D-28 and D-29 for identification and show me wherein, if in any way, the paper you hold in your hand shows any difference?

Mr. Mott: I object. I do not want this witness to tell wherein two papers differ.

The Court: I understand that this paper, which is produced in responsee to your demand, is the third duplicate original?

Mr. English: Yes.

The Court: It is for the State to show that. Suppose you show him the third copy and ask him.

Q. Is that S-23 for identification the third duplicate original of this paper? A. I have no doubt of it at all.

Q. Are the signatures there all original signatures? A. Yes, sir.

Q. The same as appear on the other two copies? A. Yes, sir. It appears not to be dated. That is the only difference.

Mr. English: I offer in evidence D-28 and D-29 for identification, being identical papers executed in duplicate.

Mr. Guild: I object on the ground that the two copies which the defendant produces differ from the copy which we have.

The Court: He has not offered your copy. They will be admitted.

The papers referred to are marked Exhibits D-28 and D-29 respectively.

Q. In connection with that signing of that paper, at about the same time was the paper Exhibit D-27 for identification signed by you? A. Yes, sir.

Q. And it relates to the same transaction? A. Yes, sir.

The paper referred to is offered in evidence and marked Exhibit D-27.

Mr. English: I offer in evidence the duplicate of Exhibits D-28 and D-29 and which is now marked S-23 for identification.

Mr. Guild: I object because it differs from the other two copies.

Mr. English: Because it is not dated?

Mr. Guild: Yes.

Mr. English: Everything is exactly the same except the date.

The Court: I will admit this paper.

The paper referred to is marked Exhibit S-23.

Q. You spoke of a deed. Did you, in fact, execute a deed to Mr. Sica? A. Yes, sir.

Q. For this Johnson Avenue property? A. Yes, sir.

Q. I show you a deed signed "John B. Scarlett" acknowledged before William H. Reynolds, Commissioner of Deeds, to Nicholas R. Sica for property in Newark, New Jersey, at a point beginning on the westerly line of Johnson Avenue, and so forth. Was that deed executed by you? A. Yes, sir.

Q. And was that the deed which was referred to in the trust agreement Exhibit D-28 and D-29? A. Yes, sir.

Q. The deed has been recorded? A. Yes, sir.

Q. In Book G-51 of Deeds of Essex County, page 45? A. Yes, sir.

Q. In connection with this same general transaction did Mr. Smith loan you any moneys in ad-

dition to those which he had loaned you prior to the date of October 25, 1912? A. Yes, sir.

Q. How much? A. The sum of $4200, for which he gave me his personal check.

Q. I show you Exhibit D-26 for identification, which is a check identified by Mr. Smith as his own check, dated October 25, 1912, to your order for $4200, and I ask you whether this check was given to you in connection with this transaction? A. Yes, sir, that was the check.

Q. And you got the money on that check? A. Yes, sir.

The check referred to is offered in evidence and marked Exhibit D-26.

Q. In connection with this same transaction did Mr. Smith either loan or agree to advance for you any other money than that represented by this check? A. Yes, sir.

Q. How much and for what purpose?

Mr. Guild: Can't we get which is which, loaned or agreed to loan?

Q. Was it an actual loan or an agreement to loan? A. It was an agreement to pay a certain premium on life insurance policy.

Q. And the premium amounted to how much? A. It was figured up as $800.

(Defendant's counsel reads to the jury Exhibits D-28, D-29 and D-27.)

Q. Did you make on your duplicate copy of the trust agreement any memorandum as to what the items were that made up this sum of $9700 which is mentioned in both the trust agreement and the letter D-27? A. Yes, sir.

Q. Can you turn to it?

Mr. Mott: When did he make the memorandum.

Q. When did you make the memorandum? A. On the 25th of October, 1912.

Q. That is the day the paper was signed? A. Yes, sir, that is the day the transaction was consumated.

Q. Show us where they are. A. The memorandum is on the lefthand margin of the last sheet.

Q. Of the sheet signed by all three parties? A. Yes.

Q. Will you just read what you have written there?

Mr. Mott: Is that in his handwriting?

Q. Is that in your handwriting? A. Yes, sir. (Reading): "Loans, $1000."

Q. Is that the first word? A. The first word is "Amounts."

Q. Read everything in pencil. A. (Reading:) "Amounts, Loans, $1000; check, $4200; note, $1247; note, $2500; insurance premium; $800."

Q. Total? A. Total, $9747. The odd dollars was omitted in the trust agreement.

Q. Does the item of $1000 refer to the money previously loaned which you have testified about? A. Yes, sir.

The Court: Can you identify that a little more fully?

Q. You said that previous to October you had borrowed moneys from Smith in several small loans which aggregated a thousand dollars? A. Yes, sir.

Q. Does the item here "Loans, $1000" refer to those loans? A. Yes, sir.

Q. Then the check of $4200 refers to S-26? A. Yes, sir.

Q. And does the note of $1247 refer to the pre-

decessor note of S-32 in evidence? A. Yes, sir.

Q. The Sica note, so-called? A. Yes, sir—the Spinoza note.

Q. The Spinoza note is to the order of Sica? A. Yes, sir.

Q. And does the item "Note, $2500" refer to the predecessor note of S-21 for $2500? A. Yes, sir.

Q. That note S-21 is signed by Nicholas R. Sica? A. Yes, sir.

Q. Do you know who was the original maker of the predecessor note? A. Yes, sir, Mr. Reynolds.

Q. He was the bookkeeper who died? A. Yes, sir.

Q. And Mr. Sica afterward took his place on the note, so to speak? A. Yes, sir.

Q. The last item here is "Insurance premium, $800." That refers to what? A. That refers to the insurance premium.

Q. I mean with refereence to Smith—the one that he agreed to pay for you that you testified about? A. Yes, sir.

Q. As a matter of fact, did he ever pay it for you? A. No, sir; not that I know of.

Q. I show you a paper signed by Caroline E. Scarlett and ask you if you know whose signature that is? A. Mrs. Scarlett's.

Q. Your wife? A. My wife's signature.

Q. Can you say whether or not this paper was signed in connection with the trust agreement? A. It was.

Q. And the deed to Mr. Sica? A. Yes, sir, it was.

Q. That is Mr. Scarlett's signature? A. Yes.

The paper referred to is offered in evidence and marked D-36 for identification.

Mr. Guild: I shall have to object to the introduction of this paper now offered untill there is better evidence of its execution.

Mr. English: You want Mrs. Scarlett to prove her signature?

Mr. Guild: Yes.

Mr. English: We will prove it by the person who signed it.

The Court: What is the date of that paper?

Mr. English: October 25, 1912; the same date as the trust agreements.

Q. It appears from the trust agreement that this Johnson Avenue property was subject to two mortgages, one of $12,000 and one of $4,000. Do you know approximately what the value of that property was at that time? A. Between thirty and thirty-five thousand dollars.

Q. Johnson Avenue was one of the best residential streets in Newark? A. Yes, sir.

By the Court: Q. You think it is valued at $35,000? A. It stands us in more than that.

Q. You say it is valued at $35000? A. It is valued between thirty and thirty-five thousand dollars.

By Mr. English: Q. Did Mr. Smith, as a matter of fact, loan you other moneys after the date of these papers in October, 1912? A. Yes, sir.

Q. Did he agree to loan you any moneys after that date? A. Yes, sir.

Q. First with reference to the fact, what moneys in fact did he loan you after that date?

Mr. Guild: Do you mean after the 25th of October?

Mr. English: After the 25th of October, 1912.

Q. Smith has already admitted that he did deposit to your account $300 in December, 1912. What conversations after this, if any, did you have with reference to further loans to you from Mr. Smith?

Mr. Guild: Fix the date.

Q. Did you have a conversation with him after that? A. Yes, sir.

Q. Did you have any conversations between the date of October 25, 1912, and March 17, 1913? A. Yes, sir, a few.

Q. Were those conversations had face to face or over the telephone or both? A. Most of them over the telephone I think.

Q. (Handing witness paper.) I show you a paper dated February 19, 1913, signed by you and in evidence as S-16 and I ask you whether the signing of that letter was preceded by any conversation between you and Mr. Smith? A. Yes, sir, it was.

Q. And how was the conversation had—face to face or over the telephone? A. This was over the telephone, I am quite certain.

Q. Can you remember what the conversation was? A. I told Mr. Smith I would like to use $400 and asked him if he could loan it to me.

Q. What did he say? A. He said he would.

Q. And did you say anything about drawing a check to receive the money or how was it to be arranged?

Objected to as leading.

Objection sustained.

Q. What, if anything, did you say or did he say as to how you were to receive the money? A. I told him I would send a messenger up and I would like to use the money and to certify a check, and I thought probably it would be necessary for him to deposit the money to my account as under no circumstances did I want the account to show an overdraft. Mr. Smith said "Send your check up and I will certify it." I said "Understand, Mr. Smith, I don't want my account to show an overdraft, to be overdrawn." He said, "I will attend to that, the account will not be overdrawn; I will fix the account all right, it will not be overdrawn."

Q. In that connection, had you had your account straightened out with the Roseville Trust Company? A. No, sir.

Q. And were you still claiming that you had a balance if the account was straigtened out? A. Yes, sir; the pass-book was not found during all this period.

Q. And in connection with that letter you did receive the check in evidence here, S-15, being dated February 19, 1913? A. Yes, sir. Mr. Smith certified this check for me on that date.

Q. After the time you received that check did you or did you not rely on Mr. Smith's agreement to see to it that your account was not overdrawn? A. Yes, sir; I relied absolutely upon it.

Q. (Handing witness paper.) Now, I show you a letter dated March 4, 1913, which is in evidence as S-14, signed by you and addressed to Mr. Smith and I ask you whether the writing of that letter was prededed by any conversation between you? A. Yes, sir; it was.

Q. And was that conversation face to face or over the telephone? A. I think it was over the telephone.

Q. Can you tell us what the conversation was? Look at the letter to refresh your recollection. A. I can't recall what the New York matter I referred to in the letter is at present.

Q. "That New York matter is not through yet," that you don't recall, don't recall what it was? A. No, I don't recall what particular matter I referred to at that time.

Q. It evidently related to expected funds by you? A. Yes, sir.

Q. Can you recollect what the conversation was between you and Mr. Smith in reference to securing money from Mr. Smith and as to the certifying of the check? A. Yes, sir. I told Mr. Smith that I would like Mr. Smith to make me a little further loan—I forget now the amount—and I explained to him that I wanted to use the money by way of certified check, and I asked him if he would certify a check and see that the account was good for it.

Q. What did he say? A. He said he would attend to it and take care of it all right.

Q. In connection with that did you sign a check, being S-14, for $500? A. Yes, sir. (Indicating.) This is the check.

Q. In connection with that did you state anything as to your account showing an overdraft? A. I told Mr. Smith that I didn't want the account to show an overdraft, that I wanted him to loan me the money to take care of my credit. He said it would be all right, that I need not worry about the account, he would see that the account was all right.

Q. In reliance upon that did you send up that check Exhibit S--14? A. Yes, sir.

Q. And the same in regard to S-15? A. Yes, sir. I considered that he had taken care of my account—couldn't have gotten any better evidence of it from any source.

Mr. Guild: I move that the last part of the answer be stricken out.

The Court: Strike it out.

Q. Now, I show you the letter S-12 in evidence dated March 17, 1913, and I ask you whether any conversation preceded the sending up of that letter? A. Yes, sir.

Q. How was the conversation had? A. This conversation was had face to face with Mr. Smith.

Q. And whereabouts? A. I think I might have met Mr. Smith at the bank.

Q. What was the conversation with reference to the borrowing of any money by you? A. At this period there was quite a little conversation relative to my financial affairs, and I told Mr. Smith that I was going to cut loose from this hat shop; I told him I was going to cut loose from this drain that this concern in New York had been on me which involved some hundred thousand dollars; I told him this expense down at Metuchen, owing to bad management, had been such a heavy drain on me I was going to cut it out, I was going to dispose of both of those enterprises, clean them up and pocket my loss, whatever it would be, and that the realizing on these investments would leave me substantially in funds; that in the meantime, however, I might need some slight assistance and that I would be greatly obliged if he could help me out with a little additional loan.

Q. What did he say? A. He said he was very glad that I was going to give up the outside ventures because he thought they were bothersome to me and would be the occasion of heavy losses; to that I replied I had made up my mind to the same thing, that whatever the loss was I was going to pocket it and be done with it, and he said "Well, all right, Scarlett, you are going to come out better if you get rid of those miserable enterprises that are draining the life blood out of your finances;" and he said, "You won't have to worry about your business after once you do dispose of both of those firms;" and he said "I will help you out a little further." In pursuance of this conversation I wrote this letter. I didn't wish to bother him again unless it was absolutely necessary. I considered Mr. Smith had been very kind and I thought it was up to me to clean up my obligations and pay up what Mr. Smith had loaned me and quit these disastrous investments.

Q. The conversation took place before the loan of the money? A. Yes, sir, a week before.

Q. You sent the letter up by messenger? A. Yes, sir.

Q. That is, Exhibit S-12? A. Yes, sir.

Q. In response to that you received the check mentioned in the indictment, S-5 in evidence? A. Yes, sir.

Q. Did you or did you not rely upon the agreement that Mr. Smith had stated in the conversation which you have described? A. Yes, sir. I spoke to Mr. Smith—

Mr. Guild: Never mind.

Q. Did you have any other conversation with Mr. Smith other than that which you have described with reference to this matter? A. I

spoke to him again about the account, I didn't want it under any circumstances to show an overdraft.

Q. You said to Mr. Smith what? A. I told Mr. Smith that I would wish to use the check as a certified check and that under no circumstances did I want my account to show an overdraft or to be overdrawn, and therefore it would be necessary, as before, for Mr. Smith to deposit his own funds to my account.

Q. What, if anything, did he say indicating whether he would do that? A. He said, "Don't worry about the account;" he said, "I will attend to the account all right, Mr. Scarlett."

Q. And you relied on that, you say? A. Yes, sir.

Q. Now, at the time you signed and sent up this check and accepted it did you have any intention of overdrawing your account? A. No, sir.

Q. Did you know, in fact, that you were overdrawing your account? A. No, sir.

Q. Did you believe that the account was being taken care of by Mr. Smith in the way you have described in your conversation? A. I believed there was several thousand dollars I had there; I thought there was, but I was uncertain about it owing to this discrepancy and owing to the fact that my pass-book had been kept in the bank.

Q. Apart from additional credits which you believed you had deposited did you also believe what Smith told you as described in your conversation? A. Yes, sir.

Q. Did you in this conversation which preceded the writing of the letter S-12, which is the letter of March 17, 1913, which went with the check mentioned in the indictment, say to Mr.

Smith that you knew that he was running certain risks in connection with your account? A. No, never.

Q. Did Mr. Smith in that conversation say to you that your account was in awful shape? A. No, sir never.

Q. Did Mr. Smith say to you in connection with that conversation that he had had to make improper entries in the account? A. Absolutely not, Mr. English.

Adjourned until tomorrow, Thursday, March 18, 1915, at ten o'clock, a. m.

FOURTH DAY

Thursday, March 18, 1915.

Continued pursuant to adjournment.

Present, counsel as before stated.

John B. Scarlett resumes the stand in his own behalf.

DIRECT EXAMINATION (continued) by Mr. English:

Q. Mr. Scarlett, at the time you completed these negotiations with Mr. Smith in October of 1912 was any memorandum of any character prepared by Mr. Smith indicating the details which aggregated $9700? A. Yes, sir.

Q. What sort of a paper was that? A. That was on a piece of pad paper, about 5 by 7 inches.

Q. And written out by whom? A. Part of

it by Mr. Smith, and I think there were some memorandums on it in my handwriting.

Q. Where was that prepared or written out? A. It was prepared in the back room of the bank.

Q. And did you bring it away or leave it there? A. I brought it away.

Q. What did you do with it? A. I kept it inside of my check-book.

Q. When did you last see it? A. I last saw it —I took it out of the check-book and showed it to Mr. Smith when he was sent down to see me by Mr. Vredenburgh, to make an appointment with me to meet Mr. Vredenburgh about a little matter.

Mr. English: I would like to have that answer read.

(Answer read.)

Witness: I didn't say about a little matter; I said the matter of my account.

Q. Approximately when was that? A. After the bank closed.

Q. What did you do with it? A. I put it back in the check-book.

Q. What did you do with it after that? A. The check-book was taken out of my office by Mr. Spaulding Frazer at the time a petition in bankruptcy was filed against me.

Q. Have you seen that since? A. No, sir.

Mr. English: I ask the State to produce the memorandum if they have it.

Q. Come back to the time when it was signed, you took it away from the office of the bank and took it to your own office? A. Yes, sir.

Q. Did anybody else see it there besides yourself in your office? A. Mr. Sica.

Q. Do you know what use he made of it or what reference he made to it? A. Yes.

Q. What? A. When Mr. Sica returned from seeing Mr. Smith, that he went up to see him on October 25th, and he brought back the declaration of trust signed by Mr. Smith that had been previously signed by me; he called my attention—

Mr. Guild: No.

Q. I don't think you can describe conversations between yourself and Mr. Sica. What did Mr. Sica do on that occasion after you came back from the bank with reference to this memorandum, if anything? A. Mr. Sica said—

Mr. Guild: Don't tell conversations.

Q. No. What I want to know is what Mr. Sica did, if anything, with reference to that memorandum which you brought there and exhibited to him? A. He put on his copy of the declaration of trust the memorandum of the figures that were contained in this memorandum that Mr. Smith had given me making up the amount of $9700 for which the declaration of trust was given as security.

Mr. Guild: I move that that be stricken out unless Mr. Scarlett saw it done.

Witness: I saw it done.

By Mr. English: Q. Did he make the memorandum in your presence? A. I saw it done, and at the same time—

The Court: Just answer the question.

Q. I show you Exhibit D-28 which you have already said was Mr. Sica's duplicate copy of the declaration of trust and I call your attention to

the word "Memoranda" in pencil and some notations under that written in lead pencil, and I ask you who made that memorandum, to your knowledge? A. Mr. Sica made the memorandum.

Mr. Guild: Is this what Mr. Scarlett calls his copy that you are talking about?

Mr. English: No, this is Mr. Sica's copy. I showed him Mr. Sica's copy. He said that Mr. Sica made a memorandum on his copy and he says that is the memorandum which was written by Mr. Sica in his presence.

By the Court: Q. Do you know whose handwriting that memorandum is in? A. Yes, sir.

Q. Whose? A. Mr. Nicholas R. Sica.

Q. You are familiar with his handwriting? A. Yes, sir, and I saw him write it.

By Mr. English: Q. In making that he copied the memoranda of Mr. Smith which you have referred to? A. Yes, sir.

The Court: I assume that when this Exhibit D-28 went in that memorandum was on it.

Mr. English: Oh, yes.

The Court: My point is that apparently nobody noticed the fact that there was anything on it at that time.

Mr. English: I did not notice it myself.

The Court: You can offer it now.

Mr. English: If your Honor will permit me, I will withhold offering that until after I call Mr. Sica.

Q. Now, Mr. Scarlett, I show you Exhibit D-29,

which you have testified is your duplication of the declaration of trust, and I call your attention to the notation which you made in your handwriting on the second page setting forth the details of the loan, and I ask you to look at that, and also to look at the memorandum in the handwriting of Mr. Sica on Exhibit D-8 and tell me how they compare?

Mr. Guild: They speak for themselves. It is something we can all see.

Mr. English: I am going to call Mr. Sica in due course to corrobrate what Mr. Scarlett has testified to about those things. Your Honor can well reasonably assume that I will do what I said.

The Court: The objection was to the witness comparing it with other items. However, I think they may be admitted subject to that qualification, but the objection goes to the comparison, not to the witness reading the figures. Let the witness read the figures.

Q. Now, Mr. Scarlett, I direct your attention to Exhibit D-29, which is your duplicate copy of the trust agreement, and I ask you to read the figures and the notation opposite the figures totaling up $9700. Just read them off. A. (Reading): "Loans, $1000; check, $200; note, $1247; note, $2500; insurance premium, $800;" footed up, $9747.

Q. Now, I show you Exhibit D-8 and I direct your attention to the memorandum in Mr. Sica's handwriting and I ask you to read that. A. (Reading:) "Loans, 1000; check, $4200."

Q. Is the word "check" spelled out? "Ck." "Note, $1247; note, $2500; insurance premium, $800."

Q. Is "Premium" spelled out? A. No; "Prem."

Q. "Insurance" is spelled out? A. Yes, sir.

Q. Is that totalled up? A. That is not totalled up.

By the Court: Q. That last memorandum you just read you testified yesterday was made by you? A. The first one I read was my copy of the agreement that had the memorandum in my handwriting, and the last one I read was Mr. Sica's agreement in which the figures were entered up in Mr. Sica's handwriting.

By Mr. English: Q. Mr. Scarlett, I show you Exhibits S-21 and S-22, being respectively the $2500 and the $1247—

Mr. Guild: Which is S-21?

Q. $2500, and S-22 being the $1247 note, the predecessor notes of which you say were delivered, or caused to be delivered, by you to Mr. Smith. I now ask you why you had those predecessor notes delivered to Mr. Smith? A. Mr. Smith agreed to lend me the money—

Mr. Mott: I object.

The Court: That is a conclussion. Objection sustained.

Q. Don't use the language. Answer in some other words.

The Court: (To the witness:) In other words, you are not supposed to state your conclusion as to what the transaction is. State what the fact is, what was said or

what was done, but not what you think that meant, because that is where the dispute is.

Mr. English: The question is why you gave those notes or caused those notes to be given to Mr. Smith?

Mr. Guild: Does it make any difference why he did? He has already testified that he either gave them himself or sent them up for the purpose of getting the money and he got the money.

Witness: I beg pardon. That is incorrect, Mr. Guild.

Mr. English: He has not said that he got the money.

Mr. Guild: That the money was obtained on the note.

Q. The question is, why did you give those predecessor notes to Mr. Smith? A. To be discounted outside of the bank and the money to be placed to my credit.

The Court: I think he did say that yesterday.

Q. What, if anything, did Mr. Smith say at the time you fixed up with this trust agreement with reference to having the amount of the notes included in the total stated in the trust agreement? A. Mr. Smith wanted the notes included in the trust agreement for the reason that I guaranteed the payment of those notes and therefore he wanted to have security for the payment of those notes because he was to be responsible for them himself or to advance the money on them himself.

Q. Your name was not on the notes? A. No.

Mr. English: I ask the State to produce a letter written by Mr. Scarlett, addressed to the directors of the Roseville Trust Company, and dated February 3, 1913.

Mr. Guild: In relation to what?

Mr. English: His resignation.

Mr. Guild: We have no such letter.

Q. Mr. Scarlett, did you, on February 3d, 1913, address a letter to the board of directors of the Roseville Trust Company with relation to your resignation as a director? A. Yes, sir.

Q. In the absence of the original not produced by the State I show you a carbon copy of the letter you wrote and ask you whether that is a carbon copy of the letter you wrote?

Mr. Guild: There is no evidence that that letter was ever received.

The Court: It is a question of what proof is necessary to first introduce a copy.

Mr. Guild: My objection is that the question implies that there was such an original letter sent and that we fail to produce it. That means that we must have received it. It is an implication that we received the original of which they claim the paper they now produce is a copy.

The Court: (After discussion.) I think you had better lay a proper foundation.

Q. Did you not only write such a letter, but did you cause to be sent such a letter? A. Yes, sir.

Q. Now, I show you a letter dated February 3, 1913, addressed to the directors of the Roseville

Trust Company and ask you whether that is a a carbon copy of the letter which you caused to be sent?

Mr. Guild: I would like to cross-examine on that, as to how and when the original letter was sent.

Mr. English: I don't think the prosecutor can cross-examine now.

The Court: You may ask this question at this time.

By the Court: Q. Is that a carbon copy of the letter you referred to as having sent? A. Yes, sir.

By Mr. English: Q. And to whom, what individual on behalf of the directors did you have the letter sent to? A. To Mr. Smith.

Q. The secretary and treasurer of the trust company? A. Yes, sir.

Mr. English. I offer in evidence the copy of the letter.

Mr. Guild: I would like to cross-examine on that.

By Mr. Guild: Q. You say that this letter was sent to Mr. Smith, the original of which this is a copy was sent to Mr. Smith? A. Yes.

Q. When? A. On February 3, 1913.

Q. By whom? A. Some messenger from my office took it up at the same time he took up my oath of office as director.

Q. Who was the messenger? A. I don't recall who the messenger was. It was in the same envelope with the oath of office as director.

Q. You signed the report referred to in this letter? A. Yes, sir.

Q. Which is a report of the election of the directors? A. Yes, sir. I have already admitted my signature on that.

By the Court: Q. This is directed to the directors of the Roseville Trust Company. Why do you say you sent it to Mr. Smith? A. Mr. Smith was the officer in charge of the bank. There was no one else there, and Mr. Smith had telephoned me three or four times—

Q. I am asking you why you say it was sent to Mr. Smith when it is directed to the directors of the Roseville Trust Company? A. As I say, your Honor, Mr. Smith telephoned me urging me to sign this oath of office as director three or four times, and finally, on this day, Mr. Smith telephoned me and said "Mr. Scarlett" he says, "you are hanging up the business of the bank, the banking department insists upon the report going in, won't you please sign this report and send it up to me?" I said, "Mr. Smith, you know, as I have told you three or four times before, that I refused to allow my name to stand for reelection. I explained fully to the board themselves my reasons, which were the distressing personal financial conditions; I explained to you and to the board, and my name on the board would be no good to the board and probably might do harm on account of the numerous lawsuits that were pending against me and therefore it is only fair that you put somebody else in my place and excuse me." Mr. Smith said, "We can do that, Mr. Scarlett, at the next meeting, but the bank department insists that those oaths of directors should be in today. Won't you please sign this

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up and send it up to me?" And I said, "All right, Mr. Smith, I will do so rather than hold the matter up any longer." And I went over to Mr. Dotto's office and had his clerk Miss--

Q. No, I am asking you your reason for sending a letter to one person which was directed to somebody else? A. At the same time I sent this report I enclosed in the same envelope this letter to the board of directors.

The Court: Is there any objection to the admission of his letter?

Mr. Guild: There is no evidence that it was ever received, that this affidavit which he says was enclosed in the envelope of this so-called letter was received by anybody, either by Mr. Smith or anybody else. The oath of office is on file in the office of the Commissioner of Banking & Insurance.

Q. You say you sent it up with a certain paper, the oath as director? A. Yes, sir.

Q. I show you Exhibit S-3 and ask you if that is the paper you refer to as having sent this letter with? A. Yes, sir, this is the paper that I sent this letter up with.

The Court: I think I will admit the copy of the letter.

Marked Exhibit D-37.

By Mr. English: Q. That was signed how? A. John B. Scarlett.

Q. Who is the Mr. Odell mentioned in this letter? A. He was the president of the bank.

Q. And who is the William J. Bannister mentioned? A. He was of the firm of Banister & Poll-

ard, hardware dealers on Market Street. He was also a director of the bank.

Q. The letter refers to a previous meeting of the directors. What meeting was that? A. That was a meting held between Christmas and New Year's.

Q. Previous to the election, when the question—

Q. Wait a minute. And you say you gave your reasons for believing that it would be better "for all concerned that I should not continue in that capacity." What reasons did you give at that time? A. I explained to the members of the board that my financial condition—

Mr. Guild: When was this?

Mr. English: He said between Christmas and New Year's.

Witness: The latter part of 1912.

Mr. English: The latter part of 1912, at a directors' meeting.

Witness: I explained to the members of the board that my personal financial affairs were in rather distressing condition, that I was being sued by various people for accounts I had guaranteed, both in this New York firm and Stevenson, Rye & Company, and also the Middlesex Hat Company, that I was subjected to repeated attacks, that my credit had been severely attacked and my name in the board would do no good on the board whatever and I was afraid it would do them harm.

Q. And what, if anything, was said by the board in reference to your standing for a re-election?

Mr. Guild: That is rather a general question.

Q. Who on behalf of the board replied to what

you said? A. Mr. Odell—

Mr. Mott: It does not seem to me that this is competent.

The Court: Objection overruled.

Witness: Mr. Odell and Mr. Monroe, both.

Q. Who was Mr. Monroe? A. G. Rowland Munroe. He was one of the directors.

Q. What did Mr. Odell say on behalf of the board? A. Mr. Odell said I had the sympathy of the board, that they knew about these matters and they had no doubt that I would be able to get over them; he said he didn't feel as though they had to omit me from the board on that account; that he thought a man who was in a little trouble, that that was the time that friends should stand together.

Q. What did Mr. Monroe say? A. He expressed himself in the same way.

Q. What did you say in reply? A. I said my time was absolutely all taken up with my personal affairs, it would be absolutely impossible for me to attend a single meeting, that I was busy from five o'clock in the morning until eleven o'clock at night and I could not attend meetings and could not give any time to it and must be excused.

By the Court: Q. That was a meeting of the board between Christmas and New Year's? A. Between Christmas and New Year's. I think I did attend a meeting before the annual election and I think it was held between Christmas and New Year's of 1912.

By Mr. English: Q. Before the annual election by the stockholders? A. Yes, sir.

Q. Did you, after the writing of this letter,

receive any notices of meetings of directors? A. Yes. I received a notice for the February meeting.

Q. 1913? A. Yes, sir.

Q. And did you, after the date of the February meeting—It was the meeting following the date of this meeting? A. Yes, sir.

Q. Did you after that receive any notices of meting of directors? A. No, sir. I would like to add that I didn't attend that meeting.

Q. You didn't attend that meeting and you received no notices after that meeting? A. No, sir.

Q. Did you in fact sign the report which was mentioned here? A. Yes, sir.

Q. The report of the election of directors? A. Yes, sir. I called it a report; it seems it is an oath of director, but I think there is a report also signed which went with it; I think there was two separate papers; I think one was a report and the other was the oath of office.

Q. When you speak of the oath of office do you refer to Exhibit S-3 which contains your signature and was sworn to on the 3d day of February, 1913? A. Yes, sir.

Q. The same day the letter was written? A. Yes, sir.

Q. And your recollection is that there was also a report which you signed in addition? A. It seems to me there was. I would like to qualify one statement that I made with regard to this meeting previous to the election. That may have been a meeting of the executive committee and not of the full board. I couldn't say which it was.

Q. Do you remember who was present at the meeting? A. Yes, Mr. Odell was there, Mr. Foster was there, Mr. Fairlie was there, Mr. Munroe was there, Mr. Smith was there and I was there. I think that is all.

Q. I want to direct your attention once more to the bank-book in evidence as D-23. Did you say from whose hands you received that when you finally did receive that after the bank was closed? A. You now refer to the original pass-book that was lost?

Q. Yes. A. I received that from the hand of Mr. Vredenburgh.

Q. The dupty banking commissioner? A. Yes, sir.

Q. What did you say to him and what did he say to you about it when the book was handed over? A. I turned the pass-book to look at it and I noticed there was—

Mr. Mott: I object to the question as incompetent. A conversation between Mr. Vredenburgh and this witness is not competent.

Mr. English: It corroborates his claim that he didn't see this book from 1911 until the bank closed, and also bearing on the question of ascertaining the state of his account with reference to deposits he made and never got credit for.

Mr. Mott: And it is remote.

The Court: I do not see how you can bind the State by anything occurring at such a remote time, and I do not think you can bind the State by a conversation

with a person who had nothing to do with it whatever, a person who was not chargeable with the consequences of what was done, or bind the State by admissions that he might make about it.

Mr. English: Mr. Vredenburgh was the representative of the State Department. The State Department had taken over all the records of the bank and he spoke in authority with reference to the situation in the bank.

Mr. Mott: Even assuming that to be true, this is long after the alleged crime, and this conversation would come, in my judgment, within the self-serving rule.

The Court: I cannot see any aspect in which this question is admissible.

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)

CROSS-EXAMINATION by Mr. Guild:

Q. You were examined as a witness in the bankruptcy proceedings in the matter of Raymond E. Smith individually and trading as Oakland Motor Sales Company? A. I was examined in some matter in connection with Raymond E. Smith.

Q. November 17, 1913? A. About that time.

Q. Do you remember being asked whether you

held any office in the Roseville Trust Company? A. I think so—yes, sir, I do.

Q. Do you remember being asked whether you were elected a director? A. Yes, sir.

Q. Do you remember your answer? A. Yes, sir.

Q. What was it? A. My answer was, I think, probably I was.

Q. The question being "And when were you elected a director?" and wasn't your answer: "At the first annual meeting, the first meeting for the election of directors". A. That was a previous question I referred to. You didn't specify it "elected".

Q. I specify it now, whether you were not asked whether you were elected a director of the company and your answer to that is what—what did you answer? A. My answer is what or what was my answer?

Q. I ask you what your answer was on this examination?

Mr. English: As to what question?

Mr. Guild: As to whether he held office in the Roseville Trust Company.

A. I replied I was elected a director at the first meeting of the bank in its organization, if I remember right. That is a year and a half ago. I believe.

Q. And were you not asked this question: "And were you not a director of the institution at the time the bank was closed?" and did you not answer "I think I was, yes, sir"? A. I answered "I think probably I was, yes, sir."

Q. And in your direct examination yesterday you say "I was president of six or eight different

land companies." Won't you give me the names of those companies? A. There was the Greylock Land Company.

Q. Who controlled that company? A. I controlled it at one time.

Objected to as immaterial.

Q. What was your official connection with that company? A. President and treasurer.

Q. And you were the active manager of it, were you not? A. Yes, sir.

Q. And you signed the checks and had charge of the banking business of that institution, had you not? A. Up to some time in 1913.

Q. Up to what time? A. I would have to refer to the record. I couldn't state offhand.

Q. Where did that company keep its bank account? A. In the Essex County National Bank.

Q. Any where else?

Mr. English: Is this cross-examination? Is this material? The Greylock Company had no concern with this matter. It makes no difference where it kept its bank balance.

The Court: My recollection is that there was something in the testimony in regard to the payment by the witness of taxes on some property.

Mr. English: Yes, there was.

The Court: And it included the name of this company.

Mr. English: Yes, there was. The object of that testimony at that time was to show that some check which had gone through the bank had been paid. The ob-

ject was to show that the tax people had got their money on it.

The Court: Under Section 171 of the Crimes Act of 1906 the question of how this money was misappropriated, if it was misappropriated, becomes material as bearing on the intent.

Mr. English: Even if that is so it is not cross-examination.

The Court: I will permit 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. OSBORNE,
Judge.

(Seal)

(Question read)

A. I think not.

Q. Did that company not have an account in the Orange National Bank? A. Yes, there was an account in the Orange bank; that is right.

Q. Now, I show you Exhibit S-5, which is the check in the indictment, and ask you whether you did not use that check for the benefit of the Greylock Land Company? A. It was deposited to the credit of the Greylock Land Company.

Q. And they got the benefit of it? A. Well, I wouldn't want to say that.

Q. What would you want to say, that it was deposited to their credit in the bank? A. Yes.

Q. What other land company are you interested in? A. Nutley Manor Land Company.

Q. Were you an officer in that company? A. Yes, sir.

Q. What office did you hold? A. I had the same office.

Q. Were you the active manager of the company in its affairs? A. Yes, sir.

Q. What other company? A. Mattatuck Land Company.

Q. Where was that located? A. Had an office in the same building, in the same office.

Q. Was that a New Jersey corporation? A. It was a New Jersey corporation, but only owned lands in—

Q. Do you hold an office in that company? A. I have the same offices.

Q. Were you the active manager of it and its affairs? A. Yes, sir.

Q. What other company? A. The Balmoral Land Company.

Q. Is that a New Jersey corporation? A. Yes, sir.

Q. Do you hold an office in that company? A. The same offices, I think.

Q. You were the active manager of it? A. Yes, sir.

Q. What other company? A. Bras d'Or Land Company.

Q. Is that a New Jersey corporation? A. Yes, sir.

Q. You hold the same position in that company? A. Yes, sir.

Q. And were its active manager? A. Yes, sir.

Q. What other company? A. Ridgewood Land Company.

Q. Is that a New Jersey corporation? A. Yes, sir.

Q. Do you hold the same office in that company? A. Yes, sir. You are referring in these questions to what period of time, Mr. Guild?

Q. Well, any time to start with. A. Yes, I formerly did.

Q. And you had charge of its financial and business affairs? A. Yes, sir.

Q. Is there any other company? A. There was one or two others. I used to have to look on the door to see how many there was. I think the other company was the old Lindsley Manor Company; that was being wound up practically.

Q. When was that wound up? A. I think the last transaction in it was somewhere around 1911 or 1910.

Q. Lindsley? A. Lindsley Manor Land & Improvement Company.

Q. You hold the same position now as before? A. Yes, sir.

Q. You say that it was wound up in 1911, you think? A. It seems to me the last transaction, to clean up the thing, was 1911.

Q. You mentioned yesterday your connection with the Stevenson, Rye Company, of New York? A. Yes, sir.

Q. Is that a New York or New Jersey corporation? A. It was both. There was one corporation under the laws of New Jersey of the same name and there was a company incorporated in New York under the same name.

Q. Where was that business? A. What time?

Q. 1911, 1912 and 1913? A. Broadway.

Q. I don't mean the street? A. New York.

Q. And conducted its business in New York? A. Yes, sir.

Q. You also mentioned the Middlesex Hat Company? A. You didn't ask me the same question. I didn't want that understood.

The Court: The witness desires to make a statement to the Court with regard to his answers. He says that he is being perhaps placed in an improper position, and he has a right to the protection of the Court. He does not want to be understood in reference to these last two corporations as saying that he was also president and director of those.

Witness: President and treasurer and executive manager of them.

Mr. Guild: I have not asked anything about his connection with any company since the Ridgewood Land Company.

The Court: But he has testified, in response to your question, that there were three other companies, two Stevenson, Rye & Company and Middlesex Hat Company, and to that general statement he does not want to be understood that he occupied the same office.

Q. What was your connection with the Stevenson, Rye Company? A. At what period, please?

Q. 1911, '12 and '13.

Mr. English: I do not think that is at all material nor I do not think it is cross examination.

The Court: You think the period of time is too broad?

Mr. English: That is one objection, but I think the others are more fundemental. It is not cross-examination and it is not material.

The Court: He has already said on your direct-examination that he was interested in these companies and specifically mentioned this one.

Mr. Guild: I will withdraw that question.

Q. Were you an officer of the Stevenson, Rye & Company? A. Yes, sir.

Q. What office did you hold? A. I think latterly I held the office of president.

Q. Prior to "latterly" what position did you hold? A. Treasurer.

Q. Were you a director in the company? A. Yes, sir.

Q. Up to what time were you treasurer? A. I think I was treasurer up to 1910 or 1911, and then I think Mr. Rye was made the treasurer and secretary, and then I think later than that Mr. Sica was made the treasurer. I, all the time during that interim, was the president of the company.

Q. Who is Mr. Rye? A. Mr. Rye was a member of the corporation of Stevenson, Rye & Company.

Q. Where did he live? A. He lived in Belleville.

Q. Was he connected with you in any other way, any other business relations? A. No, except I think at one time he was a director in the Middlesex Hat Company.

Q. Did he have an office with you? A. No.

Q. Related to you—blood relation in any way? A. No, sir.

Q. By marriage? A. Yes, sir; he married a cousin of mine.

Q. Did Mr. Sica have an office with you? A. Yes, sir.

Q. Was he in your office as an employee? A. No, sir, not personally; he was working with the land companies that I was working with.

Q. And he had his office with you? A. Yes, sir.

Q. You were, after a certain period, president of Stevenson, Rye & Company? A. I think I said I was during that entire interim, during that entire period.

Q. And you continued as president until what time? A. I think I am president yet.

Q. Did you have charge of the financial affairs of the Company as president and treasurer, or either? A. I didn't exercise any charge.

Q. Didn't you see to the raising of money when they needed it? A. I was called upon to raise the money all right.

Q. And you did raise the money for it, did you not? A. Sorry to say I did.

Q. You used the checks of Stevenson, Rye & Company quite frequently in connection with these other corporations that you were connected with did you not?

Objected to as not cross-examination.

Objection sustained.

Q. Did you use the checks of Stevenson, Rye & Company in your personal affairs?

Objected to. Objection sustained.

Q. I show you Exhibit D-19, which is the check of Knauth, Nachad & Kuhve—a copy of a check—payable to the order of Stevenson, Rye Company and endorsed by them to your order? A. What is the question?

Q. The question is whether you did not use that check for your personal account, deposit it in the Roseville Trust Company? A. I can't answer yes or no.

Q. Was the check made payable to you? A. No, sir.

Q. Isn't the paper endorsed to you? A. Yes, sir, for money due me.

Q. And isn't the paper endorsed by you for deposit in the Roseville Trust Company? A. Yes, sir.

Q. Are you still connected with the Greylock Land Company? A. Not officially, no, sir.

Q. What has become of the company—still in business? A. Yes sir.

Q. The Nutley Manor Land Company, are you still connected with that?

Objected to as immaterial and not cross-examination.

Objection sustained.

Mr. Guild: I will go down to the Stevenson & Rye Company of New York.

Q. I ask you whether you were not in the habit of using the moneys of the Bras d'Or Land Company—whether you didn't use their moneys for your personal use?

Objected to.

Objection sustained.

Q. I show you a check dated "Hartford Connecticut check dated September 19, 1911 No. 1940, to the order of the Roseville Trust Company for $150," signed "Bras d'Or Land Company, John B. Scarlett, Treasurer," and ask you if you signed that check?

Objected to as immaterial.

Mr. Guild: This is for the purpose of identification only.

The Court: I will admit the question for that purpose.

A. I signed this check.

Q. Did you sign it?

Objected to.

The Court: He was asked whether he drew it and he said that he signed it.

Mr. English: That identifies it.

Marked Exhibit S-24 for identification.

Q. I show you another check dated Hartford, Connecticut, September 19, 1911, No. 1941, and ask you whether you signed that check as president of the corporation? Whose name is on that check? A. You mean treasurer—you said president.

Q. Whatever it may be. A. Yes, I signed that check.

Marked Exhibit S-25 for identification.

(At this point the witness is temporarily withdrawn.)

G. ROWLAND MUNROE, sworn in behalf of defendant:

Direct-examination by Mr. English:

Q. Mr. Munroe you are a member of the bar? A. I am, yes, sir.

Q. Were you at one time a director of the Roseville Trust Company? A. Yes, sir, I was.

Q. Were you such director in the winter 1912 and 1913? A. I was.

Q. Do you remember attending a meeting of the executive committee of the Roseville Trust Company, held between Christmas and New Year's, 1912? A. I remember a meeting about that time.

Q. Was Mr. Scarlett present at that meeting? A. He was.

Q. What, if anything, was said by Mr. Scarlett at that meeting with reference to standing or not standing for re-election as director?

Mr. Guild: If this was official action I think the minutes of the meeting should be produced.

Mr. English: I offier in evidence the minutes of the executive committee of December 30, 1912, signed R. F. Smith, secretary. I refer to page 422 and 423 of the minute book.

Marked Exhibit D-38.

Mr. English: It shows "President Odell in the chair. Present, Messrs. Odell, Fairlie, Foster, Munroe, Lurich, Scarlett and Smith."

Q. Now, I direct the attention of the witness to those minutes and ask him if there is anything in there in reference to the conversation in which Mr. Guild previously directed his attention? A. There is not.

(Question read.)

Mr. Mott: I object to that as perfectly immaterial.

The Court: This seems to be an executive committee meeting, and it is a conversation which explains and leads up to a certain letter which was written and is corroborative in substantiating the defendant's statement that he did in fact write and send that letter pursuant to this conversation and as an incident following it.

Q. (Question read as follows: "What, if anything, was said by Mr. Scarlett at that meeting with reference to standing or not standing for re-

election as director?'') A. I remember about that time Mr. Scarlett attended a meeting; he had not been to a meeting for a long time—

Objected to.

The Court: Call his attention to the specific conversation.

Q. You remember Mr. Scarlett was there? A. I remember he was there at that meeting at that time, just before the annual meeting I remember the matter was duscussed whether Mr. Scarlett or Mr. Banister should stand for re-election.

Mr. Mott: I object to that kind of testiony. The witness says ''I remember that that matter was discussed, that is my recollection.''

Witness: I don't recall how the matter came up.

The Court: (To the witness.) Do you recall what was said?

Mr. Guild: Can you give us the gist of what was said and by whom?

By Mr. Scarlett: A. My best recollection —it is not as clear as I wish it were—is that Mr. Scarlett said that owing to the condition of his financial affiairs and his relation to the trust company he thought it would be better it he should not stand for reelection.

Q. Do you remember whether anything was said in reply to that by any member of the executive committee? A. I don't recall any particular individual who may have replied but I do remember the thought was expressed—

The Court: No.

Q. Use some other language. Do you remember what was said by somebody in the meeting? A. I can't remember the exact language.

Q. As near as you can the gist of it. A. Somebody suggested that it would be better not to have a vacancy left at that time as it was so near the election and we had made no provision for anyone else that after the election if there were any resignations, they could be acted upon and the vacancies could be filled by the board.

CROSS-EXAMINATION by Mr. Guild:

Q. Did you ask Mr. Scarlett to remain in the board? A. That was all that was said, Mr. Guild.

Q. I ask you whether you requested Mr. Scarlett to remain in the board? A. I did not.

Q. He said you did. A. No, I did not.

Q. Is he mistaken about that? A. Yes, sir.

Q. Do you remember any other person asking him to remain? A. I have already stated that I don't remember who spoke or just what was said; I don't recall that I asked him; I don't recall that anybody specifically asked him. I remember that the thought which was expressed and which prevailed was that it was better not to have any attempt made at that late date to provide some other member for the board.

Q. And it was left in that state when you adjourned wasn't it? A. Yes.

By the Court: Q. You don't remember what he said to that suggestion do you? A. I do not.

Q. Do you remember whether or not he dissented from it? A. My thought was—

Q. No. A. My recollection is that he just repeated that he thought under the circumstances it would be better if he would withdraw and not stand for reelection.

Q. Who was present at that meeting besides yourself? A. Well, as I recall Mr. Odell was there, and Mr. Smith, Mr. Fairlie, Mr. Foster—I am not sure about any others.

JOHN B. SCARLETT resumes the stand in his own behalf:

Cross-examination (continued) by Mr. Guild:

Q. I show you Exhibits D-20 and D-21, being checks of the Middlesex Hat Company for $1,000 each, both being dated November 19, 1910, made payable to Stevenson, Rye & Company, endorsed Stevenson, Rye & Company, and also endorsed by the Roseville Trust Company, Newark, N. J., or order, John B. Scarlett. Those checks were sent by you to the Roseville Trust Company for deposit to your account? A. Yes, sir.

Mr. Guild: At this point I would like to re-call Mr. Munroe for a question or two.

(The witness is temporarily withdrawn.)

G. ROWLAND MUNROE, re-called:

Further cross-examination by Mr. Guild:

Q. Mr. Munroe, did you continue as director of the Roseville Trust Company down to the time that it stopped business?

Mr. English: I object to that as not cross-examination and immaterial. He was called to testify with reference to one particular

meeting on one particular date. What happened after that is not cross-examination.

The Court: It seems to me that is true.

Mr. Guild: I think he was asked if he was a director of the trust company.

The Court: On a certain date. It could not refer to the present time; it must have referred to that time, and I think he was asked if he attended a meeting between Christmas and New Year's, 1912.

Mr. Guild: I will have to ask the witness to return.

JOHN B. SCARLETT resumes the stand in his own behalf.

Cross-examination (continued) by Mr. Guild:

Q. I show you Exhibits D-32 and D-33, being notices of protest. Those are notices of protest of checks of the Middlesex Hat Company of $1000 each, are they not? A. Yes, sir.

Q. And what is the date of the protest? A. The 19th day of November.

Q. What year? A. Nineteen ten.

Q. Now, those two checks had been deposited by you, or left by you at the Roseville Trust Company, had they not, the checks mentioned in those protests? A. Deposited by me in the Roseville Trust Company.

Q. Had they been deposited by you or cashed for you by the Roseville Trust Company? A. Deposited.

Q. You are sure of that? A. I am quite sure of it.

Q. The checks were not good? A. They came back.

Q. I ask you whether these two checks, D-20 and D-21 were not given to take the place of those two protested checks? A. No sir; they were not. I gave—

Q. You have answered my question. Didn't you, on the 19th day of November, 1910, cash two checks of $1,000 each of the Middlesex Hat Company? A. I believe I drew the money on my own check.

Q. I didn't ask you that at all.

(Question read.)

Q. At the Roseville Trust Company? A. I think not.

Q. And on that same day did you not take that identical money and deposit it in the Essex County National Bank to the credit of the Greylock Land Company? A. I don't recall that.

Q. Did you not on the 22d day of November, 1910, deposit or have cashed at the Roseville Trust Company two checks of $1,000 each of the Middlesex Hat Company? A. On the 22d?

Q. On the 22d day of November, 1910. A. No, I think not.

Q. Did you not, on the 23d day of December, 1910, deposit or have cashed at the Roseville Trust Company two checks of $1,000 each of the Middlesex Hat Company? A. Twenty-third day of what?

Q. Twenty-third day of November, 1910, two checks of $1,000 each of the Middlesex Hat Company? A. No, sir; I have no recollection of anything of the kind.

Q. Or re-deposit these two checks of a previous date which had been protested? A. No, sir.

Q. Did you not, on December 1, 1910, deposit or have cashed at the Roseville Trust Company two checks of $1,000 each of the Milldesex Hat Company? A. Not that I have any recollection of.

Q. Do you not know as a fact that the two checks deposited or cashed on November 16, 1910, of $1,000 each, the two checks deposited or cashed on November 22, 1910, of $1,000 each, the two checks deposited or cashed November 23, 1910, of $1,000 each, and the two checks deposited or cashed December 1, 1910, of $1,000 each, were all returned to the Roseville Trust Company "Not good"?

Mr. English: I object. The prosecutor is asking the question as if the witness had replied to each question affirmatively which he put. He assumes in his question that it has been all answered affirmatively.

The Court: He is asked "Do you or do you not know a certain fact?" He has referred to four checks and asked whether or not he does not know as a matter of fact that those checks were all protested for non-payment. Objection overruled.

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)

A. I can't identify the dates. Will you please give me the dates again?

The Court: November 16th, November 22d and November 23d and December 1st.

(Question read.)

Witness: No, I do not.

Mr. Guild: I would like to eliminate from that question these two checks D-20 and D-21 because they were the checks deposited on the 22d.

The Court: Eliminate those two checks.

Mr. English: We ought to have a new question.

Q. Do you not know that two checks of $1,000 each of the Middlesex Hat Company, deposited or cashed for you by the Roseville Trust Company, November 16, 1910, were returned to the Roseville Trust Company protested as "Not good"? A. That is, these two checks that you have shown me the protest items of?

The Court: You may see the checks if you wish to. You are not asked about the two checks of the 16th.

Witness: These are the 19th.

Mr. English: The witness asked to see the protest.

The Court: Let him see the exhibit you refer to.

Mr. Guild: They speak for themselves. They were protested.

Witness: I have already testified—

The Court: Never mind what you have already testified to. Answer this question.

Q. (Question read.) A. I don't know that the checks were returned to the Roseville Trust Company no, sir.

Q. Where did you get those protests from that

you have in your hand? A. These, I think—well, they were in my office; the bookkeeper had them; I found them in my office.

The Court: One of these protests refers to a check dated the 15th, Mr. Guild.

Mr. Guild: I didn't ask him the date of the check. The date of deposit or cashing the check was my question.

Q. What is your answer? A. I said I don't know that these checks were returned to the Roseville Trust Company.

Q. Were they ever returned to you? A. I believe so.

Q. By the Roseville Trust Company? A. I don't think so.

Q. How did you get these protests? Isn't it a fact that those protests were attached to those checks and handed back to you by the Roseville Trust Company? A. I am unable to state that, your Honor, whether I took them up at the Roseville Trust Company or whether I took them up at the Metuchen Bank or at the notary.

Q. If you took them up how did you take them up?

Mr. English: He says he can't remember where he took them up.

By the Court: Q. You did take them up, however? A. That is my recollection, that I took those up.

By Mr. Guild: Q. Weren't they taken up with these two checks D-20 and D-21? A. I don't think so.

Q. You noticed that the protest is November 19, 1910? A. Yes sir.

Q. And you notice that these checks D-20 and

D-21 are dated November 19, 1910? A. Yes, sir.

Q. Well, don't you know that these checks D-20 and D-21 were to take up the protested checks represented by these two protests? A. I do not. That protest—

Q. I ask you to answer the question.

Mr. English: I insist that he be permitted to answer the question.

The Court: (To the witness.) You may answer the question. You are asked whether you do not know a certain thing?

Witness: I do not.

Q. On the 21st of November 1910, did you not have your own check cashed, your own check for $2,000 on the Roseville Trust Company cashed, and did you not take cash down to Metuchen to take up the checks of November 16th, the Middlesex Hat Company checks; do you remember that? A. Yes, sir; I think I did.

Q. And didn't you get there too late to take them up? A. I don't think so. I think those checks were caught—

Q. What is your answer to that? A. I think not. I got there too late to—

Q. The checks had already been protested when you got there? A. Yes, sir.

Q. And returned to the Roseville Trust Company? A. No, sir.

Q. Do you say that they were still in the possession of the notary? A. That is my recollection.

Q. Now, as a matter of fact, Mr. Scarlett, didn't the cash which you got from the Roseville Trust Company which you took to Metuchen pay these two checks, D-20 and D-21? A. That is not my recollection. My recollection is different from that.

Q. What is your recollection? A. That the cash I drew on those checks was used to pay the checks of November 15th.

Q. And to whom do you say you paid the money? A. I say I think it was paid to the Middlesex National Bank.

Q. Did you pay the protest fees to the notary? A. I wouldn't be certain whether I did or not.

Q. Don't you know that the checks came back to the Roseville Trust Company and the protest fees were charged against your individual account? A. No—I notice in the ledger there is a charge of a protest fee against me.

Q. And if the checks had not been returned to the Roseville Trust Company they would not have known anything about the protest fees? A. The notice would have been made.

Q. Would they have paid the protest fees if the checks had not come back? A. I don't think so.

Q. Would they have paid the protest fees if the checks had not come back? A. I don't think so.

Q. On December 27, 1910, did you not cash at the Roseville Trust Company a check of the Middlesex Hat Company of $2,000? A. I can't answer the question like that. I am unable to say.

Q. What do you mean? A. I mean, offhand I can't answer a question like that from memory about a lot of specific items.

Q. Have you any books to which you can refer from which you can refresh your recollection? A. No, sir.

Q. Did you make an entry of these transactions in your check-book? A. I don't think I made any entries in the check-book, no, sir.

Q. You, I think, said you were in active control of the Middlesex Hat Company? A. No, sir; I did not.

Q. You were its treasurer? A. No, sir.

Q. Didn't you say you were president and treasurer for a time and some time after somebody succeeded you as president? A. No, sir, that was with reference to Stevenson, Rye & Company.

Q. You were president of the Middlesex Hat Company? A. For a period.

Q. What period? A. It taxes my recollection terribly to get on dates.

Q. The check that we have last spoken of, the check of December 27, 1910, $2,000, do you recollect that that was protested for nonpayment? A. No, I don't recall the item at all, Mr. Guild.

Q. On January 3, 1911, did you have cashed at the Roseville Trust Company another check for $2,000 of the Middlesex Hat Company? A. I don't recall anything about it.

Q. Was that check not protested for nonpayment? A. I don't recall anything about it, so I wouldn't recall anything about a protest. There were quite a number of checks put in for collection.

Q. I will ask you the same question about a check of $2,800, the Middlesex Hat Company which you had cashed at the Roseville Trust Company on January 9, 1911. Do you recollect that? A. I have no recollection of the individual transaction. There was some checks put in for collection and there were some cashed, I believe. I have no definite recollection of it.

Q. Cashed for your account or by you? A. I really haven't recollection enough to tell you positively to that Mr. Guild.

Q. The last check that I have referred to, $2,800, do you not recollect that that was protested for nonpayment? A. No, sir.

Q. This check for $2,800, do you not know it was charged against your individual account in the Roseville Trust Company because it was protested? A. I can't recall at the present time. The books ought to show that.

Q. Haven't you had it returned to you? A. I can't state as to whether it was or not.

Q. Haven't you had two other checks of $2,000 to which I have referred, have they not been returned to you by the Roseville Trust Company? A. I have no recollection as to those checks at all.

Q. You have no recollection of those Middlesex Hat Company checks being returned to you as vouchers after they had been charged to your account? A. I can't remember.

Q. You remember some of the Middlesex Hat Company checks being returned to you, do you not? A. I remember getting these two items of the 15th for which we have had the protest notice here.

Q. Did they come back to you? A. I am quite sure I got those two checks back.

Q. Did you ever make them good? A. That is my recollection—yes, my recollection is that I drew the money to make them good on my own check.

Q. Where did you get the money? A. I drew my own check—I can't state positively.

Q. Out of the Roseville Trust Company wasn't it? A. It might have been; it might not have been; I can't swear positively to that at this time, Mr. Guild.

Q. Now, you have produced, Mr. Scarlett, these two checks of $1,000 each, D-20 and D-21, which have been paid. These you produce yourself. What has become of the others that were turned over to you? A. Those are the only two checks that I know anything about at the present time.

Q. They were the two checks that you say were returned to you protested? A. Now, you are referring to those two of November 15th?

Q. I am referring to those two checks accompanying the protest of $1,000. A. I can't tell you that. I have the protest items and I have a memorandum that they were paid.

Q. Where did you get the memorandum that they were paid? A. I think the memorandum was in the office.

Q. Where did you get those two checks D-20 and D-21? A. I think Mr. Sica found them for me.

Q. Where? A. In the office.

Q. In your office? A. Yes, sir. You refer now to those two checks that were paid?

Q. What? A. The last question referred to the two checks that had been paid?

Q. Yes. A. Yes, sir.

Q. They were in your office? A. Those two checks, I believe, were found in the office, yes.

Q. In your office? A. The office where I have a desk.

Q. And yet you know nothing about other checks of the same concern that were returned to you? A. I can't recall.

Q. Have you tried to find them? A. Yes, sir.

Q. On February 8, 1911, you claim that you made a deposit in the Roseville Trust Company of

$5,700 as evidenced by a deposit slip which you have produced? A. Yes, sir.

Q. On that day were you indebted to the Roseville Trust Company to the extent of $6,800, represented by the check which you had cashed, the check of $2,000, which you had cashed December 27, 1910, the check of $2,000 which you had cashed January 3, 1911, and the check that you had cashed January 9, 1911, for $2,800, being checks of the Middlesex Hat Company? A. No, sir.

Q. Or of checks of that concern, Middlesex Hat Company, that had been given in substitution of those checks which I have mentioned? A. No, sir.

Q. I ask you whether you did not receive, on or about November 19, 1910, notice of protest on November 19, 1910, of a check of the Middlesex Hat Company of $1,000? A. Is that the protest you have submitted here—is that the one in evidence?

Q. Yes. A. I think I must have received that.

Q. And on the same date another one of a check of the same amount? A. Yes, sir.

Q. Did you receive notice of a protest on November 28, 1910, protest of a check of the Middlesex Hat Company of $1,000, the check being dated November 15, 1910? A. I don't recall.

Q. And another one on the same date, a check of the same amount? A. I don't recall that either.

Q. Did you receive notice of protest dated December 14th? A. December 14th?

Q. December 14, 1910, of a check dated December 3 1910, a check of the Middlesex Hat Company $336.52 which seems to have been made to

the order of Edith A. Krolin and cashed by you at the Roseville Trust Company? A. That was a check of the Middlesex Hat Company?

Q. Yes. A. To whom is the check drawn, please?

Q. Edith A. Krolin, I presume, and endorsed to you and cashed by you at the Roseville Trust Company—the name is Crossley as near as I can read it. A. For what amount of money?

Q. Three hundred and thirty-six dollars and fifty-two cents. A. It was drawn to the order of Edith A. Crossley?

Q. Yes. A. I can't recall that.

Q. You are familiar with that name? A. I am familiar with the name.

Q. And you had checks of the Middlesex Hat Company payable to her which she had endorsed, did you not? A. There might have been; I don't know.

Q. Wasn't she connected with the Middlesex Hat Company? A. I think she used to do some work for the Middlesex Hat Company yes.

Q. Don't you recollect having received checks with her endorsement? A. No, I do not.

Q. This lady was afterwards in your office or was at the time? A. Yes, sir.

Q. Did you receive notice of a protest on December 24th of a check of the Middlesex Hat Company dated December 21st for $800?

Mr. English: What year?

Mr. Guild: These are all 1910.

Q. Cashed by you at the Roseville Trust Company? A. No, sir; I can't recall anything about it.

Q. A protest on December 30th of a check dat-

ed December 27, 1910, Middlesex Hat Company, $2,000, cashed by you at the Roseville Trust Company? A. No, sir; don't recall anything about it.

Q. Did you receive notice of a protest dated January 6, 1911, of a check of the Middlesex Hat Company dated January 3d for $2,000 which had been cashed for you at the Roseville Trust Company—cashed or deposited? A. What was the date?

Q. January 6, 1911, was the date of protest. A. No.

Q. Did you receive notice of a protest of a check of the Middlesex Hat Company dated December 27, 1910, for $2,000, deposited or cashed by you at the Roseville Trust Company? A. I don't recall that, either.

Mr. English: What is the date of the protest?

Mr. Guild: January 7, 1911.

Q. Did you receive notice of a protest dated January 3, 1911, of a check of the Middlesex Hat Company for $2,800? A. I don't recall that.

Q. Did you receive notice of a protest of January 13, 1911, of a check of the Middlesex Hat Company dated January 3, 1911, for $2,000, either deposited or cashed by you? A. You asked me about January before.

Q. The 13th—this is another one. A. I have no recollection of that.

Q. Did you receive notice of a protest on January 14, 1911, of a check of $2,000 of the Middlesex Hat Company dated December 27, 1910, cashed or deposited by you at the Roseville Trust Company? A. I have no recollection of that, either.

Q. Did you receive notice of a protest of January 19, 1911, of a check of the Middlesex Hat Company, $2,000 dated January 10, 1911, deposited or cashed by you at the Roseville Trust Company? A. I don't recall that.

Q. Did you receive notice of the protest on January 19, 1911, of a check of the Middlesex Hat Company for $700, dated January 13, 1911, cashed or deposited by you in the Roseville Trust Company? A. I don't recall that.

Q. Did you receive notice of a protest on January, 1911, of a check of the Middlesex Hat Company of $2,000 dated January 3, 1911, deposited or cashed by you at the Roseville Trust Company? A. No, I don't remember such a transaction.

Q. Did you receive notice of such a protest on January 24, 1911, of a check of the Middlesex Hat Company of $2,000, dated January 17, 1911, cashed or deposited by you in the Roseville Trust Company? A. January 17th?

Q. Check dated January 17, 1911? A. I don't recall any such check.

Q. Did you receive notice of protest on January 24, 1911, of a check of the Middlesex Hat Company for $2000, the check being dated January 17, 1911, cashed by you at the Roseville Trust Company? A. I don't recall any such thing.

Q. Or deposited? A. I don't recall any such thing.

Q. Were not some of those checks that I have mentioned returned to you by the Roseville Trust Company after they had been protested and you substituted other checks for them? A. I can't recall that.

Q. I understand, Mr. Scarlett, that you claim

that you received no credit in your account with the Roseville Trust Company of the two checks of the Middlesex Hat Company of $1,000 each, being Exhibits D-20 and D-21? A. Whether it was this $2,000 check was omitted or the Knouth, Nachad & Kuhne check was omitted I am unable to state.

Q. What? A. Whether it was this $2,000 check that was omitted or the Knouth, Nachad & Kuhne check was omitted for the same amount I am unable to state.

Q. Well, now, the check of Kanuth, Nachad & Kuhne was $2,000? A. Yes, sir.

Q. And those two checks, Exhibits D-20 and D-21 of $1,000 make $2,000, the total being $4,000? A. Yes, sir.

Q. Were they deposited the same day? A. No, sir; I think not—they show they were put through the Roseville Trust Company the same day by the endorsements on the back.

Q. You say you don't know whether you failed to get credit for Exhibits D-20 and D-21 or the Knauth, Nachad & Kuhne check of $2,000, is that it? A. There is one item that I don't get credit for; which it is—

Q. You say one or the other, amounting to $2,000 which you are minus credit? A. Yes.

Q. Did you file your claim with the Roseville Trust Company or with the Commissioner of Banking & Insurance? A. Yes, sir.

Q. For how much money? A. For $5,701.30.

Q. How was that made up? A. That was made up before I deducted this discrepancy.

Q. I didn't ask you anything about that. I asked how it was made up?

Mr. Guild: I ask that the last part of the answer be stricken out.

Mr. English: What claim? A written claim or what counsel understands is his claim?

Mr. Guild: I asked him if he had filed his claim against the Roseville Trust Company and he said he did.

By the Court: Q. How was that made up? A. I took the balance the way it was returned to me by the banking department—

By Mr. Guild: Q. I didn't ask you that. I ask you how it was made up?

Mr. English: He should be permitted to answer the question.

Q. Of what items did it consist? A. It consisted of an item—you mean the gross or the detail items?

Q. The detail items if you can give them to us. A. It consisted of one item of $1.30 and another item of $5,700.

Q. Another item of $5,700? A. Yes, sir.

Q. What did the $5,700 consist of? Maybe I can facilitate it. Wasn't it the amount of your deposit represented by your deposit slip which you put in evidence here? A. With the amount of this deposit ticket that Mr. Vredenburgh told me—

Q. Never mind about Mr. Vredenburgh. If you have any explanation you can make it after.

Mr. English: I think, if the witness is asked the question, he should be permitted to answer it.

The Court: If he is saying things that are not in answer to the questions he may be interrupted.

Q. (Question read.) A. With another item.

By the Court: Q. Was it the $5,700 represented by that deposit slip? A. Yes, sir.

By Mr. Guild: Q. And the other item was $1.-30? A. Yes, sir.

Q. I call your attention to Exhibit D-17, which is a deposit slip of the Roseville Trust Company, the amount mentioned being $5,700. The first item is $1,000, is it not? A. Yes, sir.

Q. What was that? A. I am unable to tell you.

Q. Didn't you keep a check-book? A. Yes sir —I beg pardon. The bookkeeper kept the check-book—I should correct that.

Q. Didn't you make any entries in the check-book at all? A. Scarcely any until after the book-keeper died.

Q. Did you keep any other book showing where your moneys came from? A. No, I didn't keep a personal set of books since.

Q. You have found one of the items of this deposit of $3,000? A. Yes, sir.

Q. You are not able to tell us what the thousand dollar item represents? A. No, sir.

Q. Was it a check? A. I should judge so from the classification on the slip.

Q. Do you remember how that deposit reached the trust company, how it got up there? A. I do not.

Q. What is the date of the deposit? A. February 8, 1911.

Q. Was Mr. Reynolds still in your service on that date? A. Yes, he died in December, 1912.

Q. Is there anything about this deposit slip to indicate whether it was a check on the Newark bank? A. No, sir.

Q. Are you able to say whether it was or not? A. No, sir; I am unable to say anything about it from the deposit slip.

Q. And you have no recollection of it? A. I have no recollection of those two items at the present time.

Q. And have you any books that would assist you in telling us what the item represented? A. I made a pretty good hunt for it. I have been unable to find anything.

Q. What is the date of that deposit? A. February 8, 1911.

Q. Were you in the habit of receiving checks from anyone at Hartford? A. We held a large tract of land at Hartford on which there were sales made from time to time, and sometimes money came down from customers.

Q. There was the Bras d'Or Land Company, they had their business there? A. Their office was in Newark.

Q. Did they not have a bank account at Hartford? A. Yes, sir.

Q. They had a bank account, did they not, at Hartford? A. Yes, sir.

Q. Are you not able to remember that that $1,000 check was a check of that concern? A. No, sir; I don't recall that.

Q. You don't remember that that check came back "No good"? A. If it did you would have the protest of it.

Q. I don't ask you that; I ask you if you don't remember that that check came back "No good"? A. No, sir.

Q. You had a personal account in a Fall River Bank, had you not? A. The account was in my name personally.

Q. Was that any different from the question I asked you? A. I think so.

Q. The account was carried in your personal name, was it not? A. Yes, sir.

Q. What bank? A. Durfee Trust Company.

Q. There is an item following on the deposit slip, an item following the $1,000 item is $1,700, is it not? A. Yes, sir.

Q. Are you able to tell us what that represented? A. No, sir.

Q. That was evidently a check? A. It looked so.

Q. What? A. From the deposit slip I would think so.

Q. Was that not your own check on your Fall River bank account? A. I can't tell you that.

Q. Have you a check-book of that account? A. There is a check-book of that account.

Q. Where? A. I guess it is around the office somewhere.

Mr. Guild: I ask Mr. English to produce this check-book and I also ask him to produce a return voucher of $1,700 dated on or about February 8, 1911.

Mr. English: I never heard of it before.

The Court: The witness has said that he has the check-book.

At this point the Court took a recess of one hour.

After recess.

Mr. English: I would like to call Mrs. Scarlett, out of turn, to which the prosecutor is agreeable.

CAROLINE L. SCARLETT, sworn in behalf of defendant.

Direct-examination by Mr. English:

Q. You are the wife of John B. Scarlett? A. I am.

Q. And live where? A. 47 Johnson Avenue, Newark.

Q. I show you a paper which is marked Exhibit D-36 for identification and direct your attention to the signature and ask you whose signature it is? A. It is mine.

Q. When did you sign that, if you know —on the day of its date? A. October 25, 1912.

Q. On the day it is dated? A. October 25, 1915.

Q. After you signed that paper to whom did you deliver it? A. Nicholas R. Sica.

Q. For what purpose did you sign the paper?

Objected to.

The Court: I think the paper speaks for itself.

Mr. English: I offer in evidence D-36 for identification, the signature of which is identified by the witness.

CROSS-EXAMINATION by Mr. Guild:

Q. What date did you say you signed this paper? A. October 25, 1912.

Q. When did you see it last? A. Just now.

Q. When previous to this? A. I haven't seen that paper until this morning.

Q. And it was shown to you; when it was shown to you you saw the date, of course? A. Yes, I saw the date just now.

Q. If you had not seen the paper could you have told when you signed it? A. Yes, pretty nearly; I guess, I could have told perfectly; I know it was the last of October; I know it was 1912; I know it was before the bank failed.

Q. Do you know when the bank failed? A. Yes, August 14, 1913. Wasn't that the day?

Q. I am asking you. A. August 14, 1913. I ought to remember it.

Q. That was ten months after the date of this paper? A. What was?

Q. The failure of the bank? A. The failure of the bank?

Mr. English: I object to anything about the failure of the bank.

The Court: This is proper for testing the recollection of the witness as to the date.

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)

Q. That was ten months after the date of this paper? A. The failure of the bank?

Q. Yes. A. Yes, I suppose so; I know it was some time before the failure of the bank; some months before, if it is ten months; I haven't reckoned it up.

Mr. English reads the paper referred to to the jury.

Mr. English: I would like to call another witness out of order at this point.

WILLIAM P. SUTHERLAND, JR., sworn in behalf of defendant.

Direct-examination by Mr. English:

Q. Are you a member of the bar? A. No, sir.

Q. Have you any official connection with the bankruptcy court of Newark? A. I am the referee's clerk.

Q. And the referee is whom? A. Edwin G. Adams.

Q. He is one of the referees in bankruptcy for this district? A. Yes, sir.

Q. Where is the office of the bankruptcy court? A. Essex Building.

Q. Are the papers in the matter of the bankruptcy of Raymond E. Smith filed in your court? A. Yes, sir.

Q. Did you, in response to our subpoena, produce certain claims filed against the estate of Raymond E. Smith? A. Yes, sir.

Q. I show you some papers entitled "In the matter of the bankruptcy of Raymond E. Smith, a bankrupt." Is that one of the official records in your court? A. Yes, sir.

Q. And that sets up the amount of a claim against Raymond E. Smith by the Roseville Trust Company?

Objected to.

The Court: You are asking for the contents of the paper before offering it in evidence.

Q. That is the original proof of claim that you have? A. Yes.

Mr. English: I offer in evidence the proof of claim that the witness holds in his hand.

Mr. Guild: I object to this paper going in evidence for the reason that whatever the Roseville Trust Company, or its representative, after its failure, may have done, cannot bind the State in any way.

Q. Has this claim to which you have been referred, been allowed by the Referee?

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. OSBORNE,
Judge.

(Seal)

The Court: I will hear you on the admissibility of the paper.

Mr. English: One reason for offering it is that Mr. Smith said he couldn't remember how much money he took from the Roseville Trust Company.

The Court: What difference does it make, how much it was?

Mr. English: As to the credibility of the witness Smith. I think a man who will steal a hundred thousand dollars, in comparison with a man who will steal one dollar, that that is a matter for the consideration of the jury. My other objection is to further discredit the witness Smith by proving the amount of money which he embezzled.

The Court: I do not think it tends to throw light on either point. I cannot

see how it is possibly any worse to steal a hundred thousand dollars than to steal a dollar, morally, and I cannot see how the second proposition would affect the case. I will overrule the offer.

The paper referred to is marked Exhibit D-39 for identification.

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)

The Court: I do not see how it would bind the State or how it would affect the credibility of Mr. Smith, because it is a claim of the Roseville Trust Company.

JOHN B. SCARLETT, resumes the stand in his own behalf.

Cross-examination (continued) by Mr. Guild:

Q. Have you that check-book you spoke about before recess? A. I said I think I might have it around the office.

Q. Did you look for it at recess? A. I didn't go to the office at recess.

Q. Will you make a search for it after court and see if you can produce it, if you can find it? A. Yes, sir.

Q. And also the vouchers drawn on that account that went to the Roseville Trust Company? A. Yes, sir.

Q. I would like to take you back to the deposit of February 8, 1911, Exhibit D-17, and ask you again about the item of $1,000 in that deposit slip. Have you the cancelled vouchers of the Bras d'Or Land Company? A. I think there must be some of them around the office somewhere or most of them.

Q. Have you the check-book of that company? A. They have been around the office for some time and in the meantime we have moved twice, and I have hunted for them several times and have been unsuccessful in locating them.

Q. You did draw checks of that company which you deposited in the Roseville Trust Company to your own account, did you not? A. No, there were checks sent forward for collection.

Q. I am speaking about the checks of that company. A. That is what I am talking about.

Q. The Bras d'Or Company checks you deposited in the Roseville Trust Company to your account or had cashed there for your own benefit? A. No, they were sent that way for collection.

Q. By whom? A. By me.

Q. Deposited in the Roseville Trust Company? A. For collection.

Q. Deposited in the Roseville Trust Company? A. For collection.

Q. I say, by you deposited in the Roseville Trust Company? A. Placed in the Roseville Trust Company for collection.

Q. To your account? A. It would not be credited to my account unless the money was paid.

Q. Were they placed there by you for collection? A. Yes.

Q. Do you mean to say that the Roseville Trust

Company never gave you credit for a deposit that you made of a foreign check until it had been paid? A. I didn't say that.

Q. Why do you select this particular company? A. I say there were a number of items—

Q. I am asking you about this particular one? A. Well, I can't recall any particular individual item.

Q. Then you are not willing to say whether the $1,000 item here was not the check of that company?

Mr. English: I object to the form of that question.

Q. Are you willing to say whether it is or not?

Objected to.

Q. Do you say it is, or what do you say about it? A. I don't know what that thousand dollar item is.

Q. Do you remember that it came back protested? A. I couldn't remember that.

Q. Will that help you recollect anything about it? A. No, sir.

Q. I show you a check-book and ask you whose check-book that is and used in connection with what account, what bank? A. This was a check-book of John B. Scarlett used in connection with the Roseville Trust Company.

Q. And from the beginning to the end of your account with that institution? A. I believe so.

Q. So that you had no other check-book that you used in connection with your acocunt there? A. No, sir; I think not.

The check-book referred to is marked Exhibit S-26 for identification.

Q. You say that you turned your original pass-

book in for balance in February, 1911? A. I think so—yes, I think that was the date.

Q. And previous to that had it been handed to you by the bank after being balanced? A. I never saw it after it was balanced. There is one balance previous to that date.

Q. That is the date I am asking you about. A. But I didn't get it at that time. It may be the bookkeeper got it at that time.

Q. I know, but what the bookkeepr got you got; is that not so? A. I can't tell you. If the bookkeeper didn't call my attention to it I wouldn't say that I would have seen it.

Q. You testified that the book had been balanced to December 20th—there don't seem to be any year here—1910. A. I testified that the book showed it had been balanced December 20, 1910.

Q. When did you get it, when did you receive the book after that? A. I never saw the book after that date until Mr. Vredenburgh handed it back to me after the bank was closed.

Q. Why, you have already testified, as I understand you, that you turned the book in for balance in February, 1911? A. I say my bookkeeper may have got that book after it was balanced—

Q. I am not asking you anything about your bookkeeper. You testified yesterday, and this is the question "Then you turned it in for balance in February, 1911?" and your answer was "Yes, sir, that is my recollection." Is that correct? A. Yes, sir; that is correct.

Q. You say that after that you were unable to get this book back; is that right? A. I never got that book back.

Q. Answer my question. A. That is, until Mr. Vredenburgh handed me it back.

Q. I say, you were not able to get it back for a long time? A. You didn't say a long time.

Q. I will say it now. A. That is correct.

Q. And in the meantime, about three months after you turned it in, in February, 1911, you got a duplicate book? A. Yes.

Q. Now, up to what time was that duplicate book in your possession? A. Up to June, 1913.

Q. So that between February, 1911, and June, 1913, you had a pass-book with the Roseville Trust Company? A. No, I didn't say February; several months after February.

Q. Well, make it several months after. I think you said three months? A. It might have been six months.

Q. Well, make it six months. A. During that time there was a pass-book in the office of the Roseville Trust Company.

Q. Take your own figures, six months, which would make it August, 1911. From that time on down to June, 1913, you had a pass-book with the Roseville Trust Company? A. Yes, sir.

Q. When was it that you claim that you first found, as you say, there was a discrepancy in your account with the Roseville Trust Company? A. It was first drawn to my attention around February, 1913—no, 1911.

Q. How was it brought to your attention? A. There was some item—I don't recall what it was—that there was a question raised about that needed to be made good, and somebody from the bank called on the telephone.

Q. Do you remember the amount of the items? A. I don't remember the amount of the items.

Q. Do you remember whether it was a note or a

check or whose note or check it was? A. No, I don't remember anything about the item; it is long ago.

Q. You think it was February, 1911, that that was brought to your attention? A. I think so.

Q. At about the time of your deposit on February 8th? A. I couldn't fix the date exactly.

Q. Now, Mr. Scarlett, wasn't what was brought to your attention this thousand dollar item and the $1,700 item in your deposit slip of February 8th as not being good? A. No, sir; it was a check of my own, it seems to me, if I remember right, that they called up and said they had sent it back or some other bank here in Newark returned it to me unpaid.

Q. Check on what institution? A. A check on the Roseville Trust Company, I think.

Q. As not being good? A. As not being good.

Q. A certified check? A. No; it would not have been a certified check, I don't think; I don't think it was a large check; it was only a small check.

Q. Could you find it, do you think, by looking in your check-book? A. I will try.

Mr. English: What bank is this supposed to have been drawn on?

Mr. Guild: He said Roseville Trust Company.

Witness: No, I said I wasn't sure. (After examining book.) No, it could not be any check on the Roseville Trust Company because there is no such check.

Q. I ask you again whether it is not altogether likely that it was these two items of $1,000 and $1,700 in your deposit of February 8, 1911? A. No, I don't think it was.

Q. Well, now, you say that you think this was a check drawn on some other bank than the Roseville Trust Company? A. I can't remember what it was. I have a faint recollection of a telephone conversation—the impression it made on me that there was some money needed to be sent up to the Roseville Trust Company.

Q. And you are not able to say for what purpose? A. To make good some check.

Q. And pursuant to that call did you not make your deposit of February 8, 1911, of $5,700? A. No, sir.

Q. Well, did you make any entry as to what the item was that the bank wanted you to make good? A. At the time I did, but my recollection is that it was only a small item.

Q. Did you make it good? A. I think the Roseville Trust Company returned it, whatever it was.

Q. Is that making it good? A. Well, yes, I made good all right.

Q. How did you make it good? A. Oh, I don't remember now.

Q. You think it was a small matter, do you? A. Yes, sir.

Q. And that was the discrepancy in your account? A. Oh, no, I didn't say so; I say that that drew my attention to the fact that there was some radical difference between the account as the bank had it and the account as the bookkeeper had it.

Q. What was the radical difference? A. I sent my book up, or had Mr. Reynolds send it up then for balance immediately and I called Mr. Smith up—

Q. Please tell us when this was, Mr. Scarlett? A. Well, I think it was some time in February.

Q. 1911? A. Yes; I called Mr. Smith up and I told him that there was a difference between us that I couldn't understand and I would send my pass-book up for balance, and it was a serious matter with me because my book showed considerably more money than he claimed, and therefore I wished he would balance it as soon as it could be balanced.

Q. You say your book showed considerably more money than what other book? A. This check-book.

Q. Which check-book? A. (Indicating.) This check-book here.

Q. Take the check-book and show us where it showed more in February 1911. A. Right here, opposite check No. 25 and 26 and 27, there is deposits right here and there is only small deductions and there should be quite a bit of money there.

Q. Call off what you say it shows. A. (Indicating.) There is a $2,500 deposit.

Mr. Guild: (Indicating some person.) Will you check this off on the ledger?

Mr. English I object to checking them off on the ledger because the bank's books are shown to be inaccurate.

Witness: (Indicating.) There is an $805 deposit—

Q. Oh, no, there is not. A. There is a $500 deposit on December 22d, it looks like.

Q. May it not be the 23d? A. It may be the 21st—I don't know.

Q. It may be the 8th? A. It is Mr. Reynold's writing; it is a little indistinct.

Q. And whose check was it? A. Check of

Stevenson, Rye & Company on the Savoy Trust Company, of New York.

Q. How much is it? A. Five hundred dollars.

Q. What is the next item? A. The next item is a check on the National State Bank, Newark, New Jersey, $305.

Q. That makes a total of— A. $805.

Mr. English: In the pass-book under date of December 31st there is $805. Counsel now agree that the date is December 31, 1910.

Q. Now, read the next item. A. $305 item you have. The next item is less a protested check of $800. You don't want this?

Q. I certainly do.

By the Court: Q. What is that? A. Less a protested check of $800.

By Mr. Guild: Q. And that left a balance of how much? A. That left a balance, according to the book, of $8.12.

Q. This is your book? A. Yes, sir.

Q. What is the next item? A. Less a protest of $5.

Q. And that left a balance of how much? A. $3.12, and there is a deposit on January 18th, $2,000.

Q. Whose check is it? A. Middlesex Hat Company.

Q. And the next one? A. Another one on the same date of $2,000.

Q. The same concern? A. Yes. Another one of February 8th of $3,000.

Q. What is that? A. State bank.

Q. Whose check is that? A. I think that is the $3,000 check referred to in that deposit ticket.

Q. Whose check is that? A. Check of John B. Scarlett. Then there is a statement of foreign check $1,000 and foreign check $1,700.

Q. What is the next item?

Mr. English: That seems to be in red ink. Do you know anything about that?

Mr. Guild: This is my examination.

Q. What is the next item? A. I don't know what they refer to. That is not a deposit apparently.

Q. I didn't ask you what the next item was. Under what date?

Mr. English: I object to the question because the witness said it is not a thing he knows about.

The Court: He has testified that this was the check-book and from which he reached certain conclusions and he said he thought he had a big balance.

Mr. English: Counsel asked him to read into the record items which I say, if proper to be put in at all, should be by the book itself.

The Court: I think he may be asked to point out the figures. I think, however, if the book has not gone in evidence, perhaps it is going a step too far to take the book on any given date and ask him to read the contents of it. I think he should be asked to look at the figures on which he bases his statement and after having done that he can be cross-examined further.

By the Court: Q. Just state what you find there upon which you base your claim. A. Those checks that I have read, and I remember calling Mr.

Reynold's attention to a duplication of $2,000 back in 1910, where there was a check of $2,000 was deducted at the same time a note or something else was deducted they were both the same items.

Q. Will you be a little more specific about that? That is very general. A. The item I refer to is opposite checks 13, 14 and 15 where a memoranda is deducted, less Middlesex check $2,000, and yet the check No. 12, the money was drawn to pay those checks.

Q. I do not understand you. A little while ago you said, when you first looked at this book, you started to testify as to what the entries on pages opposite checks 5, 6 and 7 were? A. No, your Honor, you were mistaken about that, 25 26 and 27.

Q. What do you refer to? A. I refer to opposite checks 13, 14 and 15.

Q. What does it show opposite those checks? A. It shows that the same item of $2,000 has been deducted twice.

Q. By whom? A. By the bookkeeper.

By Mr. Guild: Q. Whose bookkeeper? A. My bookkeeper.

Q. What are you pointing at? A. Here is a deduction—

Q. Give us the dates and what you refer to? A. This item opposite checks No. 13, 14 and 15 in Mr. Reynold's handwriting says, "Less Middlesex H" something, $2,000.

Q. There is a blue pencil mark opposite that, isn't there? A. Yes, sir. I don't know what that means.

Q. You don't know what what means? A. That blue pencil.

Q. Where is the word less? A. There.

Q. What is it? A. It looks to me like "Less." That is the same item as check No. 12 for $2,000. In other words—

Q. Just a minute. What you have called attention to appears under date of November 22, 1910, which is in lead pencil? A. There is such a lead pencil memorandum there, evidently put on at the time—

Q. When I ask you a question will you please answer it and stop? What you have called attention to is under date of November 22, 1910, in lead pencil, is that right? A. Yes, sir.

Q. Whose handwriting is the lead pencil figures? A. I think that is mine.

Q. When did you make it? A. That was made, I think, after Mr. Reynold's death, because I never handled the check-book before.

Q. I merely ask you when you made it. Middlesex Hat, $2,000, that is deducted from the figures above, which are $4,150, leaving $2,150? A. Yes.

Q. Those are the figures as they appear there? A. Yes, sir.

Q. Where do you say that has been deducted twice? A. (Indicating.) This check is also deducted from the balance.

Q. Where? A. Less checks, $4,000 opposite checks 10, 11 and 12.

Q. Where is the Middlesex Hat Company check which appears on the date of November 22d as a deduction deducted again? A. This money—

Q. Please show me where it is deducted the second time. A. Will you read that question? I don't think I comprehend it.

Q. (Question read.) A. This check of Novem-

ber 21st was used to pay that item that Mr. Reynolds deducted there.

Q. Well, then, it is your contention that check represented by stub No. 12, $2,000, is the same check deducted under date of November 22, 1910, on the following page? A. It is the same item—I think I can explain that if you will allow me to.

Q. I wish you might. A. This protested item of the 16th came back and we had a notice of protest.

Mr. English: You had better give the dates. The 16th of what?

Witness: The 16th of November, 1910, this item of $2,000—

Q. Where does it appear in your check-book? A. Here, opposite check No. 10.

Q. It appears as a deposit, and whose check is it? A. Middlesex Hat Company. Those are the two items that were returned; check No. 12 was used to pay those items and yet Mr. Reynolds deducted it again opposite check No. 13.

Q. How much is check 12? A. The same amount, $2,000.

Q. There were two $2,000 checks returned? A. No, there were two $1,000 checks returned. That would make two in the aggregate.

Q. Check No. 12 was used to pay it? A. Yes, sir, yet Mr. Reynolds deducted the check that I drew from the balance and then on the back of the stub deducted the same checks again, the same check a second time.

Q. Well, then, the effect of your statement is that the check that is represented in your book by stub No. 12 and which is deducted on the other side or again deducted on the following page and

represents the same transaction? A. And represents the same transaction.

The Court: What was the date of that transaction, Mr. Guild? I am asking you what the book shows.

Mr. Guild: The stubs of checks No. 11 and 12, check No. 11 being November 16, 1910, shows a $2,000 check, the stub of No. 12, November 21, 1913—

Witness: Won't you say opposite the stub?

Mr. Guild: Stub No. 12 under date of November 21, 1913, shows a stub of $2,000. Now the total of those two amounts is $4,000. That is deducted from the opposite side of the page where the deposits appear. The balance before the deduction is $6,150. The $4,000 is taken out of that, leaving a balance of $2,150, which is carried forward to the next page. On the next page, opposite stub No. 13 is a credit under date of November 23, 1910, in lead pencil—

Mr. English: I object to that. The witness said it was a deduction.

Mr. Guild: It is a credit of the Stevenson, Rye & Company discount of $2,000, which makes a total of $4,150—that is the $2,000 discounted added to the $2,250 brought forward makes a total of $4,450. Here is where Mr. Scarlett says the error occurred. The next item under that balance of $4,150 is Middlesex Hat, $2,000, which is deducted from the $4,150 and leaves $2,150; that is under date of November 22, 1910, in lead pencil. His contention, as I understand it, is that that Middlesex

Hat Company $2,000 deducted is the same $2,000 which appears on the previous page opposite stub No. 12; that is when he says $2,000 was deducted twice in his book.

By the Court: Q. That is what you discovered later on? A. I called Mr. Reynolds' attention to—

Objected to.

Q. Is that what you discovered later on? I refer particularly to the discovery which you say you made when the bank called you on the telephone in reference to some small check, and then you discovered there was a serious discrepancy amounting to $2,000? A. At that time that is the matter I had reference to.

Q. On your statement of the condition of your book the book shows you had less than you should have had there? A. The book shows I had less there than I should have had there on account of this duplication of the deduction of this $2,000.

By Mr. Guild: Q. You have said you drew a check here, which I presume is check No. 12 judging from the stub, November 21, 1910, at the bottom, of $2,000. What did you draw it for, according to the stub? A. To make good the check of November 16, 1910.

Q. And those are the two $1,000 checks of the Middlesex Hat Company that have gone to protest? A. Yes, sir.

Q. What did you do with the money, as a matter of fact? A. Used it to take up the checks.

Q. Where did you take them up? A. I think I took them up in Metuchen.

Q. What is the date of your check that you

drew? A. The check looks like November 21st, if I can read the writing correctly, 1910.

Q. Now, those are the two protested checks—you used that money to take up those two protested checks; is that right? A. November 16th.

Q. And the checks were protested on the 19th? A. Let me see the protest item. (After looking at paper.) Yes, the checks were protested on the 19th.

Q. And the date of your check which you say you used to take them up is four days later? A. No, I make it the day after; it looks here like and truly to be made, we bind ourselves, our and the 21st.

Q. You didn't draw your check until two days after the other check were protested; is that right? A. According to this record that is what it looks like, but there is a day intervenes, one day intervenes between the time I drew the check to take up the notes and the actual date of the protests.

Q. You deposited that money at the Metuchen National Bank, did you not? A. I don't think so. I think I got the checks and brought them back to the office.

Q. Isn't it a fact, Mr. Scarlett, that that $2,000 paid checks D-20 and D-21 instead of the protested checks? A. No, sir; these checks were dated the 19th and my check is dated the 21st. I can't see any connection between that.

Q. I won't ask you to. Now, as I understand you, you say that what started you in to investigate your so-called discrepancy in the Roseville Trust Company account was this error that you found in your check-book? A. I think that it

was owing to some item that there was a question raised about that was I satisfied should be good, that my bookkeeper told me was good.

Q. Was that prior to February 8th? A. I can't remember the exact date; that is too long ago.

Q. Can you tell from your check-book how much you had on deposit at that time? A. I could if I could fix the time I think.

By the Court: Q. What time do you refer to? A. February 8th.

Q. Take February 8th, before you had made your deposit of $5,700. A. Prior to February 8th—that is, say the 1st of February, that would be agreeable to fix the date, the balance should have been $6,003.12.

Q. 1911? A. 1911.

By Mr. Guild: Q. Will you look under date of January 18th and see what deposits you made on that date? A. There were two deposits on that date of $2,000 each.

Q. What were they? A. Checks of the Middlesex Hat Company.

Q. Were they paid? A. I guess so.

Q. This is too serious a matter to guess about. A. I have no doubt about it.

Q. Don't you know they came back not paid? A. I do not.

By the Court: Q. Was your account charged with them? A. I don't believe so. I haven't the charge in here; it is not on my book.

By Mr. Guild: Q. What was the date of that deposit? A. January 18, 1911.

Q. Do you say on that date, the 1st of February, that this book shows a balance of $6,000, the 1st of February, 1911? A. That was taking into

consideration this duplicated deduction that I spoke of.

Q. Now, in order to reach that balance of $6,000 you included the two $1,000 checks of the Middlesex Hat Company that were protested, did you? A. No, they were deducted because they were paid by this check.

Q. I am asking you not about what you did outside, I am talking about what your check-book shows?

Mr. English: Then let him have the book.

The Court: If he needs the book he may have it.

A. I think I had better see the book. Your question is whether, in making up this balance, I included these two items of these protested checks?

Q. That is my question. A. I don't think you could frame it so, no.

Q. I don't want to discuss this matter with you. I just want you to tell we what your check-book shows, whether, in making up this balance which you say was $6,000, you have not included the deposit of January 18th for $2,000 which is made up of two Middlesex Hat Company checks of $1,000 each which were not paid? A. I didn't say they were not paid.

Q. I know, but came back protested? A. I don't know as to that.

Q. You have the protest notices in front of you? A. Not this protest notice; those are the protest notices of November 19th. You are all mixed up.

Q. I will assume I am mixed up. The next item is January 18th? A. Yes.

Q. What year? A. 1911.

Q. And the amount? A. $2,000.

Q. You say that both of those amounts were made good? A. I know nothing to the contrary.

Q. Don't you know that the first item of $2,000 came back not good? A. No, I don't know as to that.

Q. And the second item? A. I don't know as to that.

Q. I call your attention to S-6, the individual ledger account under date of January 31st, there is a charge of $2,001.63. Do you know what that represents?

Mr. English: He is being directed to a book, but he does not know anything about it.

A. No, I don't know anything about it.

Q. Was your attention ever called to that? A. No, sir.

Q. You have had a transcript of this account furnished you since your indictment, haven't you?

Mr. English: I object, because it is immaterial. Suppose that is the fact, he didn't make the account, he had nothing to do with it, and something furnished long after the alleged crime is not going to be binding on him now.

The Court: He might be given an opportunity to check it up and verify it and compare it. It might have some bearing upon the weight of his testimony, if he denies the original. I will permit 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. OSBORNE,
Judge.

(Seal)

Q. Have you had it? A. Yes, sir; Mr. Vredenburgh gave me a transcript of my account on the ledger. That was after the bank closed.

Q. And you have gone over it?

Mr. English: I object unless it appears that the witness has compared the copy with the original. He doesn't know whether it is right or not.

Q. Have you got it here?

Mr. English: I have got it as it was handed to me, but I have not compared it, either. (Paper handed to prosecutor.)

Q. Your counsel produces a paper containing figures which is marked "Transcript of ledger, Scarlett, J. B." I ask you whether that is the statement which you say Mr. Vredenburgh furnished you? A. Yes, sir; this is a copy of the statement.

Q. You were asked whether that is the statement Mr. Vredenburgh gave you? A. Yes, sir.

Q. Look under date of January 31, 1911, and see if it shows a charge of $2,001.60?

Mr. English: I object. It is very unfair to show the witness a record or a copy of a record made by somebody else, never seen by him until months after the date of the check charged in the indictment, the record containing any reference to any checks or anything to identify it and expect the witness to be cross-examined on this record which he didn't make without anything in it to identify figures. It is utterly immaterial.

The Court: It may be unfair it if goes too far. I think the present question is proper.

Mr. English: Especially when it has been proved that the account is an inaccurate account and the only thing it rests upon is the discredited testimony of witnesses, according to their own admission.

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.

H. V. OSBORNE,

(Seal) Judge.

By the Court: Q. Do you find that item referred to again? A. There is an item under date of January 31st, a charge, $2,001.62.

Q. You do find it? A. Yes, sir.

By Mr. Guild: Q. Do you not know that that represents one of the two checks of the Middlesex Hat Company deposited by you January 18, 1911?

Objected to. Objection overruled.

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. No, I do not.

Q. Is it not a regular charge against you, a proper charge against you?

Mr. English: Objected to. That calls upon the witness to interpret the record made by somebody else a long time after the charge in the indictment.

The Court: No, it calls upon him to say whether $2,001.62 was properly charged to him in the Roseville Trust Company.

A. I can't answer that question; I don't know.

By Mr. Guild: You made up your proof of claim against the Roseville Trust Company after you received this statement, did you not? A. Yes.

Q. Did you include this $2000 item in your claim against the bank? A. I accepted for the purpose of—

Q. I didn't ask you anything of the kind; I asked you whether you included in making up your claim against the Roseville Trust Company this item of $2000 which is charged against you on the statement and on your ledger account? A. I cannot answer that yes or no.

Q. Answer it your own way. A. The only items I included in making up that charge is $1.30 as reported to me by Mr. Vredenburg, the balance was the $5700 deposit of February 8th.

Q. And when you made up your proof of claim you had this statement which Mr. Vredenburgh had furnished you? A. I couldn't make head nor tail out of it; I couldn't straighten out with it at all.

Q. If you couldn't straighten it out or make head nor tail of it, what was the trouble? A. I couldn't ascertain.

Q. You couldn't ascertain what? A. What the trouble was.

Q. Did you ask Mr. Vredenburgh what the trouble was? A. I asked Mr. Vredenburgh a dozen times to please join with me to see if we could straighten out the account owing to Mr. Smith's manipulation, and my bookkeeper was dead—

Mr. Guild: I ask that that be stricken out.

Mr. English: That cannot be stricken out.

By the Court: Q. I understand Mr. Scarlett, that the answer you are now giving is part of a conversation with Mr. Vredenburgh or is it given as a reason? A. Oh, no it is a conversation with Mr. Vredenburgh.

Mr. English: I insist he be permitted to answer it.

Mr. Guild: Not his conversation with Mr. Vredenburgh.

The Court: He says now that it is part of a conversation with Mr. Vredenburgh.

Mr. Guild: I ask him if he endeavored to secure the assistance of Mr. Vredenburgh, and now he is going into a detailed conversation and the reason that lead up to it.

(Question read.)

The Court: I suppose that can be answered yes or no. The question is susceptible of a yes or no answer.

Witness: Yes, sir, I did.

Q. You did, then, go over your claim with Mr. Vredenburgh? A. No, sir—

Q. You did go over the matter of your claim with Mr. Vredenburgh? A. You mean go over the account or the claim?

Q. The account. A. No, sir.

Q. You spoke of Mr. Vredenburgh about your account after you received the statement? A. Yes, sir, and Mr. Morgan, representing the banking department, on several occasions.

Q. And you say that Mr. Vredenburgh re-

fused to give you any assistance? A. He put it off and put it off and put it off, and I never could get any statement out of Mr. Vredenburgh at all. I wasn't quite through—

Q. You have answered the question. You showed him your $5700 deposit ticket, did you not? A. Yes, sir.

Q. And asked him to investigate it? A. Yes, sir.

Q. And you afterwards filed your claim with him or some representative of the banking department? A. After consulting with Mr.—

Q. No. A. Yes, sir.

Q. Was the claim allowed or rejected? A. Ultimately he notified me it would be rejected, but—

Q. Now, going back to the Middlesex Hat Company deposits of January 18th, two of them seem to be under the same date, January 18, 1911, two of a thousand dollars each. Did you not receive from Mr. Litterst, a notary of Metuchen, a notice of protest of those two checks, the notice of protest being on or about the 24th of January, 1911, and the question is whether you did not receive from Mr. Litterst, the notary public for the Metuchen National Bank, notice of protest of these two checks? A. I can't answer the question.

Q. $2000 each—so there will not be any misunderstanding I want you to get the right checks in your mind? A. You mean the checks of January 18th.

Q. That is, that you deposited January 18th? A. Yes, sir.

Q. And which in order to make up your so-called balance of $6000 prior to Febuary 1, 1911,

you have included in your calculation, and the question is whether those two checks did not go to protest and whether you did not receive from the notary, Mr. Litterst, notice of the protest? A. I can't tell you that; I can't tell you that off-hand.

Q. Now, it was about February, 1911, when you say that your attention was called—that you discovered there was a discrepancy in your account in the Roseville Trust Company? A. Yes, sir.

Q. And the discrepancy was the discrepancy that you have called our attention to in your own check book? A. I said that I should have had considerably more money there than the bank's books gave me credit for.

Q. Where are the bank-books showing what you were given credit for? A. I didn't have them; I only got word from people at the bank.

Q. What word did you get? A. There was some item was not good.

Q. You don't know what the item was? A. I can't remember now.

Q. And you don't remember what the amount was? A. I remember it wasn't a very large item.

Q. Nothing to startle you? A. Nothing to worry about particularly.

Q. You were not very much disturbed by that? A. Not on that particular point.

Q. (Question read.) A. I was quite disturbed over the fact that the account up there seemed to be different than what we had it for.

Q. What was the difference between you? A. That is what I sent the pass-book up there to find out.

Q. You say that the amount mentioned was small. A. I say that this item that was not good was small.

Q. And the item that was not good was the discrepancy? A. No, indeed had nothing to do with the discrepancy at all.

Q. What was the discrepancy? A. I don't know; that is what drew my attention to the discrepancy.

Q. How did you find there was a discrepancy? A. I figured I should have more money in the bank.

Q. What did you figure from? A. The check-book, as I told you.

Q. And the discrepancy was $6000? A. Yes, sir.

Q. Where does that differ from what the pass-book or bank-books show you were entitled to?

Mr. English: That is a double question. He has asked first about the bank-books and then the pass-book. I submit that he should not be expected to answer any question about bank-books which he had never seen and his pass-book.

A. I used the word bank's book, referring to books they had in the bank, not my pass-book.

The Court: You mean your question to refer to depositor's pass-book?

Q. I want to know what you mean when you say that the bank's books and your books did not agree. What bank-books do you refer to? A. I perhaps should not have said the books. I referred to the information I got over the telephone that this little item was charged back to me that made the account need some more money.

Q. That amount that your account was overdrawn, was that your understanding? A. I don't remember exactly the details of it. The only impression it made on me was that the

amount that the bank people had to my credit was different from the amount that should be to my credit; that is the only impression I got.

Q. How was that brought up, Mr. Scarlett? A. I have told you all I can recollect about it.

Q. Do you mean to say that if your check-book shows a balance of $5000 and the bank book shows a difference of $4000 and you write to them and say there was a difference between you and them—is that what you mean?

Mr. English: It was a telephone conversation.

A. You remember you have fixed an arbitrary time to strike a balance. That time has no relation to the time when the bank called me up or when I got in communication with the bank about the balance.

Q. What I am trying to find out from you is when the bank called you up, and which you say was sometime in February 1911, is that right? A. That is my recollection of it.

Q. And you think it was prior to February 8th, 1911? A. No, I didn't say so.

Q. Well, about February 8th, 1911? A. I can't tell you.

Q. Was it February, 1911? A. I couldn't tell you within a few weeks of what time it was, but it was around that time.

Q. Around what time? A. Around the time of February, 1911.

Q. Of February 19, 1911? A. Yes, sir.

Q. Shall we take that as a fact, that it was about February, 1911? A. It might have been the end of February or the beginning of February or January; I couldn't tell years ago the precise date.

Q. Fix your own time. A. I can't fix a time.

Q. Will you say it was January, 1911? A. No.

Q. February? A. I think so.

Q. We will say that you think it was February, 1911, that the bank, you say, called you up on the telephone, is that right? A. That is my recollection.

Q. And told you there was a discrepancy in your account or there was something there that ought to be made good? A. No; I think there was some item of around $100 or $150 or $200 or something of that kind which went up there and wasn't paid and came back.

Q. Was it your own check? A. Well, now, I can't place that; I haven't got that definitely in mind. The only impression that I have fixed in my mind firmly was that at that time that it appeared to me that the books at the bank and my books did no agree.

Q. Well, now, it must have been one of two things, either your own check that you had given outside and came up to the Roseville Trust Company "not good" or else a check that you had deposited in the Roseville Trust Company that had come back "not good"—it must have been one or the other of those two things—isn't that so? A. It would seem so.

Q. Well, now, you think it was in the neighborhood of $100 they told you you would have to make good? A. No, my recollection is it was a small item.

Q. As small as $100? A. I really have no distinct and definite recollection about the amount of it, but when I got word that this item, whether

it was a check I had deposited there or something else, I can't at the present time recall.

Q. We have settled all that, it was either one of two things, it was either your check or somebody else's check, and now we are trying to find out about the amount? A. My recollection is it was a small amount.

Q. You think it was a small amount? A. That is my recollection.

Q. And they told you you would have to make it good? A. No, I don't think that it was stated exactly in that way.

Q. What was stated? A. It seems to me that it was—I don't know—I had the impression that it was something the bank people had sent back, some check of mine or something that the bank people sent back; that is what I had the impression of.

Q. What did they wish you to do about it? A. They called me up to let me know about it merely.

Q. There is nothing in your check-book that indicates what it was? A. No. Once in awhile I gave an outside check; it might have been that. If I didn't have my check-book with me I might have given an outside check.

Q. What I am trying to get at, Mr. Scarlett, what it is that started you on this investigation of yours, that lead you to think there was some discrepancy in your account. You have said that it was a small item, and you recollect now that the bank wanted you to fix it in some way. A. I didn't say that, Mr. Guild; I said it was a small item.

Q. Are we to understand from what you say that your account was not good and you had to

make it good? A. No; my recollection is that it was some small item that they called me up and said they had returned.

Q. Did they tell you why? A. Because the account was not good for it.

Q. Whose account? A. My account.

Q. That is just exactly what I have been trying to get at for the last ten minutes. A. You took a round-about way to get it.

Mr. English: He made that perfectly plain long ago.

Witness: I thought I made that perfectly plain long ago.

Q. So what the bank wanted was for you to make good a shortage in your account? A. Absolutely not. They notified me that they sent the item back because the account was not good for it.

Q. Whose account? A. My account. Probably they did not pay it, therefore there was no shortage in my account.

Q. You had already had credit for this item, hadn't you, if it was an outside check, somebody else's check? A. Not necessarily at all.

Q. What was the check doing in your account if it wasn't passed through your account? A. Supposed—

Q. Not suppose. This check that you are talking about, it may have been an outside check, somebody else's check; if you had put it in your account you must have put it in either as a cashed check or deposited it if it was a check of somebody else's and they gave you credit for it. A. Not by any means, no. Suppose I had a blank check in my pocket, if you will allow me—

Q. I don't care to know anything about a blank

check in your pocket. What did you do to have it straightened out? A. I sent my book up for balance.

Q. And that was brought about by the message you received from the bank? A. Yes, sir.

Q. And that was, you think, in February, 1911? A. I think so.

Q. Well, you didn't get your book back, you say? A. I never saw the book again until Mr. Vredenburgh returned it to me.

Q. I say, you didn't get it back until after the bank failed? A. That is correct.

Q. And you got your so-called pass-book in May? A. I don't know the exact date; it was anywhere from three to six months afterward.

Q. And do you remember what the duplicate pass-book—what balance it started off with? A. I cannot remember now. It was a small item.

Q. You remember the date under which the balance was given? A. No, sir, I don't. That book was left for balance in June, 1913, up at the bank and I have never seen it since.

Q. I call your attention to your pass-book D-23, under date of December 20th, and the balance is given at $4.42, and ask you if you recollect that that is the balance with which your duplicate book started? A. No, I could not recollect that.

Q. I call your attention to S-26 for identification on the page opposite check stubs 22, 23 and 24 is some writing and some figures in red ink, and ask if you recognize that writing? A. That is Mr. Reynold's handwriting.

Q. And I will ask you if it dosen't show there under date of December 20th, a balance of $4.42—December 20th, I suppose that would be

1910? A. That is what it shows without the $2000 item.

Q. One minute. I am merely asking you what it shows.

Mr. English: He is telling you what it shows.

Q. Also on the same page of your check-book, I presume in Mr. Reynold's handwriting, are other figures and items aggregating how much? A. It looks like $1800.

Q. That $1800 represents outstanding checks does it not, or possibly items returned and charged to your account, such as protested checks and protest fees? A. I can't tell what they represent; they don't mean much to me.

Q. Do the items themselves explain what they mean? A. No, sir.

Q. But it is all in the handwriting of Mr. Reynolds, the bookkeeper? A. Yes , sir.

Q. And the aggregate of those several items, deducted from the balance as shown by your check-book, makes the $4.42 which your pass-book shows as your balance as of December 20, 1910? A. That is what the figures appear to show without counting this error of $2000.

Q. That is not in there? A. The error is not there.

Q. I say, those figures of $2000 are not included in these figures of Mr. Reynolds? A. No.

The Court: So that this check-book and this pass-book correspond, do they not, up to that given date?

Mr. Guild: Up to December 20, 1910.

Q. Is that right—the figures appear to correspond? A. Yes, sir, the figures appear to correspond.

Adjourned until to-morrow, Friday, March 19, 1915, at ten o'clock a. m.

FIFTH DAY

ESSEX OYER AND TERMINER,

Friday, March 19, 1915.

Continued pursuant to adjournment.

Present: Counsel as before stated.

JOHN B. SCARLETT, defendant, resumes the stand in his own behalf.

Cross-Examination (continued) by Mr. Guild:

Q. I show you again Exhibit S-20 for identification, which is your check-book of the Roseville Trust Company, and I call your attention to an entry on a stub, stub 28, May 17, 1911, and ask what your check-book shows was your balance? A. I don't understand that.

Q. I ask you what your balance was as entered on your own check-book? A. Oh, the balance? $154.30. Can I explain that? I can't tell the date; there is no date here. There is one opposite the stub; that is March 22, 1912; as to what date that refers to or when that was put down I have no knowledge or cannot tell from this book.

Q. I merely asked you what it showed?

Mr. English: The book is not in evidence.

The Court: Objection sustained.

Mr. English: I move to strike out the answer the witness gave because he was reading from a record not in evidence.

The Court: you are asking him to state the contents of a book which is not offered in evidence.

Mr. Guild: I am willing to offer it myself.

The Court: Mr. English suggested yesterday that if you wanted to put it in evidence he had no objection.

Mr. English: I have no objection.

The book referred to is offered in evidence and marked Ehibit S-26.

Mr. Guild: I ask that the evidence already given stand, if there is no objection.

The Court: It will stand because it went in without objection.

Q. I ask you if on May 16, 1911, your check-book stub No. 27 does not show that you drew a check for $34.10.

Mr. English: I object because the book is in evidence and speaks for itself.

The Court: He may read from the book. Objection overruled.

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)

A. The question asks me if I didn't draw a check?

Q. Does your check-book stub show that on

May 16, 1911, a check was drawn for $34.10 on the Roseville Trust Company? A. Yes, sir.

Q. You had produced yesterday a transcript of your individual ledger account with the Roseville Trust Company, did you not? A. Mr. English produced it. It was given to me by Mr. Vredenburgh.

Q. I call your attention to your individual ledger account with the Roseville Trust Company which is marked Exhibit S-6, and I call your attention to the date of May 9, 1911, and ask you whether your ledger account here does not show on that date a balance of $188.40.

Mr. English: I object. He cannot say.

Mr. Guild: I merely am asking him what it says.

Mr. English: I have no objection to the witness reading opposite the date May 9th, what the figure is, but I do object to the question, and which is necessarily included in the answer, that the ledger account shows a balance of that much, first, because the ledger account is proved to be inaccurate, and second, it was not made by this witness, and he ought not to be bound by any statements that he may make about it.

The Court: The only objection that I see to it is the conclusion that it is a balance. He may, without objection, read the entry opposite the date, but I do not think he should characterize it as a balance.

Q. Opposite the date, May 9, 1911, are the figures $188.40; is that right? A. The figures are there.

Q. And those figures are in the column over which is the word "balance."

Mr. English: I object. It is not there, according to the transcript. That is an effort to have this witness say that this book, about which he knows nothing, shows a balance.

Mr. Guild: No, I am asking him to say what the book shows.

The Court: He is not attempting to state the correctness of this account at all. All he is asked to do is to read from it. He may do so. Objection overruled.

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

H. V. OSBORNE,
Judge.

(Seal)

A. The word "balance" is at the head of that column.

Q. And these figures $188.40 are opposite the date May 9th? A. Yes, sir.

Q. Have you a pencil and paper? A. I have.

Q. Will you put down the figures $188.40? A. Yes, sir.

Q. And you have already said that a check was drawn against your account under date of—at least, the stub shows that a check was drawn on May 16, 1911, of $34.10.

Mr. English: I object to that. He said he hadn't drawn any check. I think the Prosecutor was permitted to let him read what it said. That does not say a check was drawn.

The Court: He said that stub 27 in the check-book was a check for $34.10.

Q. Will you subtract $34.10 from $188.40? A. I make it $152.30.

Q. Try again. A. $153.30.

Q. And those are the same figures that appear as a balance in your check-book stub opposite the date May 17, 1911, are they not?

Mr. English: I object. That is an effort to get into the record what the exhibit itself shows.

The Court: I can see no objection to reading into the record the contents of the exhibit.

Mr. English: I was not permitted to do it.

The Court: When the paper was an exhibit you were.

Mr. English: My recollection is that the ruling was that the exhibit spoke for itself and I was not permitted to have the witness read what the exhibit said.

The Court: The question will be permitted.

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)

(Question read.)

A. Yes, but there is no—

Q. No, answer the question.

Mr. English: He should be permitted to answer it.

The Court: You are asked questions, and if you will just confine your answers to a yes or no answer, when the question is of such a nature that you can answer it

yes or no, answer that way. If it is necessary for you to explain it, if you cannot answer it without an explanation, you may say so.

Mr. English: My contention is that it is entirely proper for him to say in connection with it that there is no date in the check-book. My motion is that the witness be permitted to finish his answer.

(Question read.)

The Court: That is susceptible of a yes or no answer. The motion is denied.

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

H. V. OSBORNE,
Judge.

(Seal)

Mr. Guild: I ask that all of the answer except "yes" be stricken from the record.

The Court: Strike it out.

Q. In whose writing are the figures $154.30? A. That is Mr. Reynolds.

Q. You say you turned in your bank book, your original bank book, to be written up, as I recollect, about February, 1911? A. Yes, February, 1911, I think it was.

Q. And that was because they called your attention to some check or other paper that you had put in that had come back "not good"? A. No, I didn't say that.

Q. Didn't you? A. No.

Q. Some item? A. I said I thought it was some check, a blank check I had in my pocket had been returned by the Roseville Trust Company.

Q. As not good? A. Yes.

Q. Is that right? A. Not good.

Q. You think that may have been a check that you did not take out of your check-book? A. Quite likely.

Q. You were in the habit of doing that, were you not? A. In some cases.

Q. I am speaking now with reference to checks drawn against the Roseville Trust Company account? A. I can't answer that without explaining what you mean by habit

Q. You did it quite frequently? A. It might be three or four times; it might be half a dozen.

Q. And you asked that your bank book be written up so that you could see what your balance was? A. Yes, sir.

Q. The amount, you have stated, that they called your attention to at that time was not a large amount? A. It wasn't a very large amount.

Q. Then you had no reason to suppose at that time that there was any large discrepancy in your account?

Mr. English: Objected to. That is not a fair deduction at all from the previous question. It does not show that there was a large discrepancy. It simply shows that particular check was returned.

The Court: Objection overruled.

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

H. V. OSBORNE,
Judge.

(Seal)

(Question read.)

A. That don't follow at all.

Q. Answer my question. I don't care to have you argue the case now. A. Yes, I had ressons to suppose so.

Q. What steps other than turning in your bank book for balance did you take to ascertain about that discrepancy? A. I never got the pass book back.

Q. I didn't ask you that; I asked you what other steps you took to ascertain about the discrepancy? A. I complained to Mr. Smith about it.

Q. When? A. At the time.

Q. Did you complain to him again? A. I spoke to him about it several times, that there was a difference somewhere.

Q. Did you know that there was a difference? A. Because the check-book didn't agree with the figures that the bank had given.

Q. What figures had the bank given you? A. When they returned this check of mine stating that it was not good.

Q. Did they give you any figures? A. Well, if that little check was not good it showed me conclusively that the figures of the bank differed with my figures.

Q. I asked you if they gave you any figures? A. I don't think they gave me any figures until this duplicate pass-book was handed to me.

Q. That was some months afterwards? A. Yes, sir.

Q. In the meantime had you made any effort to find out what this discrepancy was except to turn in the pass book? A. I put the pass book in.

Q. I ask you whether you took any other steps to ascertain what the discrepancy was?

Objected to.

Objection overruled.

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 spoke to Mr. Smith and complained about it two or three times.

Q. Two or three times in six months? A. I couldn't tell you.

Q. What did he tell you? A. He told me that he was sure the bank was right and the mistake was in the office or somewhere else.

Q. What mistake? A. The mistake that I was referring to.

Q. You haven't referred us to any mistake except that there was a discrepancy. Now, I am trying to find out what the mistake was. This difference in the account.

Q. What was the difference? A. I figured, and my bookkeeper told me, it was something like four to six thousand dollars.

Q. And you said a few moments ago it was a matter of a few dollars. A. I beg pardon; I said nothing of the kind, absolutely nothing of the kind. You tried to get me to say that three or four times.

Q. I didn't try to get you to say anything but the truth. When did you find out there was a difference of from two to four or six thousand dollars? A. When this little check came back, if there was not enough to pay this little check then I knew there must be some large discrepancy.

Q. Then you did have some idea of the amount

of what you thought was erroneously charged against you? A. I told Mr. Smith—

Q. No, I want no talk. You turned your pass book in to have it balanced. Whether you didn't at that time believe there was a discrepancy against you of from two to four or six thousand dollars? A. Yes, sir., I did.

Q. Did you tell Mr. Smith that you believed there was an error against you of from two to four thousand dollars? A. Yes, sir.

Q. And you were not able to get your pass book back? A. That cannot be answered yes or no, Judge, can it?

Q. You were not able to get it back for six months of four months, which ever it was? A. I never got it back until Mr. Vredenburgh handed it to me after the bank was closed.

Q. So you got a substitute pass book at the end of four or six months? A. Yes, sir.

Q. Was it four or was it six? A. I don't remember.

Q. Which do you prefer to make it? You made it six yesterday? A. I said anywhere from three to six months. I know there was quite a lapse of time.

Q. Well, say from three to six. You believed that the bank had improperly charged against you items amounting to $6000 that you were entitled to credit instead of being charged against you, is that right? A. I thought there was this discrepancy in the account amounting to three or five or six thousand dollars.

Q. When you got your duplicate pass book did it straighten out your discrepancy? A. No, sir.

Q. It did not? A. No, sir.

Q. The discrepancy still existed, according to your view of it? A. Yes, sir.

Q. And can you give us about the date when you got your duplicate book? A. No; I am unable to do that.

Q. You can do it approximately? A. I have told you it was some three to six months after this—

Q. Try to give us the date. It is a matter of indifference to me whether you make it three or six months? A. I can't fix the date. Somewhere between three and six months.

Q. Can you say what the month was of the year? A. I didn't get it back myself either.

Q. I know, but you knew about when it came back? A. The book was sent down to Mr. Reynolds.

Q. You knew about it didn't you? A. I think probably I did.?

Q. It involved a matter of from four to six thousand dollars of your money? A. Yes.

Q. Do you mean to say that you didn't take interest enough in it to look at the pass book when it came back? A. I took quite an interest in it.

Q. Then you must have known about when it came back? A. I cannot fix the time within two or three months at this late day.

Q. Fix some time. A. I am not willing to fix the time any closer than three to six months, that the book was sent back.

Q. You sent it in February? A. That would bring it in May or August, 1911.

Q. In that time did you complain to anybody else about this so-called difference in your account? A. Yes.

Q. To whom? A. I think I spoke to several around the office about it, the bookkeeper.

Q. I mean other people connected with the bank? A. I don't think I did.

Q. After you got your duplicate pass book back and it didn't correct what you claim was a discrepancy in your account did you go to Mr. Smith about it? A. I think the subject was brought up two or three times.

Q. What did you say to him? A. I always told him that missing pass book would sooner or later turn up, and it was hopeless for me to try and straighten the matter out until I got it.

Q. The books and records of the bank were open to you at all times, weren't they? A. I never saw them.

Q. They were open so you could go there and look at them if you wanted to? A. I didn't consider it so.

Q. Did you ever ask Mr. Smith to permit you to go over the books or have some one to go over the books with you in order to ascertain where this discrepancy was? A. I don't think so.

Q. You were a director of the bank at that time? A. Yes, sir.

Q. Did you ever speak to the president about your alleged discrepancy? A. I don't think so.

Q. Or any other director? A. At that time?

Q. Yes. A. Not at that time, I don't think so.

Q. And after you got back your duplicate pass book did you speak to any director of president or officer other than Smith about it? A. It seems to me I spoke about there being some difference in my account, but who spoke I couldn't recall.

Q. Mr. James Hanister was a director in the Roseville Trust Company, was he not? A. Yes, sir.

Q. Was he a member of the executive committee? A. I think not.

Q. Was he a member of the finance committee? A. I think not.

Q. Was he a member of the examining committee? A. He was at one time; I don't know the date.

Q. Did he not, in May or June, 1913, call to see you regarding your account with the Roseville Trust Company?

Objected to.

Q. Regarding your loans and account with the Roseville Trust Company?

Mr. English: I object to that. It is a matter after the check laid in the indictment. What he did after the date in the indictment is immaterial. He is simply asked now whether Mr. Banister came to see him regarding that account.

By the Court. Q. Did he call or didn't he? A. He called to see me.

By Mr. Guild: Q. Now, at that time did you make any complaint to him about this alleged discrepancy?

Mr. English: I object to that because it is long after the material date set out in the indictment.

Mr. Guild: The witness still claims that the discrepancy was there at that time.

The Court: I will overrule the objection.

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

H. V. OSBORNE,
Judge.

(Seal)

A. I don't recall that that matter was brought up.

Q. It is a fact, Mr. Scarlett, is it not, that your own personal checks against your account in the Roseville Trust Company were checks that you had either cashed or deposited and had come back not good and were held from time to time by the bank?

Mr. English: I object because there is no date fixed.

The Court: I think the date should be fixed.

Q. Prior to October 25, 1912, the alleged date of that trust agreement, prior to that, that your checks had been held, your own checks that you har used outside were not good, came into the Roseville Trust Company, checks that you had either cashed or deposited that came back, that were held because your account was not good for them.

Mr. English: I object. It is not material what happened months before the indictment.

The Court: Objection overruled.

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

H. V. OSBORNE,
Judge.

(Seal)

A. I have referred to one check, and that is the only recollection I have.

Q. What check do you refer to? A. This check that was returned that drew my attention in the discrepancy in the account.

Q. I ask you whether, in your testimony given in the R. E. Smith bankruptcy proceeding, to which reference has already been made, you did not answer to a question: "I gave Smith some checks to hold until my account was good for it pending this discrepancy."

Mr. English: I object unless the time is fixed.

Q. The time you claimed you discovered this discrepancy, which was in February, 1911. Did you not give that testimony? A. You mean Mr. Smith personally to hold—

Q. I ask you whether you did not give that answer. A. I can't remember.

Q. In the same examination you were asked: "Now, the time you were having the dispute about the amount of your account you say that Smith had some of your checks and held them; is that right?" And wasn't your answer, "Well, now, I don't know. It seems to me there may have been some instances of that kind, but I think in the majority of the instances he cashed checks for me himself personally." Did you give that answer? A. That is substantially correct.

Q. You were asked the question: "All you know is you got the cash?" And your answer was, "Yes, all I know is I got the cash." A. I think that is hardly correct.

Q. Did you give that answer or didn't you; that is all I want to know. A. It may be substantially correct.

Q. I want to know whether you didn't make that answer. You may say yes or no. A. I will accept it, that I gave the answer that way if the stenographer has it down that way. I don't remember.

Q. Another question: "Tell us what took place

on any particular occasion in reference to having your check cashed?" Did you not answer, "Why, I would ask Mr. Smith if he would accommodate me personally to a loan and how he would like to have the transaction fixed." Did you give that answer? A. I don't remember that.

Q. And you were asked, "And what would he say?" Did you not answer, "Sometimes he gave me a personal check for it, I think, and sometimes he said, 'Well, give me your check and I will hold it until the account is good for it." Did you not say that? A. I don't remember that. I can't remember the details of a conversation that took place a year or two ago.

The Court: You are not asked whether you can remember the details of a conversation a year or two ago; you are asked whether you recall that testimony given at a hearing.

Witness: This took place a year and a half ago.

Q. If you don't remember say so. A. I can't recall the exact words of my testimony a year and a half ago.

Q. You were asked; "Wouldn't the checks come back after they were cashed" And did you not answer. "No, he kept the checks until the account was good or I gave him the cash." A. I don't recall that.

Q. Will you say you didn't say that? A. No; I say I don't remember that.

Q. "Q. Did you ever give him any cash?" A. I will tell you. I was waiting to get the statement of the discrepancy of my account, when I wished to have these checks paid to Smith." Did you or did you not say that? A. I don't remem-

ber. I would accept the stenographer's version of it.

Q. Then you say you did give that answer? A. I say I don't remember the exact words of my testimony in the Smith bankruptcy matter, but I would accept the stenographer's version of it.

Q. As correct? A. As substantially correct.

Q. You were asked; "You mean when Smith cashed a check for you he would be entitled to draw from your account from the Roseville Trust Company to make it good?" Did you not answer, "Yes, if Smith cashed me a check I gave him a check on the Roseville Trust Company and he agreed to hold it until it was good or they would be good." Was your answer to that, "No, sir." Did you not give that answer? A. I think there is a little omission.

Q. I ask you whether you gave that answer or not? A. I think not.

Q. "Q. You would draw the check against your account whether or no you had the funds and he would cash them?" And did you not answer, "Yes, personally." A. I think there is some omissions in that.

Q. I ask you whether you did give that answer or not? A. I think not.

Q. Questioned by the Referee in this bankruptcy matter were you asked; "Are there checks in this book drawn to the order of Smith?" Did you not answer, "No, sir." A. I don't remember that question.

Q. "Your checks that were referred to by you in your testimony this morning?" Did you answer, "There are no checks there." A. I can't tell you that.

Q. "I mean stubs of checks, stubs of some of the checks that I referred to in my testimony would be in that book." Did you give that answer? A. I don't remember; I think probably.

Q. "Q. Checks that were held by Smith pending a time when you would make them good or something to that effect, that was your testimony, wasn't it?" And did you not answer, "Pending the time when this discrepancy was adjusted and if it was straightened out they would be good." A. I think I quite remember that.

Q. How long had you known Mr. Smith?

Mr. English: Prior to what date?

A. I can't fix the date. Mr. Smith's father used to be president of the—

Q. I merely asked you how long you have known Mr. Smith?

Mr. English: It depends when he started from. I think some time ought to be fixed with reference to this question.

A. Known who he was or known him personally and intimately.

Q. Well, known him to speak to as an acquaintance? A. I had a nodding acquaintance with Mr. Smith when he was up in the bank in Orange. I don't know how many years ago it was. It was a good many years ago.

Q. Had you ever had any business relations with him prior to his being connected with the Roseville Trust Company? A. No, sir; I say no—it might have been that he may have cashed a check for me while he was up in the bank in Orange in the ordinary course of business.

Q. Were you on friendly terms, were you friends socially before he went to the Roseville Trust Company? A. No, sir.

Q. Were you after that? A. Well, there was rather a bond of friendship came up between all the directors and Mr. Smith—

Q. I am merely asking about Mr. Smith.

The Court: Answer the question. Listen to the questions and answer them.

(Question read.)

A. Socially?

Q. That was the question. A. No, sir.

Q. Were you business friends? A. I felt we were fairly good business friends.

Q. These different transactions that you have told us about, which were about his lending you money, which you say he did, and his negotiating the two notes, the Spinoza and Sica notes, Exhibits S-21 and S-22, did you keep any record of those transactions? A. I think I had a record of them.

Q. Have you the memorandum now? A. No, the trustee in bankruptcy came into my office and took all of my papers and one thing and another away.

Q. You claim that Mr. Smith made you loans personally—that is, it was his money? A. That is what he said.

Q. Did you keep any account of those transactions? A. Yes, there was a memorandum in Mr. Smith's handwriting and some of it in my handwriting that was in that check-book that you took from the trustee in bankruptcy.

Q. Who took it from the trustee in bankruptcy? A. The prosecutor's office.

Q. (Indicating a book.) You mean this check-book here? A. Yes, sir.

Q. You mean Exhibit S-26? A. That is the book.

Q. Is that the book you refer to? A. This is the book.

Q. I ask you whether in your examination in the Smith bankruptcy matter you were asked this question: "And what was the nature of that transaction?" Did you not answer, "Loans that Smith made to me personally." A. I presume you refer to the transaction of October 25, 1912.

Q. 1912 is the only date given. A. It must refer to that transaction.

Q. Yes, probably, and your answer was: "Loans that Smith made me personally." A. I think that would have been my answer.

Q. "Q. Can you give us the amount? A. I cannot. I had confidence in Mr. Smith and relied upon him to keep track of our business transactions." A. I think I remember making such an answer.

Q. How much money did Mr. Smith, as you say, loan you of his personal funds? A. I can't tell you.

Q. Why not? A. I don't know what became of the money on the $2500 note.

Q. Which note is that? A. I gave Mr. Smith the security—

Q. One moment. You refer to the Sica note? A. Yes.

Q. Endorsed by Long? A. Yes.

Q. You say you don't know what became of the proceeds of that note? A. No, I do not.

Q. Do you know Mr. Long's signature? A. I think I would recognize it.

Q. I show you Exhibit S-20, being a treasurer's check of the Roseville Trust Company, dated July 21, 1912, for $2475, payable to the order of John

H. Long, and ask you whether the endorsement on that check is not John H. Long's signature? A. I think so. It looks like it.

Q. Didn't he bring you the cash for that check? A. No, sir.

Q. You have stated in your testimony that you had agreed to be responsible for those two notes S-21 and S-22? A. Yes, sir.

Q. Do you mean by that that you guaranteed their payment? A. Yes, sir, and I gave security.

Q. Have they been paid?

Objected to as immaterial.

Q. By you? A. I understand that is objected to, it is immaterial.

Mr. Guild: I understand counsel withdrew his objection until his client looked at him.

Mr. English: No, I still object.

Q. Have they been paid by you individually?

Objected to.

Mr. Guild: It is part of his direct testimony that he guaranteed the payment of these notes and I want to know whether he has paid them.

The Court: Does that make any difference?

Mr. Guild: Yes, because it will be claimed by the State that these transactions of Smith were the transactions with the bank. That is how it is material.

The Court: From that aspect I think it may be competent.

Mr. English: The evidence is that these notes have been sold to the Mutual Bank of Roseville; Mr. Vrendenburgh testified to that, that they have been sold by

him, he standing in the shoes of the Roseville Trust Company, to the Mutual Bank of Roseville, and are now held by it. Mr. Scarlett was a guarantor; he wasn't the maker; it is utterly immaterial whether as a guarantor he paid them. He simply says, "If the maker does not pay I will. It is utterly immaterial."

The Court: I will permit the question as it is asked by the State.

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

H. V. OSBORNE,
Judge.

(Seal)

A. They have not been paid by me.

Q. You say you don't know what became of the proceeds of the Sica $2500 note? A. No, sir.

Q. Which was originally made by Reynolds. You knew that the notes were being renewed, did you not, from time to time? A. I know there was two Reynolds.

Q. I ask you, Mr. Scarlett, whether you didn't know that the notes were being renewed from time to time, whether it was one time or two times? A. Yes, sir.

Q. Did you ever make any inquiries of what became of the $2500? A. I supposed it would be placed to my credit.

The Court: That is not the question. The question is whether you made any inquiry.

Witness: No, sir.

Q. In what form was your guarantee? A. It was included in the declaration of trust.

Q. And the original note was given when—do you remember the date—the note which is now represented by Exhibit S-1? A. I don't remember the exact date. It was somewhere around September.

Q. What year? A. The declaration of trust was October 25, 1912; that would have been 1912.

Q. But what month?

Mr. English: September, he said.

A. I think somewhere around September or August.

Q. August or September, 1912? A. I think so. You have all my memorandums.

Q. No, I haven't your memorandum. A. Well, they were taken away from me.

Q. I will not discuss that with you. You executed the declaration of trust the 25th of October? A. 1912, which was some months after the original $2500 note was given? A. Yes, sir.

Q. And the declaration of trust included the $2500 note? A. Yes, sir.

Q. Did you compensate Mr. Smith in money or in any other way for these accommodations he made you? A. I was to pay him interest on the money he loaned me.

Q. Did you pay him interest on the money he loaned you? A. No definite sum has been paid for interest on the money that he has loaned me as yet.

Q. When did you ever make any agreement to pay him interest? A. When he loaned me the money.

Q. When he loaned you the money? A. Yes.

Q. I show you Exhibits S-5, S-13 and S-15, being respectively your checks for $350, $400 and $500 which you say Mr. Smith made good for you

at the Roseville Trust Company Bank? A. I didn't say that, if you please.

Q. You didn't say that? A. I said Mr. Smith loaned me the money, loaned me this money; he agreed to deposit this—

Q. Never mind. Did you pay him anything for loaning you the money on those checks—money represented by those checks? A. No.

Q. Did you compensate him in any way for it? A. No, sir.

Q. Why did you say so? A. I was to pay Mr. Smith on the amount of the loans.

Q. Including these checks? A. Including these checks, certainly.

Q. Nothing was said about those particular loans? A. Yes, they were all included.

Q. When did you have this understanding with him? A. It was the original understanding when Mr. Smith first started to make me loans.

Q. When was that? A. That was sometime in 1912.

Q. Did you ever pay him any interest? A. No.

Q. Did you ever have any settlement with him at all of the interest account? A. No.

Q. Did he ever ask you for any interest? A. I don't recall that he did.

Q. Did you ever offer to pay him any interest? A. Actual money interest?

Q. Yes? A. I think not.

Q. The amount named in the trust deed is $9700? A. Yes, sir.

Q. Any interest included in that amount? A. Interest was to be paid on the loans.

Q. I ask you whether any interest on these different loans that you have spoken about is in-

cluded in the $9700 mentioned in the trust agreement? A. As that is made up?

Q. Yes. A. Not as that is made up.

Q. You were a director of the Roseville Trust Company in July, 1912? A. Yes, sir.

Q. Were the $2500 note, which was at that time the Reynolds' note, and the Spinoza note given at the same time? A. I could tell if I looked at the notes, perhaps. I don't think they were. (After examining paper.) No, I can't tell from the notes.

Q. At any event, you were a director when those two original notes were negotiated? A. Yes, sir.

Q. You had a loan at that time with the Roseville Trust Company? A. Yes, sir.

Q. How much? A. I think there was one demand loan of $10,000.

Q. Any other loan? A. There might have been that Stephenson, Rye note. What the amount of it was I can't tell at this time.

Q. In order for a director to put a loan through the Roseville Trust Company it was necessary that it should be submitted to the Board of Directors, was it not? A. Yes, sir.

Q. Had you been keeping up your notes on your $10,000 loan at that time, July, 1912?

Mr. English: I object to that as immaterial.

The Court: Objection overruled.

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

V. S. OSBORNE,

(Seal) Judge.

A. I don't know whether it was all paid or not.

Q. You pledged as collateral for that loan some life insurance, did you? A. Yes, sir.

Q. Did you yourself pay the premium on the policy after it was pledged to the trust company? A. I think not.

Q. And the Trust Company had to advance the premium, did it not? A. I don't know.

Q. In any event you didn't pay it? A. Not by my own draft or check.

Q. What was the annual premium? A. I think the anual premium, less the dividend, would have have been eight hundred odd dollars.

Q. Because you were a director at the time, those two notes, the Reynolds' note and the Spinoza note, were negotiated and you would have to apply to the directors for the loan, isn't that the reason you resorted to the notes being made by Spinoza and Reynolds and negotiated as they were negotiated? A. No, sir.

Q. Do you not know as a matter of fact that the trust company paid the premium on your life insurance which was pledged for the payment of your note? A. No, I don't know of my own knowledge.

Q. Have you paid that note? A. What is that?

Q. The $10,000 note? A. I don't know what the status of the $10,000 note is.

Objected to.

Q. I am asking you whether you paid it.

Objected to as immaterial?

The Court: How is it material?

Mr. Guild: To show his financial relations with the bank.

The Court: That note does not come in the disputed items. That is a note which

is admittedly owing to the bank. I think it is in a different class with the transactions which he claimed were personal between himself and Smith.

Objection sustained.

Q. Up to the time the $350 check, which is the check in the indictment, was certified and paid had you paid the note of $10,000 held by the trust company?

Mr. English: I object to that. That is the same question your Honor ruled out this morning.

The Court : I will permit this 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. OSBORNE,
(Seal) Judge.

A. No, the note was unpaid at that date. It was a due note and—

Q. I didn't ask you that. I merely asked you if you had paid the note. You said no, if I understand you; is that right? A. I said no.

Q. You have stated that you went into bankruptcy.

Mr. English: He didn't say that.

A. I was forced into bankruptcy.

Q. When did that take place? A. Sometime just prior to January 1, 1914.

Q.That was after the failure of the trust company? A. Yes, sir.

Q. In March, 1913, where did you reside in Newark? A. The same residence where I reside now.

Q. (Question read.)

The Court: Give the address.

Witness: The same address.

The Court: Can you not tell us the address?

Witness: 47 Johnson Avenue.

Q. I call your atention to your letter of March 17, 1913, marked Exhibit S-12, and call your attention to the last paragraph in the letter which reads, "Will send statement up this p. m." What statement did you refer to? A. A copy of the statement that I had originally given the Roseville Trust Company.

Q. A copy of the statement? A. Yes.

Q. Did you send up such a statement, the statement referred to in your letter of March 17th? A. I think so.

Q. When? A. I can't give you the date.

Q. Soon afterward? A. I think so.

By the Court: Q. That was a copy of that statement that you had already given? A. It was a copy of an original statement that I gave them two or three years previously or so that had been mislaid or lost.

Q. Hadn't they asked you for a statement of your financial condition as of the date of March 17, 1913, or about that time? A. They asked me for a copy of the statement that had been mislaid at the bank and asked me if I would bring it down to date as soon as I could.

Q. Bring it down to date? A. Yes.

Q. So that it would show your condition as of the date you sent up the statement referred to in your letter? A. If I could do so.

Q. And the statement that you did send up was intended to represent your condition at that time, was it not? A. I wouldn't say that.

Q. What would you say? A. It was a copy of the statement sent up two years previously, which, from my recollection, I made deductions from in an effort to bring it down to date, which I did not pretend to say was an accurate statement of the precise condition of my exact financial condition at that time.

Q. What was the object of giving it? A. They had lost this statement originally.

Q. Do you mean to say that you were not getting up the statement to show what your financial condition was? A. Not with a degree of accuracy.

Q. Did it accurately state your then condition? A. I say I couldn't guarantee that it accurately stated the financial condition at that time.

Q. Were the items in the statement that you submitted true? A. As near as I could ascertain them.

Q. I show you a paper which is headed "Statement John B. Scarlett," has the name of John B. Scarlett attached to it, and ask you if that is the paper that you sent up in response to the request of the bank and whether the signature to that paper is yours, and I merely want you to answer yes or no without any comment? A. I can't answer yes or no.

Mr. English: There are two questions there.

Q. I will divide it. I will ask you if that is the paper sent to them in March, 1913? A. Yes, sir, pinned on to another sheet.

Q. And the signature to that paper is your signature? A. Yes, sir.

Marked Exhibit S-27 for identification.

New Jersey State Library

The Court: Is that statement dated?

Mr. Guild: Yes, it is dated March 15, 1913.

Q. That is correct, is it not? A. Yes, sir.

Q. I show you a check dated July 23, 1912, numbered 34, drawn on the Roseville Trust Company, payable to the order of John B. Scarlett, $500, and certified, and ask you whether you signed that check? A. That is my signature.

Q. Did you endorse it? A. Yes, sir.

Q. Did you use it?

Mr. English: I object. If there is any connection betwen this check and anything else in this case it is proper, but I don't think it has any connection with anything else.

Mr. Guild: If the Court please, I have no hesitation in saying the purpose of this is—

Mr. English: I don't care to have the purpose come out.

Mr. Guild: The purpose of this evidence is to show that these checks represent moneys that were drawn by Mr. Scarlett out of the Roseville Trust Company and that the checks have never been paid, and it goes to meet his claim that the discrepancy was to his credit. We propose to show that he had no balance there.

Mr. English: I say that it has no bearing unless they go further and show that they were not charged with his knowledge or connivance.

The Court: I will permit 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. OSBORNE,
(Seal) Judge.

By the Court: Q. Did you use this check which has been shown to you? A. Yes, sir.

Marked S-28 for identification.

By Mr. Guild: Q. I show you check dated July 21, 1913, numbered 42, drawn on the Roseville Trust Company, $82, and ask you whether the check bears your signature?

Mr. English: I object. That is after the date in the indictment and it is utterly immaterial. He ought not to be questioned about it at all.

Mr. Guild: The date is January.

The Court: (After examining paper.) January 21, 1913.

Q. Was the check signed by you? A. Yes, sir.

Q. Drawn against your account in the Roseville Trust Company?

Mr. English: I make the same objection as 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.

H. V. OSBORNE,
(Seal) Judge.

A. It was money loaned me by Mr. Smith.

Q. I ask you whether it was drawn against your account in the Roseville Trust Company? A. Drawn on the Roseville Trust Company.

Q. Drawn on your account in the Roseville Trust Company? A. Yes, sir.

Q. The check is marked certified? A. Yes, sir.

Marked Exhibit S-29 for identification.

Q. I show you a check dated January 21, 1913, numbered 43, for $26, payable to the order of K. of P. B. & L. Assoc., drawn on the Roseville Trust Company and ask you whether that check is signed by you? A. Yes, sir.

Q. And whether it is a check drawn against your account in the Roseville Trust Company? A. Yes, sir.

Mr. English: I make the same objection to this.

The Court: It is understood that you object to all this line of testimony and you may have an exception covering this whole line of testimony.

Exception allowed, let it be sealed and signed accordingly.

H. V. OSBORNE,
Judge.

(Seal)

A. It is drawn on the Roseville Trust Company.

Q. Drawn on your account in the Roseville Trust Company? A. Yes, sir.

Marked Exhibit S-30 for identification.

Q. I show you a check dated January 29, 1913, numbered 46, drawn on the Roseville Trust Company to the order of Thomas A. Webb, for $50, and ask you whether that check bears your signature? A. Yes, sir.

Q. Drawn against your account in the Roseville Trust Company? A. Yes, sir.

Q. And the check is certified? A. Yes, sir.

Marked Exhibit S-31 for identification.

Q. I show you check dated January 29, 1913, numbered 45, drawn on the Roseville Trust Company to the order of Lehigh Valley R. R. Co., $89.95, and ask you whether that check is signed by you? A. Yes, sir.

Q. And drawn against your account in the Roseville Trust Company? A. Yes, sir.

Q. Is the check certified? A. Yes, sir.

Marked Exhibit S-32 for identification.

Q. I show you check dated February 13, 1913, numbered 47, drawn on the Roseville Trust Company, to the order of N. R. Sica, for $125 and ask you whether that check bears your signature? A. Yes, sir.

Q. And drawn against your account in the Roseville Trust Company? A. Yes, sir.

Marked Exhibit S-33 for identification.

Q. I show you check dated February 13, 1913, numbered 48, drawn on the Roseville Trust Company, to the order of Lehigh Valley R. R. Co., for $86.92, and ask you whether that check bears your signature? A. Yes, sir. Isn't this the same check?

Q. No. A. Are there two to the Lehigh Valley?

Q. Yes. A. This check has my signature.

Q. The check is certified? A. Yes, sir.

Q. And drawn against your account in the Roseville Trust Company? A. Drawn on the Roseville Trust Company.

Marked Exhibit S-34 for identification.

Q. I show you check dated February 21, 1913, numbered 50, drawn on the Roseville Trust Company, payable to the order of John B. Scarlett for $400. Is the signature to that check your signature? A. Yes, sir.

Q. Drawn against your account in the Roseville Trust Company? A. Yes, sir.

Q. Is the check certified? A. Yes, sir.

Q. Is the check endorsed by you? A. Yes, sir.

Marked Exhibit S-35 for identification.

Q. I show you a check dated March 11, 1913, numbered 52, on the Roseville Trust Company to the order of John B. Scarlett for $100. Is the signature to that check your signature? A. Yes, sir.

Q. Drawn against your account in the Roseville Trust Company? A. Yes, sir.

Marked Exhibit S-36 for identification.

Q. I show you check dated March 13, 1913, numbered 53, drawn on Roseville Trust Company, to the order of John B. Scarlett for $90. Is the signature on that check your signature? A. Yes, sir.

Q. Does the check bear your endorsement? A. Yes, sir.

Q. Is the check certified? A. Yes, sir.

Marked Exhibit S-37 for identification.

Q. I show you check dated March 17, 1913, numbered 55, drawn on the Roseville Trust Company to the order of John B. Scarlett for $100. Is the signature to that check your signature?

Mr. English: I object. That was drawn before the date set out in the indictment.

The Court: Objection overruled.

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

H. V. OSBORNE,
Judge.

(Seal)

Q. Was that endorsed by you? A. Yes, sir.

Q. Is the check certified? A. Yes, sir.

Q. And drawn against your account in the Roseville Trust Company? A. Account in the Roseville Trust Company.

Q. I didn't ask you that; I asked you whether the check was drawn against your account in the Roseville Trust Company? A. Yes, sir.

Marked Exhibit S-38 for identification.

Q. I show you a check dated August 15, 1912, drawn on the Metuchen National Bank to the order of John B. Scarlett for $350 and signed by the Middlesex Hat Company, Nicholas R. Sica, treasurer, and ask you whether your endorsement appears on that check?

Mr. English: The question is whether his signature is on the back?

Mr. Guild: Yes.

A. Yes, sir, my name is on the back of it.

Marked Exhibit S-39 for identification.

Q. I show you a check dated Torrington, Connecticut, Oct. 23, 1911, drawn on the Brooks National Bank to the order of John B. Scarlett for $650, and ask you whether the signature to that check is your signature? A. Yes, sir.

Q. Does the check bear your endorsement? A. Yes, sir.

Marked Exhibit S-40 for identification.

Q. I show you check dated Fall River, Mass., October 3, 1911, on B. M. C. Durfee Safe Deposit and Trust Company, drawn to the order of John B. Scarlett, for $650. Is the signature to that check your signature? A. Yes, sir.

Q. Does the check bear your endorsement? A. Yes, sir.

Marked Exhibit S-41 for identification.

Q. I show you a check dated Newark, N. J., March 21, 1912, the Broad & Market National Bank, drawn to the order of John B. Scarlett, for $150. Is the signature to that check your signature? A. Yes, sir.

Q. Does the check bear your endorsement? A. Yes, sir.

Marked Exhibit S-42 for identification.

Q. I show you a check dated Newark, N. J., dated December 20, 1912, on the Roseville Trust Company, "Pay to the order of cash," no number on the check, $500. Is the signature to that check you signature? A. Yes, sir.

Q. Drawn against your account in the Roseville Trust Company? A. Yes, sir.

Q. There are some numbers on that check, Mr. Scarlett, have they anything to do with the check number? A. I don't think so.

Marked Exhibit S-43 for identification.

RE-DIRECT-EXAMINATION by Mr. English:

Q. Mr. Scarlett, just take the check-book now in evidence as S-26 and turn to an entry of $154.30, opposite check stub No. 28. A. Yes, sir.

Q. You were questioned about that and not permitted to explain the answer which you made at that time, that the balance there shown was $154.30. Have you any other explanation to make about that entry or anything further to say about it? A. Yes, sir.

Q. What is it? A. This balance was taken from the duplicate deposit book that was given to my bookkeeper by myself when the original pass book had been held back from the bank—

Mr. Guild: There is no evidence that it was held back by the bank.

The Court: The characterization is objected to.

Q. It didn't come back from the bank—put it that way? A. It didn't come back from the bank. My bookkeeeper told me—

Objected to.

Objection sustained.

Q. Have you finished your explanation about that, that it shows the balance that was shown in this duplicate pass book when it came back? A. Yes. No figures are made previous to that date in any attempt to strike a balance; that is the time when this discrepancy occurred, and I merely took the bank's statement for the balance as returned on this duplicate pass book as being correct and started from this time.

Q. You made no further entries in your book? A. No; I started fresh from this time.

By the Court: Q. What date is that? A. There is no date. It would be around May or June.

By Mr. English: Q. Of what year? A. 1911.

Q. You were asked why you believe, in February of 1911, Mr. Smith called your attention to the fact that some check had not gone through properly, that there was a discrepancy of from four to six thousand dollars, and you were not permitted to finish your explanation of that. What is the explanation of why you believed that? A. From the entries made in the check-book. The check book showed that I should have had considerable money there.

Q. Why didn't the duplicate pass book straighten out the discrepancy? A. Because that started

with a balance forward and had no reference to previous transactions.

By the Court: Q. That is when you speak of a balance forward you are speaking of this balance of $154.30? A. Yes, sir.

By Mr. English: Q. You were asked by the Prosecutor if you had kept any memorandum of Mr. Smith's loans to you and you said there was a memorandum partly in his handwriting and partly in yours in the check book. When did you last see that memorandum? A. The last time I saw the memorandum was when Mr. Smith was sent down to me by Mr. Vredenburgh to make an appointment with me to meet him at the office of Pitney, Hardin & Skinner.

Q. And in whose possession was the check book at that time? A. My possession.

Q. Had you been forced into bankruptcy at that time? A. No, sir.

Q. How long after that time was it that these bankruptcy proceedings were brought? A. Four months, about.

Q. And upon the institution of the bankruptcy proceedings a trustee was appointed? A. Yes, sir.

Q. Who was that? A. Spalding Frazer.

Q. At present City counsel? A. Yes, sir.

Q. What became of your various papers, books, and memorandum and other papers after the appointment of Frazer as trustee. A. He took them over to his office.

Q. Did he take this check book among others? A. Yes, sir.

Q. Was the memorandum in the check book at that time? A. Yes, sir.

Q. When, after the check-book was turned over to Mr. Frazer, did you see it again? A. In court, Monday.

Q. From the date when he took them down to the date of this trial did you make any effort to get them? A. Yes, sir.

Q. When? A. About ten days before this case was set for trial.

Q. Within the last few weeks? A. Wihtin the last two weeks.

Q. Did you receive from him those various books and papers? A. No, sir.

Q. Why not? A. He promised he would let me have them, told me to come in on a certain day to get them.

Q. Did you get them? A. No.

Q. Why? A. He told me that Detective Hargan had gone down and taken them away.

Q. (Indicating) This gentleman? A. Yes, sir.

Q. So you couldn't get them from Mr. Frazer? A. No, sir.

Q. Have you succeeded in getting the check book since or the memorandum?

Mr. Guild: One moment. There is a suggestion that he has not had an opportunity to examine this check book. Counsel is trying to give the jury the impression that Mr. Scarlett was prevented from looking at the book.

Q. What was the nature of the memorandum? A. A memorandum on a piece of pad paper that I kept in between the leaves of the check book.

Q. The memorandum wasn't made on the check itself? A. No.

Q. It was a separate piece of paper? A. A

piece of paper like this (indicating) and it was kept in the leaves of the book that way. It showed—

Mr. Guild: Never mind.

Q. Now, some reference has been made to the payment of interest to you by Smith of loans made by him to you. Was that the agreement? A. Yes, sir.

Q. And was it so set forth in the declaration of trust? A. I think so.

Q. I show you Exhibit D-29 which you say is your copy of this which is signed by you? A. Yes, sir.

Mr. Guild: The declaration of trust speaks for itself.

The Court: The statement of the witness would necessarily be a conclusion. If you wish to have the contents of that instrument, which speaks for itself, you may read it to the jury, but you cannot get the witness to state his conclusion as to what it states. It is in evidence.

Q. Now, I call your attention to the declaration of trust, D-29, signed by you and the others, and ask you to read from that part of the second page which appears at the top of the page, beginning down first at the bottom of the preceding page to connect up the sense of the thing—in trust, $9,700 in trust," and then go on. A. (Reading) "In trust as security for the said Raymond E. Smith and upon the payment by the said John B. Scarlett to Raymond E. Smith of the amount of money so advanced together with interest thereon."

Q. You were asked why, as a matter of fact,

you haven't squared up the interest with Mr. Smith. Why? A. Only a short time after this arrangement was made Mr. Smith left town and this bank was closed.

Q. Some reference was made to a loan of $10,000 from the trust company to you. Was that loan presented to the Board of Directors and passed upon by them? A. Yes, sir.

Q. Some reference was also made to a Stephenson Rye & Company loan from the trust company to that company, I assume; is that right? A. Yes, sir.

Q. In connection with the $10,000 which the Prosecutor asked you about you mentioned the Stephenson Rye & Company. What was the situation with reference to any loan to it? A. It was a loan that the trust company made to me upon a note of Stephenson Rye & Company.

Q. Did that loan go through the Board of Directors? A. Yes, sir.

Mr. English: I have here the minute book produced by the State. I would like to offer the minute book in evidence.

Marked Exhibit D-40.

Mr. English: And I see in the book, physically detached from the book, minutes of Executive Committee meetings.

The Court: The question is whether they are part of the minutes.

Mr. Guild: They are part of the book.

Marked Exhibit D-41.

Mr. English: I would like to have Exhibit S-27 for identification.

Mr. Guild: I will ask for a ruling by the Court on that.

Mr. English: Will your Honor direct the Prosecutor to hand it to me so I can frame a question.

The Court: No, I don't know that that is a paper that you would be entitled to have.

Mr. English: What is the date of it?

The Court: March 15, 1913.

Q. You were asked about a financial statement dated March 15, 1913, marked Exhibit S-27 for identification, and you started to say, until you were interrupted, that there was another paper pinned to it. What was that other paper? A. I think there were one or two other sheets pinned to it. That gave the statement of some of these other companies as of the date which they were named.

Q. Did it refer to and have bearing upon the statement S-27 for identification? A. Yes, sir.

Q. And part of the same general statement? A. Was a part of the same thing.

Q. You were examined, I think, yesterday upon a claim of $5,701.30 which you filed with the Roseville Trust Company, but you were not permitted to explain how the claim was made up or why it was fixed at that amount. Will you explain that? First tell me when the claim was filed? A. My recollection is the claim was filed around the 1st of December.

Q. Of 1913? A. Of 1913. I had on later, if I may be permitted to explain it, from Mr. Vredenburgh—that is, it was a circular form of letter that unless the claim was presented about the 1st of December—I am not exactly sure about the date, but about that time—it would be barred and the dealer could not make any further claim.

Q. It was a circular letter to depositors of the bank? A. Yes, sir. I called on Mr. Vredenburgh shortly after receipt of that letter, several days prior to the filing of the claim, and I reminded him that he had made an arragement with me several times about going over the account, and he said yes, but he didn't have the time, had not had the time. "Well," I says, "Mr. Vredenburgh, it is an impossibility for me to make up"—

Mr. Mott: I object to this conversation with Mr. Vredenburgh.

After discussion, objection withdrawn.

A. (Continuing)—"the exact amount of my claim until we can go over the account together."

Q. What did he say, if anything? A. He said, "I am sorry I can't help you with it"; he said, "there is no doubt at all in my mind"—

Mr. Guild: Are we going to have him say what was in somebody's mind?

By the Court: Q. Mr. Vredenburgh said all this? A. Yes, every word of it. Mr. Vredenburgh said, "There is no doubt in my mind whatever that you are entitled to this credit of $5,700. If I was on the jury to decide this case I should decide to give you credit for $5,700." I said, "What is your suggestion, Mr. Vredenburgh, shall I file my claim for $5,700 plus the $1.30 that you make the balance? It is hardly satisfactory for me to do so." He says, "I don't see anything else for you to do, Mr. Scarlett, and if you don't file your claim you will be barred."

By Mr. English: Q. Following that you made up the claim and filed it? A. Yes, sir.

Q. At that time had you been able to straighten out, as you express it, your account in the Roseville Trust Company? A. I had not.

Q. What efforts had you made to straighten it out and with whom? A. I made efforts to get it straightened out with Mr. Vredenburgh; my attorney, Mr. Dotto, made efforts to get it straightened out with Mr. Vredenburgh —

Mr. Mott: I ask that that be striken out.

By the Court: Q. Was it in your presence? A. Yes, sir.

Mr. English: He apparently has personal knowledge of the efforts.

Q. You made efforts and Dotto made efforts in your presence, and what else? A. And I also made efforts with Mr. Morgan, of Pitney, Hardin & Skinner, who represented the banking department.

Q. Was Mr. Vredenburgh there that time? A. At one interview, yes.

Q. As a result of all these efforts could you get the thing straightened out, or did you, in fact? A. No, the only excuse I got, "We are so busy, we haven't got time, Mr. Scarlett, we will do that later on." I would like to say another thing: I consulted with Mr. Morgan, of Pitney, Hardin & Skinner, with reference to putting in my claim of $5,700, and Mr. Morgan said—

Mr. Mott: I object. He has gotten off to a conversation with a lawyer.

The Court: Objection sustained.

Q. In connection with your cross-examination dealing with this claim you were asked if Mr. Vredenburgh had afterwards rejected it and you said he said something and you were interrupted. What else did you want to say? A. He didn't reject it until the day before the indictment was returned against me. On every occasion previous

to that, when I have seen Mr. Vredenburgh, he assured me that I should have that credit on every occasion, and there were many of them.

Q. Now, I show you a letter dated January 29, 1914, the signature of which I cannot read, but which I understand is Mr. Vredenburgh's, signed by somebody "Special Assistant Deputy Commissioner Department of Banking and Insurance," on a letterhead of the Roseville Trust Company, with the words "In liquidation" stamped underneath. This letter is addressed to you, and I ask you if you received that letter with reference to this $5700 claim? A. Yes, sir; this is the letter that I received.

Mr. English: I offer the letter in evidence.

Mr. Guild: It is not shown that it is written by any one authorized to write in behalf of the banking department.

The Court: I will sustain the objection.

Mr. English: Will the Prosecutor tell me by whom that letter is signed?

Mr. Guild: I do not know.

Mr. English: I am willing to testify that Mr. Vredenburgh in my office told me he had caused that letter to be sent.

Mr. Guild: Mr. Vredenburgh can testify. He is accessible at any time.

The Court: As the matter now stands, the letter is offered and the offer is objected to and 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.

The paper referred to is marked Exhibit D-42 for identification.

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

After recess.

LA RUE VREDENBURGH re-called in behalf of defendant:

Direct-examination by Mr. English:

Q. Mr. Vredenburgh, do you remember the fact that Mr. Scarlett filed a claim against the Roseville Trust Company for some fifty-seven odd hundred dollars? A. I do.

Q. Do you remember writing him a letter, or causing a letter to be written, in connection with the rejection of that claim by you? A. I do.

Q. I show you a letter which is marked Exhibit D-42 for identification, being dated January 29, 1914, having a signature nobody can read, over the stamped words "Special Deputy Commissioner of Banking & Insurance." A. Yes, that is the letter.

Q. And who signed that letter of interest? A. Philip Tillinghast.

Q. Who is he? A. He had been appointed a special deputy assistant to serve me and he served with me a month or two when I was busy with the reorganization plan.

Q. And you caused the letter to be written as an official from you to Mr. Scarlett? A. I did.

Mr. English: I now offer the letter in evidence.

Marked Exhibit D-42.

The Court: Is there anything further from this witness?

Mr. English: If your Honor will permit, I would like to ask him about some other papers I subpoenaed him to produce.

Q. Have you, as deputy commissioner, in your possession the original of an official report filed with the Department of Banking & Insurance by the Roseville Trust Company? A. Of what date?

Q. From the beginning of the trust company down. A. I have the report of the condition that the department forwarded to me, and I suppose they forwarded them all to me. They go back two or three years, I think.

Q. What is the general nature of those reports? A. They are rather comprehensive, general statement of the condition of the institution.

Q. The financial condition of the institution? A. Yes, sir.

Q. And giving a list of the names of the directors? A. Yes, sir.

Q. And their liability, if any, to the institution? A. They are supposed to.

Q. And these reports are sworn to pursuant to the statute by three of the directors? A. No, sworn to by two of the officers and the accuracy attested by a committee of directors.

Mr. English: I have here these original reports. I propose to show them to the witness and have him identify them.

Mr. Guild: For what purpose?

Mr. English: For the purpose of show-

ing that there was no over draft on the part of Mr. Scarlett, by the affidavit of Mr. Smith, who swears to this; also the affidavit of the president of the company; also the certification of three directors, each report containing a list of the liability as payors, liability as endorsers or guarantors and liabilities for overdrafts, and I desire to offer them as the official records of the department and sworn to by officers of the bank. Your Honor sees that they are all signed and sworn to by Mr. Smith, the State's chief witness, and I desire to offer them in contradiction of Mr. Smith's testimony.

Witness: There may be a difference in the form in the period between the first and last.

The Court: There is an additional ground offered. They are now offered, in addition to the reason already stated, for the purpose of contradicting Mr. Smith, who has testified to overdrafts, on the theory that he swore to the correctness of it.

By the Court: Q. Mr. Vredenburgh, do these statements which you are now referring to show overdrafts of the bank, are they supposed to show overdrafts of the bank? A. They are supposed to show the overdrafts of officers and directors in the schedule on the back of the report in the third column.

Q. If such exists? A. If such exists.

Mr. Mott: What is the number of that schedule?

Witness: It is not numbered.

Mr. Mott: Then I object because Mr.

Smith did not swear to the correctness of that schedule.

The Court: I do not see how those made after that time are competent. What he did afterwards can have no bearing on what his knowledge or intent was before. I cannot see that this last statement is sworn to.

Mr. English: I can't see that that makes any difference. You don't have to contradict a witness necessarily by a sworn statement—either sworn or not sworn, as the case may be.

The Court: The difficulty seems to be that this paper on the back is entitled "Supplementary." It says it is part of the foregoing; it is entitled "Supplementary"; I don't know when it was put there, whether Mr. Smith had any knowledge of it; it is not signed by him. I think you will have to connect it up, either by directing Mr. Smith's attention to it preliminary to the contradiction or showing that it was a part of this paper which he swore to and signed.

Mr. English: I will withdraw this witness temporarily and recall Mr. Smith.

RAYMOND E. SMITH re-called for further cross-examination by Mr. English:

The Court: This is cross-examination on something that his attention was not called

to on cross-examination, something which has now come to the attention of counsel.

Q. Mr. Smith, you were the secretary of the Roseville Trust Company from July 30, 1909, to March 17, 1913? A. Yes, sir.

Q. Did you at various times during that period file, or cause to be filed, with the Department of Banking & Insurance of this State, financial statements of the Roseville Trust Company? A. Yes, sir.

Q. And were those statements signed, among others, by you as treasurer? A. I believe they were.

Q. And were you treasurer during the period that I have named? A. I was.

Q. Did those statements signed by you as treasurer purport to give a list of the names and officers and directors of the bank? A. Yes, sir.

Q. And did that list purport to set forth the liability of such officers or directors as payers? A. Can I see one of those reports?

Q. Yes. (Paper handed witness.) A. Payors of notes, yes.

Q. It did purport to do that? A. Yes.

Q. And did that same list purport to set forth the liability of such officers as endorsers or guarantors? A. Endorsers.

Q. Guarantors of notes? A. Supposed to.

Q. That is what I said, purport to. And did that last list purport to set forth the overdraft, if any, of such officers and directors? A. Yes.

Q. Now, I show you one of these reports stamped "Filed, January 14, 1910," and I ask you if that is one of those you have testified about? A. I didn't quite understand the date on that.

Q. I gave you the filing date, the official filing date? A. Yes, sir.

Mr. Guild: I don't think Mr. Smith intended to show the condition of the bank on the date of the filing of the report.

Q. I show you one of these reports filed January 14, 1910, and sworn to by you on January 10, 1910, and ask you if that is one of those to which you refer? A. It is one of the statements that I signed.

Marked Exhibit D-43 for identification.

Q. That report contains this list of directors that you have testified about a moment ago? A. Yes, sir.

Q. That list was on there when you sent it down? A. Yes, sir.

Q. Now, I show you another one marked "Filed, April 22, 1910, and sworn to by you on April 16, 1910, and I ask you if that is one of those reports referred to by you, and if the schedule of the names of the officers and directors and their liability, if any, was on it at the time it was signed and sworn to by you? A. Yes, one of those I signed.

Q. And the schedule was on it? A. Yes, sir.

Marked Exhibit D-44 for identification.

The Court: Cannot counsel agree on those and save time?

Mr. Guild: We are willing to admit them all.

Mr. English: Between those dates.

The Court: Mr. English now offers all of them within certain dates.

Mr. English: Between the date when the account was opened and the date mentioned in the indictment.

Mr. Guild: There is no objection.

Mr. English: I therefore offer in evidence the report including those marked for identification ranging in filing date from November 30, 1909, to February 18, 1913, and being seventeen in number.

Marked Exhibit D-43 to 59 inclusive.

Q. I show you this bunch of Exhibits, D-43 to 59, and I ask you if they are the original reports signed by you, sent down to Trenton, and setting forth the schedule which has been referred to? A. They are all originals.

Q. Between what dates do these reports cover, from the date of the previous one down to the date of the last one—each one begins where the other left off? A. What part of the report are you referring to?

Q. I am referring now particularly to schedule of notes, endorsements, and overdrafts? A. They don't include a space between any date.

Q. I want to know if the last one is connected up with the last one that immediately preceded it? A. No, sir; no connection whatever.

By the Court: Q. That only referred then to the date on which the report is made? A. Yes, sir.

By Mr. English: Q. How long prior to that date? A. That day only.

Q. Are they designed to cover just the day of their date or is it seeking to give the department information between the date of the last report and the report you sent down on a given date?

The Court: If he knows. You are asking him what it is designed to do. They are reports furnished by the banking depart-

ment to the bank, which the banks are obliged to fill in and return.

Mr. English: The banking department could say what they were designed to do and he could say what they were designed to do, as to his part.

(Question read.)

A. These reports are reports of the conditions —that is, the financial condition of the institution on such a day.

Q. I understand that? A. As given in the report itself.

Q. I ask you further whether they are designed to show, with reference to the liability of officers or directors, such liability, if any, between the date of the previous report and the date which you file any given report. A. They are supposed to be shown the liability on that date only.

Q. That is the way you understood them? A. Yes, sir.

Mr. Guild: That is what you are asking him.

Q. I show you another one marked "Filed, April 24, 1913," sworn to by you on April 12, 1913, and ask you if that is one of this same series? A. That is one of those I looked at a few minutes ago.

Q. Is it designed to show the same information? A. Yes, sir.

LA RUE VREDENBURGH re-called for further cross-examination by Mr. English:

Q. Mr. Vredenburgh, you have produced here from the department these reports which have been put in evidence? A. Yes, sir; I have.

Q. And also the one which I have marked D-16 for identification? A. This is one of them.

Q. What do you say, as representing the banking department, is the object of the department sending and receiving reports of this kind?

Mr. Mott: I object to that part "What do you say as representing the banking department." I don't know as this witness is qualified to represent the banking department; I don't know that he represents the Commissioner of Banking & Insurance. I know that he is in some way employed by the department but I object to the question, as it is immaterial, as to what the object of his department is in getting the report. The document speaks for itself. What their purpose is of getting it is immaterial.

Mr. English: I don't think there is any doubt about his qualification to answer.

The Court: He may have only certain dates, and he says he is the deputy commissioner.

Mr. English: On the aspect of his capacity to testify, I cannot see anything in that objection, because he is a deputy commissioner, and he is commissioned by the commissioner, and he is acting on his behalf, and he has had these things in his possession sent him by the commissioner and he is familiar with the department. On the question of materiality, it was suggested to your Honor, when Mr. Smith was on the stand, and your Honor said that the witness may not know the object. Mr. Smith was called at my suggestion to show that

that statement was in fact there when he made this affidavit or signed this report, and that it was a part of the report. Your Honor went further and asked him what it was designed to show. Now, he didn't know. All he knows is what it did show. You now call this gentleman and ask him what it is designed to show, and one of the objections made is that it is incompetent because it doesn't make any difference what it was designed to show.

Mr. Mott: These reports were made pursuant to law. The law provides under what circumstances and conditions these reports shall be made.

The Court: I do not see what the design, what the reports may be designed, to do, has to do with the subject-matter of our inquiry. The fact is that they are offered in evidence, and you state that they show upon examination that no overdrafts were reported to have been made to the department under the oath of Mr. Smith at the time. What they are designed to show I cannot see would be of any assistance on that point.

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)

JOHN B. SCARLETT resumes the stand:

Mr. Mott: Counsel on behalf of the State withdraws its objection. The witness is in

the courtroom and can be called for the purpose of asking that question.

Mr. English: I don't care to call him now.

The Court: Mr. English states that he does not care to avail himself of the opportunity.

Further DIRECT-EXAMINATION by Mr. English:

Q. Mr. Scarlett, I show you a letter which is marked in evidence as D-42, addressed to you by the banking department, in reference to your claim of $5701.30, and ask you if you received that letter? A. Yes, sir.

Q. That was following the filing of the claim which you described before lunch? A. About two months after, nearly.

Q. What, if anything, did you do with that letter after you got it? A. This letter you refer to?

Q. Yes, this letter that I just showed you. A. Mr. Spaulding Frazer had been appointed trustee in bankruptcy; I called on Mr. Frazer and I showed him the letter I had received. I told him—

Objected to.

Objection sustained.

Mr. English: This gentleman at this time was in bankruptcy, in the hands of a trustee. This letter called on him to sue; he couldn't sue except as he sued through his trustee, and it seems to me it is proper to show that he did make an effort to realize on the claim and that it was rejected.

The Court: I sustain the objection.

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. What was your object in calling upon Mr. Frazer with this letter?

Mr. Mott: Objected to.

Mr. English: I think that is a proper question. It doesn't call for any conversation. He received a letter from the department suggesting that he sue on it, and he is prohibited in law from suing because he is in the hands of a trustee and the trustee has to do the suing for him.

The Court: All this testimony with regard to the collection of this claim is to my mind somewhat remote from the main issue, in any event, after the transaction occurred, and its bearing on it is not very clear to me. If you can indicate to me what bearing it has on the proposition I will be glad to have you do so.

Mr. English: On the cross-examination of Mr. Scarlett, his testimony was in chief that he regarded himself as entitled to a credit on the books of the bank of from $3000 to $9000, whatever the figures are. On cross-examination, counsel adverting to that, said "Didn't you file a claim setting forth what you claimed against this trust company some time in July?" the only purpose being to discredit the witness, and the witness said yes, he did file such a claim, and then he explained why, and

was interrupted, and this morning explained why he filed the claim for that amount. He is notified by the commisisoner that his claim is rejected, and if he is sincere he must sue on it. He is in bankruptcy. He has got to act through his trustee, and my object is to show that he did act through his trustee as an evidence of sincerity.

The Court: It could only come in as in the class of self-serving declarations; what he said and did after all this is over on a subsequent proceeding like this, to make his good faith appear, ostensible efforts, if they were in good faith.

Mr. Mott: As the record now stands, he did not sue.

The Court: There is no evidence one way or the other, as I take it. I cannot see how it could possibly affect the issue that we are trying here one way or the other.

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)

Q. Now, I show you the letter which is in evidence as Exhibit D-37, addressed to the directors of the trust company on February 13, 1913, with reference to your resignation. I also show you one of the reports to the banking department, which is in evidence as D-59, which report was filed on February 18, 1913, and was signed by Mr. Smith and the other gentleman on February 8, 1913, and refers to the condition of the trust com-

pany at the close of business on the 4th day of February, 1913, and I ask you to look at it and see if you signed that report? A. No, sir; I did not.

Q. Now, I call your attention to that language in the letter of resignation, D-37, in which you speak about the signing of a report, and I ask you whether that language in the letter refers to that report of the character of D-59 or to a paper of the character of the oaths of office, Exhibit S-3 in evidence? A. Will you kindly let me see that, please?

Objected to as leading.

Objection sustained.

Q. Now, I call your attention to that language used in your letter Exhibit D-37, particularly the word "report" and I ask you what you referred to?

Objected to as leading.

Mr. English: I will reframe the question and just hand him the letter.

(Question read.)

A. I referred to some paper that was signed at this time that I termed a report. I can tell by reading that whether that was the document I referred to or not.

Q. Now, I show you Exhibit S-3 in evidence and I ask you whether that is the paper you have just mentioned? A. Yes, sir; that is the paper.

Q. And you had no reference to this report, in this financial report D-59? A. No, I never saw that report at all.

Q. Now, Mr. Scralett, you were asked on cross-examination in reference to some testimony which you gave in bankruptcy proceedings in the mat-

ter of the estate of Raymond E. Smith, trading as the Oakland Motor Sales Company, and you were asked whether you have not testified in answer to a question "Were you a director of the institution at the time the bank closed?" and you said "Yes, I probably was." I asked you to explain that statement or that testimony at that time.

Mr. Mott: How can that be susceptible of explanation now?

The Court: He may perhaps explain a seeming contradiction, if he can, but I do not think he can explain away the testimony he gave in that proceeding. I think you could call his attention to the fact that he testified here to one thing and that he testified to a different state of facts at another time and ask him whether he can explain or reconcile those two conflicting statements?

Q. I call your attention to the fact that on your examination in chief two days ago you testified that in March, 1913, you were not a director of the trust company and did not regard yourself as such; I also call your attention to the fact that on cross-examination you were asked if in the bankruptcy proceedings, in the matter of Raymond E. Smith, individually, and trading as Oakland Motor Sales Company, you had not been asked and answered a question as follows: "And were you a director in the institution at the time it closed?" and you said, you answered, "Probably I was," or something to that effect. Can you explain that? A. My answer to that question in the bankruptcy was, I think probably I was. The reason I made that answer, the question of my being a

director had no bearing whatever on Mr. Smith's bankruptcy. I knew I had resigned, but as to the legal effect of my position I was uncertain.

Further CROSS-EXAMINATION by Mr. Guild:

Q. I showed you this morning Exhibit S-20, which is the Roseville Trust Company check for $2475, payable to John H. Long, endorsed by him, which is the proceeds of that note that we know about, and I ask you if you recognize Mr. Long's endorsement? A. Yes, sir.

Q. Mr. Long was in your service at that time? A. He was with the Middlesex Hat Company.

Q. And connected with you— A. In the Middlesex Hat Company.

Q. You are not able to say whether you got this cash or not? A. I am not able to say that I never got that cash.

Q. Do you know where it went? A. No.

Q. I call your attention to check stub November 11, 1910, which seems to indicate that a check for $2000 was drawn on that date and ask you whether it evidently was a cashed check? A. It looks like it.

Mr. English: Is that what you mean? You mean drawn to the order of cash?

Mr. Guild: Yes.

Q. Whose handwriting is that? A. Mr. Reynolds.

Q. Are you satisfied that cash was obtained on that check? A. I can't say offhand.

Q. Judging from the entry? A. Judging from the entry I should say so.

Q. Now, I will ask you about the next check.

stub No. 12, under date of November 21st, you think it is, 1910, which seems to indicate that a cash check for $2000 was drawn, and ask you whether you didn't get the cash on that check out of the Roseville Trust Company? A. It looks like it.

Q. And the memorandum is what? A. "To make good checks of November 16, 1910," these two checks that were protest items. That duplicated entry where the same checks are deducted—

Mr. Guild: I ask that that all be stricken out.

The Court: Strike it out.

Q. I notice on the check stubs of your check-book the letters "R" in blue pencil, and sometimes in red pencil—

Mr. English: I object unless it was apart of the check-book at the time the check was made.

Q. Do you know what they indicate?

Mr. English: Ought not the question be when they were made? You see this book has been out of our possession for a month. If somebody had put those things on—

The Court: If he doesn't know he can say so and that will end it.

A. These were not made by me; it must have been a bookkeeper—I don't know what it was.

Q. Do you know what they indicate? A. No, sir.

Q. Do they not indicate that the voucher was returned? A. I can't tell you. It is an initial of Mr. Reynolds'.

By the Court: Q. You recognize the handwriting? A. I can't say I recognize the handwriting,

whether it is Reynolds or not. It is a big blue pencil mark.

Q. It is an "R," isn't it, that is what you mean? A. Yes.

LA RUE VREDENBURGH, re-called:

By the Court: Q. Mr. Vredenburgh, you have identified certain reports here as having been produced by you from the files of your office or the office of the Commissioner of Banking & Insurance. Are those the only reports that trust companies are required to make, the only reports of that character? A. Yes, I think so. There has been occasionally a report designed to show something in a general way as to the amount of cash, in circulation, or something of that sort but these are the regular reports of conditions.

Q. Are not the trust companies required to submit reports of their elections of officers and directors? A. Yes, only in the way of filing the oath of directors; that is the only evidence that the department requires.

Q. Just the oath? A. Just the oath.

Q. No reports such as—you may or may not know—filed by corporations of the state showing the election of officers? A. No, this covers that. The heading "Supplementary" on this report is intended to show who the officers and directors are and the evidence of their acceptance of their office is the oath of office.

By Mr. English: Q. So the oath of office is regarded as a report? A. Yes, sir; and as I say,

there may be some occasional reports required, but these are the regular reports.

Mr. English: I offer in evidence that part of the ledger which was referred to as ledger A to L and marked for identification D-24, covering some half dozen pages in the book which were marked.

Marked Exhibit D-24.

Mr. English: And the other part of that same book which goes from M to Z, being D-25 for identification.

Marked Exhibit D-25.

Mr. English: I want to offer in evidence the duplicate deposit slips which were marked D-1 for identification. Some of them were afterwards individually marked for identification. They begin with July 30, 1909.

Marked Exhibit D-1.

JAMES A. BERRY, sworn in behalf of defendant:

Direct-examination by Mr. English:

Q. You live in the City of Newark? A. Yes, sir.

Q. How long have you been living here? A. All my life.

Q. Are you engaged in the real estate business? A. Yes, sir.

Q. And have been for how many years? A. Twenty-four.

Q. Are you familiar with the property 43 Johnson Avenue, Newark, owned by John B. Scarlett? A. I know that property.

Q. And have known it how long? A. Oh, casually for a number of years.

Q. Are you able to tell us the value of that property speaking as of October, 1912? A. If I may state, I looked it over the other day and I know the conditions there, and as I do know them, I would say that the value in 1912 was probably the same as it is now, barring, perhaps, slight depreciation in building, and offset by enhancement of land, probably.

Q. It is about the same? A. Yes, sir.

Q. And what, in your judgment is the value of that property, speaking as of October, 1912? A. I value that property at approximately $32,000—$33,000.

Q. How long have you known the defendant John B. Scarlett? A. I suppose I have known Mr. Scarlett since I have been downtown, or earlier, thirty years.

Q. A good many years? A. Yes, sir.

Q. Do you know what his reputation in the community was on and prior to March 17, 1913?

Mr. Guild: I object to the form of the question.

The Court: Counsel wants you to specify as to his reputation for what?

Mr. English: What his general reputation in the community was.

The Court: It is well settled that it must be reputation for something.

Mr. English: I understand I have the right to ask the general question of whether he knows the reputation of the defendant in the community, and then follow that by a question, what was that reputation. The authorities say so.

The Court: (After argument.) The prosecutor says he objects to the form of your question.

Mr. Mott: It must be with respect to these allegations of the charge.

The Court: For instance, his reputation for chastity would not make any difference in this case, therefore your inquiry must be confined to the kind of reputation that is material in this case. The general question you refer to is to be answered yes or no, that is if he knows it; either he does know it or he does not for some specific virtue.

Mr. English: I think I have the right to ask the general question first.

The Court: I sustain the objection.

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

Judge.

Q. Do you know the reputation of John B. Scarlett in this community prior to March 17, 1913, for honesty? A. I never heard anything against—

Mr. Mott: Please answer that yes or no.

The Court: Can you answer it yes or no.

A. I think so.

The Court: You mean you can answer it or you think you know it? Can you not say whether you know what his reputation is, or not?

Witness: Yes.

Q. You do know? A. For myself, yes, sir.

Q. What was his reputation in that respect prior to that date? A. I never heard anything bad about Mr. Scarlett.

Q. Do you know what his reputation was prior to the same date for truth and veracity? A. The same answer holds good.

Not cross-examined.

MERRITT G. PERKINS, sworn in behalf of defendant:

Direct-examination by Mr. English:

Q. Where do you reside? A. 140 Third Avenue, Newark.

Q. Are you engaged in business in this city? A. Yes, sir; I am president of the Franklin Savings Institution.

Q. For how long? A. Fifteen years.

Q. Do you know John B. Scarlett? A. I do.

Q. Did you know him prior to March 17, 1913? A. I did.

Q. Has he been a depositor in your bank? A. I think so.

Q. Have you had business relations with Mr. Scarlett prior to March, 1913? A. We have.

Q. Extensive business relations or just casual? A. We loaned him a great deal of money.

Q. You mean your bank or institution? A. Yes, sir.

Q. Do you know what Mr. Scarlett's reputation for honesty was prior to March 17, 1913?

Mr. Mott: The question does not go far enough. It should be in the community where he lives.

Q. Do you live in Newark? A. I do.

Q. How long have you lived in Newark? A. Over thirty years.

Q. And you have been president of the bank over fifteen years? A. Yes, sir.

Q. Did you know what the reputation of John B. Scarlett was in the City of Newark and this community for honesty on and prior to March 17, 1913? A. I think so.

Q. What was that reputation? A. His reputation was good.

Q. Do you know what his reputation was in the same place and prior to the same date with reference to truth and veracity? A. I think so.

Q. What was it? A. I speak from our dealings in the bank—

Mr. Mott: I object to that. I object to the witness basing any testimony on dealings with Mr. Scarlett.

By Mr. Mott: Q. Is your former answer based on your dealings with him? A. And the reputation which I knew he had.

Q. Was it based on your personal dealings? A. That and the knowledge I had of him.

Q. It makes some difference, Mr. Perkins. I want you to tell me what you base your answer on, on his reputation as you know it by your personal dealings? A. On his personal reputation as I know it and the personal dealings.

By the Court: Q. When you say as you knew it, you mean you gathered it from others? A. Yes, sir.

By Mr. English: Q. What was it? A. His reputation was good for truthfulness and veracity.

Not cross-examined.

FRED L. COBB, re-called, in behalf of defendant:

Direct-examination by Mr. English:

Q. You live in the City of Newark? A. Yes, sir.

Q. How long have you lived in Newark? A. All my life.

Q. I think it appeared that you are connected with the Essex County National Bank? A. Yes, sir.

Q. How long have you been connected with that bank? A. Almost thirty years.

Q. Did Mr. Scarlett ever have a bank account in your bank? I think that has already appeared in your testimony. A. Yes, sir.

Q. Prior to March 17, 1915, what sort of a balance did he carry in your bank?

Mr. Mott: I object: I assume and believe that the witness is honest and the officials of his bank are honest and therefore what transpired somewhere else would not have taken place in the Essex County Bank.

Mr. English: Then I will not press the question.

Q. Do you know what the reputation of John

B. Scarlett was in this community prior to March 17, 1913 for honesty? A. Good.

Q. It was good? A. Yes.

CROSS-EXAMINATION by Mr. Mott:

Q. What do you base that on from your personal dealings with him? A. Yes.

Q. Your bank? A. Yes, sir.

Q. Have you any other knowledge than your personal dealings? A. Well, some.

Q. You were asked if you knew what his reputation for honesty in the community was and you said yes; you were not asked that you thought; counsel asked you if you knew what his reputation among his neighbors in the community was? A. I think it was good.

Q. That is what you meant to say, was it? A. Yes.

GEORGE SPOTTISWOODE, sworn in behalf of defendant:

Direct-examination by Mr. English:

Q. Mr. Spottiswoode, where do you live? A. Orange.

Q. What business are you engaged in? A. Coal, lumber and mason materials is the business of my firm.

Q. Are you connected with any institution? A. I am president of the Dimes Savings Bank and vice-president of the Orange National.

Q. Do you know John B. Scarlett? A. Yes, sir.

Q. How long have you known him? A. Twenty or thirty years.

Q. Are you acquainted with the community of the City of Newark? A. Well, not much. My home is in Orange and I have lived there for sixty-four years so I can't say a great deal about people's affairs in Newark.

Q. You are not so very far away? A. No.

Q. Speaking of the community at large, in this vicinity, not necessarily bounded by municipal lines, do you know what the reputation of Mr. John B. Scarlett was in such community as I have outlined for honesty, do you know what it was prior to the 17th of March, 1913? A. As far as my observation went it was good all that came to my knowledge.

CROSS-EXAMINATION by Mr. Mott:

Q. Are you related to Mr. Scarlett in any way? A. Not blood relation.

Q. By marriage? A. He is a cousin of my wife's, an out of town cousin, I guess.

NICHOLAS R. SICA, sworn in behalf of defendant:

Direct-examination by Mr. English:

Q. Where do you live? A. Ninety-six Eleventh Avenue.

Q. Newark? A. Yes, sir.

Q. I show you Exhibit D-28 which is one of the trust agreements, and ask you if that paper is signed by you? A. Yes, sir.

Q. And you know the other signatures to the paper? A. Yes, sir.

Q. I show you Exhibit D-35, which is deed from John B. Scarlett to Nicholas R. Sica, and I ask you if you are the person named as the grantee in that deed? A. I am.

Q. I show you Exhibit D-36, which is the paper signed by Mr. Scarlett, and I ask you if that paper was delivered to you by Mrs. Scarlett after it was signed? A. Yes, sir.

Q. I direct your attention to certain lead pencil memoranda written on the inside, blue cover of Exhibit D-28, and ask you in whose handwriting they are? A. That is my handwriting.

Q. Where did you get that memoranda? A. In the office where I was at the time.

Q. Which was where? A. Seven sixty-four Broad Street.

Q. In the same office occupied by Mr. Scarlett? A. Part of it.

Q. And I ask you on what date you made that memorandum? A. The same date that this declaration of trust was signed.

Q. What date was that? A. On the 25th of October 1912.

Q. From what source did you get the items which you wrote there in lead pencil on your memoranda? A. I got this from Mr. Scarlett, who was at the desk reading from a piece of paper.

Q. And did you see the paper from which he read? A. I saw the paper where those items were on.

Q. And you transcribed the items from that piece of paper? A. He read them to me and I made a mark of my declaration of trust.

Q. And what was your object in making a notation of those items?

Mr. Guild: Does that make any difference?

Mr. English: I don't think so because he is the trustee. Here is what I have in mind, the history of this as given by Mr. Scarlett, that when he and Mr. Smith were together at the trust company's office Mr. Smith prepared a memorandum of this same paper, which has been lost, and that he, Scarlett, brought it back with him to his office in Newark, and that when Mr. Sica produced this agreement signed he inquired of Mr. Scarlett what its details were and Mr. Scarlett produced this paper, and he put them on there, and I asked him what his object was in getting those things.

Q. What was your object? A. First, being the trustee, I wanted to be posted on the items that represented the sum of $9700; secondary one of the notes included in these items was one, that was endorsed by me. Those were my reasons.

Q. And that memoranda you now refer to is your original memoranda? A. Yes sir.

Mr. English: I think there was some question pending and that was when the paper was originally marked in evidence this memorandum was on it, and it was held in abeyance upon my promise to prove the memoranda. I now offer D-28 in evidence, including the figure memoranda.

Marked Exhibit D-28.

Not cross-examined.

JOHN B. SCARLETT, re-called:

By the Court: Q. Mr. Scarlett, when you spoke of a difference between your book and the bank as being five or six thousand dollars, in your opinion, what did you base that opinion on—on your books? A. On the books and the fact there was this duplicate deduction.

Q. That only accounts for $2000. That would give you a greater credit than your books apparently showed that you had. You really had, on that theory, $2000 more than your own book showed. A. Yes, I went over the books at that time.

Q. Can you show me in your book what you had reference to when you said that their figures did not agree with yours and that you thought you had five or six thousand dollars there to your credit which they had not given you credit for. What is there in your books, that you have got on your books. I am only talking about the check book.

Mr. Mott: He doesn't answer your question. I suppose he ought to answer your question.

The Court: Perhaps he cannot show me without looking at the book. He says that these discrepancies amounted to five or six thousand dollars, that what the bank told him did not agree with his book. I want him to point out on his book what he bases that statement on that he thought he had five or six thousand dollars, if he can, point out in his book the particular in which the bank's statement did not agree with his book.

Witness: The bank, if your Honor please, did not give me any statement. I didn't say the bank gave me a statement. I said from the fact that this item was returned I figured it up in my mind that the difference must be between four and five thousand dollars.

Q. I understood you to say the check book did not agree with the figures the bank gave you. A. I desire to correct that. I didn't mean it in that way—because the bank did not give me any actual figures until after this duplicate pass book was returned.

Q. What did you mean by saying that your check book did not agree? A. My check book did not agree with the books of the bank for the reason that the bank returned this item.

Q. Now, you say you thought you had five or six thousand dollars more. You must have had resort to some book to get that opinion, didn't you? A. Undoubtedly. I had reference to this check book.

Q. Can you show me in your check book where you have any such balance about that time? A. (Indicating in book.) On January 18th there was these two deposits made, $2000 each, and there is this difference of $2000 caused by deducting the same item twice.

Q. Supposing you did not deduct that twice, how much is your balance? Give yourself credit for that which you say was erroneously deducted, how much would you have then? A. $4003.12 on the 1st of February. I think that is the date that we—

Q. You had, aside from that $2000 item which was deducted, a balance of $2000? A. $4000.

Q. Then deducting that erroneous item, that would leave you with $2000? A. No, if your Honor please, that is deducted erroneously on a prior page.

Q. What I am trying to find out is if you make that correction in your book— A. If I make that correction in the book I figure that the balance would be $6003.12.

Q. With that erroneous deduction made it is still $4000. Show me your balance of six thousand and some odd dollars. A. We draw a line here at this point—February 1st is the date we figured on.

Q. February, 1911? A. Yes, that was the date, I think, that Judge Guild asked me to figure on.

Q. That is when you say you turned in your book to be balanced? A. I said some time in February.

Q. You turned in your book to be balanced? A. Yes, sir.

Q. And that is when you say there was a difference of five or six thousand dollars? A. Yes, sir.

Q. Now, show it to me. A. This item is January 18th; these two checks of January 18th is a deposit of $4000, plus the $3.12, made $3003.12.

Q. On January 18th you had a balance, a credit balance of $3.12, according to your book? A. Yes, sir.

Q. What date? A. January 18, 1911.

Q. And you deposited $4000? A. Yes.

Q. Why do you come back to that? A. Because those were before that.

Q And that was the reason the balance was only $3.12 and it ought to have been— A. It shows

January 1st it should have been $3003.12, that is the way I make it.

Q. Go back a moment. Assuming that you have got on January 18th, $4003.12 how do you increase that to $6003.12? You do not increase it by going back? A. If the same item is deducted twice back here then I should have had $2000 more on January 1st.

Q. We have not overlooked that. You have a credit of $2000; that would give you $6000? A. Yes, sir.

Q. What are the deductions from that—anything? A. Not on that date. The next deduction is March 21, 1911, $2000.

Q. You left this $4000 from the Middlesex Hat Company in there from January to March before you took out $2000? A. Yes, sir, that is what the book shows.

Q. In the meantime, in February, you put in $3000 more? A. Yes, sir.

Q. That is seven. What are those two things? A. Those are those two items in question, one item of $1700 on April 28th and the $1500.

Q. What about this $2000 which you say was deducted twice? A. This check was drawn to pay these checks of November 16th for which the protest items were submitted.

Q. This check No. 12 for $2000? A. Was drawn to take up those two checks of November 16th that are entered here under the date of November 16, 1910.

Q. Those two checks were $1000 each? A. There is two protest items on that day, so there must have been two $1000 checks, and then over on this page Mr. Reynolds must have deducted these when he got the notice of protest.

By Mr. Guild: Q. What is the amount or deduction? A. $2000.

By the Court: Q. That would account for a difference of $2000 in your account; it would not account for the difference between $2000 and five or six thousand dollars? A. With these other items that would account for the difference of $6000, with these other two items. This was figured down to the 1st of February; that was the date we were talking about.

By Mr. English: Q. So, as I understand your evidence, on January 18, 1911, taking into consideration the double entry, you had $3.12 balance? A. Yes.

Q. If that error had not been made you should have had $2003.12? A. Yes, sir.

Q. And on that same date you deposited an additional $4000? A. On the 18th.

Q. Which made your correct balance, as you understand it, $6003.12? A. Yes.

By Mr. Guild: Q. Are we to understand that you had a balance in this bank of $6000 from January to March? A. That is what the book shows.

Q. You had? A. I think so.

Q. And you hard up, as you say you were? A. Yes, sir, that was the cause of my being hard up; this discrepancy embarrassed me very much indeed.

By Mr. English: Q. And that is the matter you had a dispute about? A. That is the difference that we talked about.

Adjourned until Monday, March 22, 1915, at 10 o'clock, a. m.

SIXTH DAY

Essex Oyer and Terminer,
Monday, March 22, 1915.

Continued pursuant to adjournment.
Present, counsel as before stated.

Mr. English: With the exception of a character witness and possibly some exhibits I have overlooked, the defendant rests.

Defendant rests.

IDA M. HICKS, sworn in behalf of State in rebuttal:

Direct-examination by Mr. Guild:

Q. Miss Hicks, where do you reside? A. Four hundred twelve South Sixteenth Street.

Q. Newark? A. Yes, sir.

Q. Were you at any time in the service of the Roseville Trust Company? A. I was.

Q. Beginning with what date? A. From the time of its organization.

Q. Down to what date? A. The latter part of June, 1913.

Q. What were your duties there? A. Stenographer and clerk.

Q. Was it part of your duty to write the letters? A. It was.

Q. Was it part of your duty to write outgoing letters? A. Yes, sir.

Q. To exchange banks? A. Yes, sir.

Q. With which checks were sent? A. Yes, sir.

Q. That included good checks and bad checks? A. Yes, sir.

Q. All checks? A. Yes, sir.

Mr. English: How can she characterize checks, unless she looked at the checks, as to whether they were good or bad checks?

Q. Did you actually mail the letters? A. Yes, sir.

Q. What kind of checks would be sent with these letters?

Objected to.

Question withdrawn.

Q. Did the checks that you sent out with these letters to foreign banks include checks that were deposited and checks that were cashed? A. Yes, sir.

Q. I show you a package of papers and ask you what they are? A. Those are what we call bank letters, checks that are sent out to the different exchange banks.

Q. Did checks accompany those letters? A. Yes, sir.

Q. Are these copies of the letters that you wrote and mailed? A. Yes, sir.

Q. Did you have the checks in front of you when you wrote the letters? A. Yes, sir.

Q. And were the checks enclosed with the letters to which these letters refer? A. Yes, sir.

By the Court: Q. Are these originals or carbons? A. Carbons.

By Mr. Guild: Q. Are those carbons of the original letters? A. Part of them are.

Q. What is the other part? A. Part of them are originals.

Mr. Guild: I don't understand that.

The Court: Just show us what you mean. Take out one and illustrate your answer.

Witness: This first column is original and this second is a duplicate.

Q. The first column, which is the left-hand column under the head of "Maker"? A. That is the original.

Q. And the righthand column— A. Is the carbon.

Q. Seems to be a carbon? A. Yes, sir.

Q. What did you put on the letters that were sent to the bank? A. Just the name of the bank.

Q. Do you mean— A. That is, the city.

Q. Do you mean the matters in the right-hand column, the carbon is what you sent to the bank? A. Yes, sir.

Q. Under the head of "Maker" which is the left-hand column here on this paper you say is the original? A. The original, yes, sir.

Q. You apparently kept that in the bank? A. Yes, sir, we just made one copy of it.

Q. Was that for your own information? A. For our own information, yes sir.

Q. And the bank to which you sent the letter and the check would have the check before them? A. Yes sir.

Q. Who the maker of the check was? A. Yes, sir.

Q. And for your own information and for the records of the bank you put the name of the maker— A. Not the maker, the endorser.

Q. Here it says "Maker." A. I know, but it is endorser.

Q. It should be endorser instead of maker? A. Yes, sir.

Q. Although this is under the head of maker? A. Yes, sir.

Q. It was really the endorser? A. Yes, sir.

Q. By endorser do you mean the Roseville Trust Company's customer? A. The party that deposited the check or cashed it.

Q. In the Roseville Trust Company? A. In the Roseville Trust Company, yes, sir.

Mr. Guild: I want to offer these papers in evidence. I will either offer them in bulk as they are, or have them counted and give the number of them.

The Court: I do not see any materiality as yet of these papers to this case. It seems to me there should be something to connect these multitudinous transactions with the defendant in some way.

Q. I show you a letter dated November 16, 1910, addressed to the Union National Bank. What checks were sent with that letter?

Mr. English: If you know.

Mr. Guild: If she doesn't know she can say so.

By the Court: Q. Can you tell? A. I believe I have marked it Stevenson, Rye & Company.

Q. You can't tell from your own recollection? A. Only from that letter.

Q. You have to look at that to tell? A. Yes, sir.

Q. Can you tell by looking at that? A. Only by that pencil mark.

Q. From anything on it, was the pencil mark referred to made by you? A. Yes, sir.

By Mr. English: Q. When did you make the

pencil mark? A. The same day I sent the check out.

Q. What was the object of sending out a paper of this character? A. We had to send the letter out with every check that we sent to the different banks.

Q. That was a check that was drawn on some other bank and deposited in your bank? A. Yes, sir.

Q. And after the check had gone through your bank then you sent it to what bank? A. The Union National Bank.

Q. Because they were your clearing house? A. Yes, sir.

Q. There is nothing in this from which it appears whether the check was good or bad, is there? A. No, sir.

Q. And you have no recollection of it at the present time? A. No, I have not.

Mr. English: Then I object to it as utterly valueless.

The Court: It may be connected by other testimony.

Mr. English: This paper can be identified as containing some pencil notations by this lady.

Mr Guild: The value of it is to show that those two checks were sent out that day to the Union National Bank, and that is all we expect to prove by this witness. Whether they were good checks or bad checks she doesn't know and this paper doesn't show.

Mr. English: That is the point of my objection. I don't see any objection to admitting it in evidence for that purpose. It

cannot show more than it does show. I think it is better to keep out of evidence a paper which has no evidential value until it is connected up. Why put in evidence a paper which counsel concedes, standing by itself, has no evidential value?

The Court: It must be connected with this case in some way.

Mr. English: Let it be marked for identification at this time.

The Court: This paper itself indicates some connection with this case.

Mr. English: Very remote—Stevenson, Rye, Metuchen.

The Court: Metuchen, $1000. You have had a good bit of evidence regarding Metuchen. I will admit it in evidence upon the statement of the Prosecutor that it will be connected.

Mr. English: I ask leave to have it stricken out if it is not further connected, and pray an exception to your Honor admitting it in evidence.

The Court: You may renew your application if it is not connected up.

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)

Mr. English: Is the paper pinned to it to go in evidence?

Mr. Guild: Just as it is.

Q. This paper which is pinned to it, is that in your handwriting? A. Yes, sir.

By the Court: Q. Is that part of it? A. That is the original.

Q. It is a part of the same record? A. Yes, sir.

By Mr. English: Q. What do you mean by the original? A. As a letter that would go to the bank with the check.

Q. How do you get it back in your bank then? A. I don't know.

Q. You sent out an original to another bank written in pencil like that? A. If it is late in the afternoon, I was ready to go home, but I had something else in the machine I couldn't take out.

Q. Have you any such recollection with reference to this, about it being too late in the afternoon and something else being in the machine? A. I can't recollect that.

Q. After you sent any original paper to the Union National Bank were they in the habit of sending it back to your bank? A. No, sir.

Q. What is your ground for saying that this paper which came back to your bank and now in your possession is the original? A. You can look at this.

By the Court: Q. Why do you say that one of them is an original? A. That is part of the letter. You can see where it is torn off.

Q. The difficulty is, Miss Hicks, you may know, but the jury doesn't know. You reply in response to Mr. English's question, why you say that that paper and its contents, referring to what you call the original, is the original of the other paper which you first testified to containing the carbon. A. That is the copy we always sent out to the bank.

Q. Explain the transaction just as though you

were telling it to a five-year old child who knew nothing about it. A. This sheet was a sheet with a perforated part here—

Q. We can't hear you. A. These letters, when we listed them, after we had listed the checks, we had listed the checks, we tore this part out and sent it with the checks to the bank.

By Mr. English: Q. That is what you call the original? A. Yes, sir.

By the Court: Q. The paper which you call the original, was it fast to the paper which you call the copy? A. Yes, sir.

Q. Was it fast in this manner (indicating)? A. Yes, sir.

Q. And was there a carbon between the first or original piece and the other? A. Yes, sir.

Q. And when you wrote the words on the original sheet in pencil, did the impression of what you wrote appear on the second sheet because of the carbon? A. Yes, sir.

Q. And then the words "Metuchen, $1000," ditto, $1000, and a line drawn under it, and the figure $2000 appearing under the two $1000, was that both on the original and on the carbon, by the same proceeding? A. Yes, sir.

Q. Then what did you do after you had made that carbon—did you open it and then tear it apart? A. Yes, sir, tore it apart.

Q. What did you do with it then? A. I thought it went out with the checks.

Q. What did you do with it, not what you thought. What did you do with it in the ordinary course of your work? A. I tore it off and attached the check and sent it to the Union National Bank.

By Mr. English: Q. You say that because the Union National Bank pinned it on to the copies as it appears now? A. I usually did it.

Q. You said when the original goes to the Union National Bank they don't send it back. What is it doing back here? A. I don't know.

Q. When did you pin it on? A. The same day I made the letter out.

Q. Did you send a copy to the Union National Bank?

By the Court: Q. How did you get back that original which you say you sent to the bank and which you say you pinned to this? A. No, I didn't pin it to that—

By Mr. English: Q. I asked you who pinned the copy to the original? A. I don't know.

Q. When did you first see them pinned together? A. Well, just now, as I can remember it.

Q. You don't know what the origianl is doing here after it had been sent by you to the Union National Bank is that it? A. Yes, sir.

Q. You have no recollection of it ever coming back to the Roseville Trust Company? A. I can't remember.

Q. It wasn't the practice to have them returned? A. No, sir.

Q. So you can't say, Miss Hicks, that that is the original of this copy except as you see them now pinned together by somebody that you know nothing about? A. It is the same writing.

Q. But you wrote scores of these things, didn't you? A. Yes, sir.

Q. And it happens to be the same amount? A. Yes, sir, and the writing corresponds with the duplicate.

Q. That would be true of every one of those you sent out, if you made carbon copies the copy would always correspond, wouldn't they? A. Yes.

Q. Can you undertake to swear that that which you call the original is the original which was made at the time the duplicate was made? A. I think I can.

Q. Without having any knowledge of how it got here? A. Yes, sir.

Q. Did any checks accompany this when you sent it to the Union National Bank?

The Court: Which one are you referring to?

Witness: If it went to the orignal bank the checks went with it.

Q. You mean if the checks were drawn on the Union National Bank? A. If they were sent to the Union National Bank by the Roseville Trust Company.

Q. Of course, if they were sent to the Union Bank with it, I want to know, in fact, if it did go with it? A. I don't remember.

Q. This don't mean anything except with the lead pencil notations which speak for themselves. A. That is all.

Q. You can't say whether any check accompanied this original? A. I can't remember.

Q. Or whether the check was good or bad or anything about it? A. No, sir.

Mr. English: I would like to renew the objection to the paper.

The Court: All you can say is that the original of that paper, in the ordinary course of business, would be sent to you by the Union National Bank?

Witness: Yes, sir.

Q. And in the ordinary course of business it would be accompanied by the checks referred to on it? A. Yes, sir.

Q. Did you send all checks drawn on other banks to the Union National Bank? A. Not all checks, no, sir.

Q. How can you say that the practice was to send checks with this paper addressed to the Union National Bank? A. It was always our practice to send the checks to any bank that we made a list out to.

Q. When you sent a letter out you sent a check with it, that is what you mean? A. Yes, sir.

Q. There is not anything to show that this went to the Union National Bank? A. If it went to the bank the check went with it.

Q. But you say it because of the general custom? A. Yes, sir.

Mr. English: I understand it has still to be connected up. I object and it will be subject to my further motion.

The Court: Yes.

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-44.

By Mr. Guild: Q. I show you another of these letters dated November 22, 1910, and ask you did you see that? A. I did.

Q. And to whom was it sent? A. Union National Bank, Newark.

Q. Did you find there any check sent to the

Union National Bank under date of that letter with the name of the customer and the bank, John B. Scarlett or J. B. Scarlett?

Mr. English: I object, because that is virtually introducing into the record the contents of a written paper.

The Court: Objection overruled.

Defendant 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)

A. Yes, sir; I do.

Q. What do you find?

Objected to.

The Court: Before she attempts to do more than identify the paper, the contents, or some part of it as being connected with the inquiry here, it should be offered in evidence.

Mr. Guild: I offer that paper in evidence.

By Mr. English: Q. Was this typewritten by you? A. It was.

Q. Do you remember when? A. Only from the date on that.

Q. You think it was written on the day of the date? A. Yes, sir.

Q. The left-hand side appears to be torn off, the word "Roseville" is torn in two? A. It was too large to go in the machine; we had to tear it off.

Q. What was there left if it had been continued? A. Why nothing at all.

By the Court: Q. Is it complete as it stands, as you made it? A. Yes, sir.

By Mr. English: Q. How did you make this up? A. From the checks.

Q. You had the checks before you? A. Yes, sir.

Q. And the list of names on the left-hand column, that is supposed to contain the maker of the check or the depositor who endorsed the check? A. That is the bank on which the check was drawn.

Q. You don't understand me. The extreme left-hand column. A. That is the depositor.

Q. The depositor with the Roseville Trust Company? A. Yes, sir.

Q. Then the list in the column next to the extreme left-hand column contains what? A. The bank on which the check was drawn.

Q. Opposite to the name which you refer now, in the bank column is the word "Nat."? A. That is the bank.

Q. There are lots of banks with the word "National" in the title. What bank does that refer to? A. If you will look in the next column, the city; Bloomfield National.

Q. The next column contains the name of the bank? A. And the city.

Q. In which the bank is located? A. Yes, sir.

Q. And that is supposed to contain the amount of the check? A. Yes, sir.

Q. This means that a check was drawn on the bank in the city named and deposited by the depositor in your bank? A. Yes, sir.

Q. And then you sent the check back presumably with this letter to go through the exchange? A. Yes, sir.

Q. There is nothing in this from which you can say whether the check was paid or not paid? A. Not by that letter, no, sir.

Q. There is nothing here by which you can say whether it was deposited or cashed? A. No, sir.

By Mr. Guild: Q. Mightn't it be either? A. It might be either, yes, sir.

By Mr. English: Q. And there is nothing about this that would show whether the check was good or bad? A. Not by that letter, no, sir.

Q. Or whether the check was deposited for collection? A. No, sir.

Q. This would refer to a check deposited for credit or a deposit for credit or actual cash? A. Yes, sir.

Q. And all this means is that a check drawn on the bank deposited by the person named was deposited in your bank and sent to the Union National Bank for collection as the clearing house?

Objected to.

The Witness: May I make a correction?

The Court: Yes.

Witness: When I was speaking of that other one, I kind of think that we didn't send the original copies down to the Union Bank; we just send them a machine list.

Mr. English: I pray an exception to the admission of this paper and ask leave to move to strike it out if it is not connected up.

The Court: You may reserve that right.

Paper marked Exhibit S-45.

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. You said in answer to Mr. English that checks sent out with these letters, that checks for collection would be sent out with letters of this form? A. Yes, sir.

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

Q. You are sure of that? A. Checks for collection.

Q. I know, but listed in this way. A. Yes, sir.

Q. Listed in with the cash letters?

Objected to as leading.

Objection overruled.

Q. What I mean, and I believe what Mr. English meant by his question, was, that he referred to checks that were left at the bank, no credit goes to anybody, but simply left there for collection. A. They were sent out on letters of that kind, yes, sir.

Q. And you say they might be included in this list as those other checks are listed here? A. Yes, sir.

Q. I call your attention to this Exhibit S-45, dated November 22, 1910, and ask you whether on this letter you find the name of J. B. Scarlett, and if so, what are the items appearing opposite his name? A. There are two items of $1000 each bearing the name of John B. Scarlett on Metuchen National Bank.

Q. In the course of business would those checks have been sent out with that letter? A. Yes, sir.

Q. Have you any distinct recollection about these particular checks? A. No, I have not.

Q. But that would have been the regular course of business? A. Yes, sir.

Q. I show you another of these letters under date of November 22d and ask you if you wrote

that letter or if that is a carbon of the letter you wrote? A. Yes, sir.

Mr. Guild: I offer it in evidence.

By Mr. English: Q. Everything you said about the other sheet applies to this, I suppose in the same way, they are all made out the same way? A. Yes, sir.

Q. You refer to a check either deposited or cashed or sent in for collection, as the case may have been? A. Yes, sir.

Q. And you have no personal recollection about it at all? A. No, I have not.

Q. And you had the check before you when you made out that list? A. Yes, sir.

Q. Tell me what bank the check was drawn on which is referred to in this latest paper? A. You mean bearing the endorsement of John B. Scarlett?

Q. Yes. A. Mechanics Metals Bank, New York City.

Q. And that was deposited by John B. Scarlett? A. Yes, sir.

Q. I show you a paper D-19 which is admitted to be a copy of a check purporting to be a copy. Just tell me what bank that check—

Mr. Mott: I object to this witness being cross-examined generally at this time.

Mr. English: I will reserve that for the cross-examination. This is admitted subject to the same objection and motion to strike out.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-46.

By Mr. Guild: Q. I ask you whether the name of J. B. Scarlett appears on the paper? A. It does.

Q. And the amount, if any of the check? A. Two thousand dollars.

Q. Drawn on what bank? A. Mechanics & Metals Bank, New York City.

Q. To whom was that letter sent? A. Irving National Exchange Bank, New York City.

Q. Was that the bank through which the Roseville Trust Company cleared in New York? A. Yes, sir.

Q. I desire to ask you a further question about the collection check. I want to know whether it is not a fact, if you did use this form of letter in sending out collection items, whether you did not write on the bottom of the letter "For collection"?

Objected to as leading.

The Court: That question can be answered yes or no. Objection overruled.

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)

A. I believe we did mark them in some way.

Q. So to indicate that they were collection items?

Objected to.

Objection overruled.

A. I believe so.

Q. I show you one of your outgoing letters of November 23d, 1910, and ask you if that is a carbon of one that you wrote? A. Yes, sir.

Mr. Guild: I offer that in evidence.

Mr. English: This is different your Honor. Mr. Scarlett's name does not appear that at all. Under the name of the depositor, in the column which he says contains the list of the persons who deposited, is the name of the Stevenson, Rye Company. That indicates that the Stevenson, Rye Company deposited this check, and if so, Stevenson, Rye & Company made a deposit, and which we will assume is no good, it ought not to affect Mr. Scarlett's account one way or the other.

The Court: Except that the Stevenson, Rye Company seems to have entered in this case.

Mr. English: Their name has been mentioned, but there is no allegation against the Stevenson, Rye Company.

Mr. Guild: If we cannot connect this letter up with this case the exhibit will go out.

Mr. English: Then do you desire to have it marked for identification?

Mr. Guild: No, the same as the others.

The Court: The prosecutor desires to

pursue that course, so I will admit the same as the others.

Mr. English: I pray an exception and reserve my right to move to strike it out.

The Court: Yes.

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)

By Mr. English: Q. Everything that you said about the other papers applies to this?

Mr. Guild: I object.

The Court: You mean as to the method of making it?

Mr. English: Yes.

Mr. Guild: If it goes to the form of the letter I have no objection.

The Court: Make your question clearer.

Q. I suppose this is made up just like the others were, is it not? A. Yes, sir.

Q. You had the check before you? A. Yes, sir.

Q. And the depositor goes in the extreme left-hand column and then the bank it is drawn on in the next column and the town where the bank is in the next column? A. The third column is not always a customer.

Q. Why do you change your testimony about that now? A. I should have stated that in the first place.

The Court: I think she did say something to that effect.

Q. What does show in the extreme left-hand col-

umn of the name? A. Either the customer's name or the party that had the check, cashed.

Q. When you say the customer, you mean the depositor? A. The depositor, yes, sir.

Q. When you say the party that had the check cashed, you mean anybody who came up to the bank and identified himself and cashed his check; is that what you mean? A. Yes, sir.

Q. Have you any corrections to make about that or have you said everything now that ought to be said about it? A. I think that is all.

The Court: I do not understand that she had made any corrections except as you infer it in your question.

Mr. English: I simply asked her if she had anything further to say in explanation of this extreme left-hand column.

The Court: She is here to answer questions.

Q. I ask you, Miss Hicks, if this left-hand column contains anything else except either the name of the depositor who deposited the check or the name of the person who presented the check and got it cashed? A. I don't know.

Q. Look at it and study it further? A. I think that is all.

Q. If the check was deposited then it contains the name of the depositor? A. As a rule it did.

Q. If a check is cashed then it contains the name of the person who got the cash? A. Yes, sir.

Q. That is the whole story about the left-hand column, is it? A. I believe it is.

Mr. English: I would like to renew the objection on the ground that the witness says it contains the name of the person

who deposited it or who got the cash. I say it is utterly immaterial as to who got the cash if it was not the defendant.

The Court: It may be material if somebody got it for him and it was applied to his use.

Mr. English: This is all in subject to its being connected by the prosecutor, and if it is not, I shall renew my motion to strike it out.

Paper referred to is marked Exhibit S-47.

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.

The Court: What is the amount of that check?

By Mr. Guild: Q. Two of them for $1000 each. I ask you whether you find in this letter of Exhibit S-47 the name of Stevenson, Rye Company? A. Yes, sir; I do.

Q. How often does it appear—more than once? A. Twice.

Q. And the amount opposite the name? A. One thousand dollars.

Q. Does it show where the letter was sent? A. Union National Bank, Newark.

The Court: When it appears twice does the name appear twice or does it refer to two checks?

Witness: In reference to two checks.

The Court: The name of Stevenson, Rye & Company appears only once.

Q. I ask you to explain that.

Mr. English: He said the name appeared twice; as a matter of fact it appears once. I am objecting to her explaining a written document in evidence. I think it speaks for itself.

The Court: It may or may not appear.

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)

Witness: When we had more than one check deposited by the same person, when the items appeared under each other, we only wrote the name once.

Q. There is nothing appearing in the column where the person who cashed it or deposited it would go? A. No.

Q. You say that was your system of dittoing the second item? A. Yes, sir.

Q. With relation to those two checks, $1000 each, Stevenson, Rye Company, appearing in Exhibit S-47, I ask you where your letter shows they were payable? A. What do you mean payable?

Q. Where the checks were payable, under the column, "Where payable." A. Metuchen National Bank.

Q. I show you another letter dated December 10th, and ask you whether that is a carbon of a letter that you wrote? A. Yes, sir.

Mr. Guild: I offer it in evidence.

By Mr. English: Q. You repeat what you said

before, that you don't know whether it is a good check or a bad check or anything about it? A. No.

Q. Simply sent through for collection?

Mr. Guild: She didn't say that.

Q. Was it sent to the Union National Bank for collection? A. If it was marked for collection it would be.

Q. How would it be marked for collection? A. I believe we marked it for collection.

Q. What was your method of marking it for collection? Haven't you got the system in your mind? A. I think we marked "For collection."

Q. You are sure about that? A. I am sure, yes, sir.

Q. What kind of a mark do you make that would mark it for collection? A. If we had sent it for collection we would have put it on the bottom of the letter or made a separate letter of it.

Q. Suppose you had, in this paper, a whole list of checks, how would you indicate on the bottom of the letter which were for collection and which were not? A. We would put the check on the bottom of the letter and mark it "For collection." We would have included it in the amount of the letter.

Q. And you sent a separate letter with the check for collection? A. Either in a separate letter or the bottom of the letter.

Q. Do you mean pinned on or physically written on? A. We would write it on the bottom of the letter.

Q. You don't want to change your testimony any further about this left-hand column, that it contains the name of the depositor or the person who cashed the check or got the money?

Mr. Mott: The witness has shown no desire to change her testimony. If she wants to change her testimony she has not said that she did.

The Court: She has not indicated that fact. 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. OSBORNE,
Judge.

(Seal)

Q. The left-hand column either shows the name of the person who deposited the check or the person who got the cash? A. I believe it does.

Mr. English: I object because the defendant's name does not appear on it.

The Court: It will be admitted.

Marked Exhibit S-48.

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)

Q. I call your attention to the last two items in Exhibit S-48. What are they?

Mr. English: I would like to register an objection to reading an exhibit which speaks for itself. It is in evidence.

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.

H. V. OSBORNE,
Judge.

(Seal)

A. (Reading) "Stevenson, Rye Company, check $1000 each on Metuchen National Bank."

Q. Do you mean by that that there are two items of Stevenson, Rye Company of $1000 each check drawn on Metuchen National Bank? A. Yes, sir.

By Mr. Guild: Q. You haven't spoken of the system of marking on these letters items that were sent out for collection? A. Yes, sir.

Q. I show you two letters, one under date of January 4, 1911, and the other under date of January 17, 1911, and ask you whether you wrote those letters or whether those are carbons of letters that you wrote? A. Yes, sir, they are.

Mr. English: Which?

Witness: They are the carbons.

Mr. Guild: I offer those in evidence.

Mr. English: Have they any reference to the defendant?

Mr. Guild: Simply the system. She has testified as to the system. It is not necessary to corroborate her testimony by putting in some outside paper.

By the Court: Q. In reference to this matter of placing checks on the bottom of the page that you sent your exchanges in on, do I understand you to say that after having made up your list of checks that were to be sent to your exchange bank and totalled up would you then, when there were checks for collection, add them to the bottom of that same page? A. They wouldn't be included with the first total.

Q. After you got through with the checks that were merely exchanges you would make a separate entry or entries including the checks which were sent merely for collection? A. Yes, sir.

Q. Those checks not being included in the exchange totals? A. No, sir.

The Court: It seems to me to be so clear that it is not necessary to introduce those papers.

Q. You either pursued that method or enclosed another sheet with the checks for collection pinned on? A. Yes, sir.

By Mr. Guild: Q. I show you another letter dated December 12, 1910, and ask you whether that is a carbon of an original letter which you wrote? A. Yes, sir; it is.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion to strike out if it is not connected.

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.

H. V. OSBORNE,
Judge.

(Seal)

Q. I ask you whether the name of John B. Scarlett appears in that letter? A. Yes, sir, it does.

Q. Where? A. Next to the last item.

Q. Which column is his name? A. The first column.

Q. The left-hand column? A. Yes, sir.

Q. Was a check sent out with that letter? A. Yes, sir.

Q. Can you tell us what the amount of the check was and on what bank it was drawn? A. Four hundred and twenty-five dollars, on the Savoy Trust Company, New York City.

Q. To whom was this letter addressed? A. Irving National Exchange Bank.

Q. New York? A. Yes, sir.

Marked Exhibit S-49.

Q. I show you a letter dated December 13, 1910. Is this a carbon of an original letter written by you? A. Yes, sir; it is.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion to strike out.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-50.

Q. Does the name of J. B. Scarlett appear on that letter? A. Yes, sir; it does.

Q. And the amount of that check sent with the letter? A. Six hundred twenty-five dollars.

Q. Drawn on what bank? A. Savoy Trust Company, New York City.

Q. And to whom the letter is addressed? A. Irving National Exchange Bank, New York City.

Q. I show you a letter date December 19, 1910, is that a carbon of a letter written by you? A. Yes, sir.

By Mr. English: Q. There is nothing in this to indicate who drew this check? Nothing on this sheet indicating who drew this check? A. No, sir.

Q. Simply that it is drawn by somebody on some outside bank? A. Yes, sir.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-51.

Q. Do you find the name of J. B. Scarlett in that letter? A. I do.

Q. What is the amount of the check? A. One thousand two hundred dollars.

Q. Drawn on what bank? A. Savoy Trust Company, New York City.

Q. And the letter is addressed to whom? A. Irving National Exchange Bank, New York City.

Q. And a check accompanied the letter? A. Yes, sir.

Q. I show you a letter dated December 21, 1910; is that a carbon of a letter written by you? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection. Same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-52.

Q. Does the name of J. B. Scarlett appear in that letter? A. Yes, sir, it does.

Q. What is the amount of that check? A. Eight hundred dollars.

Q. Drawn on what bank? A. Metuchen National Bank.

Q. How much? A. Eight hundred dollars.

Q. The letter is addressed to whom? A. Union National Bank, Newark.

Q. Did that check accompany the letter? A. Yes, sir.

Q. I show you a letted dated December 22, 1910; is this a carbon copy of a letter you wrote? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection. Same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-53.

Q. Do you find the name of J. B. Scarlett in that letter? A. Yes, sir; I do.

Q. What is the amount of the check? A. Twelve hundred dollars.

Q. Drawn on what bank? A. Metuchen National Bank.

Q. To whom is the letter addressed? A. Union National Bank, Newark.

Q. Was the check sent with the letter? A. Yes, sir.

Q. I show you a letter dated December 27, 1910; is that a carbon of a letter that you wrote? A. Yes.

Mr. Guild: I offer it in evidence.

By Mr. English: Q. The date here, December 27th, is the date that the check was deposited, if it was deposited, or cashed, if it was cashed? A. Yes, sir.

By the Court: Q. And was sent out the same day that it came to the bank? A. Yes, sir.

By Mr. English: Q. It shows under the date of December 27th that it was either a check cashed or deposited on that same day? A. Yes, sir, as a rule.

Q. That was the practice? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-54.

Q. Do you find the name of J. B. Scarlett in this letter? A. Yes, sir; I do.

Q. What is the amount of the check? A. Two thousand dollars.

Q. Drawn on what bank? A. Metuchen National Bank.

Q. To whom is this letter addressed? A. Union National Bank, Newark.

Q. Did the check go with the letter? A. Yes, sir.

Q. I show you a letter dated December 29, 1910, and ask you whether that is a carbon of a letter you wrote? A. Yes, sir, it is.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-55.

Q. Do you find the name of John B. Scarlett in that letter? A. Yes, sir; I do.

Q. What is the amount of the check? A. Eight hundred dollars.

Q. Drawn on what bank? A. Metuchen National Bank.

Q. To whom is this letter addressed? A. Union National Bank, Newark.

Q. Did the check go with the letter? A. Yes, sir.

Q. I show you Roseville Trust Company letter dated December 31, 1910, and ask you if that is one of the series of letters you have been testifying about? A. Yes, sir; it is.

Q. Do you find the name of J. B. Scarlett on it? A. I do.

Q. For what amount A. Five hundred dollars.

Q. On what bank? A. Savoy Trust Company, New York City.

Q. Is this the letter that you sent to the Union National Bank? A. No, sir; Irving National Bank.

Q. New York? A. New York City.

By Mr. English: Q. You don't know who drew the check or anything about it? A. No, sir.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-56.

By Mr. Guild: Q. I show you another of these letters dated January 3, 1911, and ask you if that is one of the series of bank letters you have been testifying about? A. Yes, sir, it is.

Q. Will you look and see if the name of J. B. Scarlett appears on it? A. It does.

Q. For what amount? A. Two thousand dollars.

Q. On what bank? A. Metuchen National Bank.

Q. And this was a letter addressed to whom? A. Union National Bank, Newark.

Q. Did the check accompany the letter? A. Yes, sir; it did.

Q. And in the case of the last exhibit, the Irving National Bank, did the check accompany the letter in that case? A. Yes, sir.

By Mr. English: Q. You have no further knowledge about this than the others? A. No, sir.

Q. The same category? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-57.

Q. I show you another of these series of bank letters dated January 4, 1910, and ask you if it is another letter of the same character you have been testifying about? A. Yes, sir.

Q. Look at the date. A. Yes, it is January 4, 1910.

By Mr. English: Q. I notice that it has what seems to be an original and a carbon copy of the right-hand column giving the name of the bank and the location of the bank— A. I believe I told you before we have been sending the original copy to the Union National Bank.

By Mr. Mott: Q. You said you sent the check alone? A. Yes.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-58.

By Mr. Guild: Q. Do you find the name of Scarlett on this letter? A. Yes, sir; I do.

Q. Accompanied by what letters? A. "J. N."

Q. Do you find any depositors, as far as your

knowledge goes, of the name of J. N. Scarlett? A. No, sir, we did not.

Mr. English: I object to that.

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.

H. V. OSBORNE,
Judge.

(Seal)

Witness: No, sir, we did not.

Q. How do you account for that appearing as J. N. Scarlett there?

By Mr. English: Q. Have you any recollection of the entry at all? A. No, I haven't any recollection.

Mr. Guild: I object to her answering the question. It would be a mere guess on her part.

The Court: How can she account for it if she has no recollection except the same way as anybody else? We are just as capable of making that deduction as she is.

By Mr. Guild: Q. What is the amount of the check? A. Two thousand dollars.

Q. Drawn on what bank? A. Metuchen National Bank.

Q. To whom was this letter sent? A. Union National Bank, Newark.

Q. Did the check accompany the letter? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
(Seal) Judge.

Marked Exhibit S-59.

Q. I show you another of these bank letters dated January 9, 1911, and ask you whether that is one of the series of bank letters to which you have been testifying? A. Yes, sir; it is.

Q. Does the name J. B. Scarlett appear in that letter? A. Yes sir; it does.

Q. Under what column? A. Under the left-hand column.

Q. What is the amount of the check? A. Two thousand eight hundred dollars.

Q. Drawn on what bank? A. Metuchen National Bank.

Q. To whom is this letter addressed? A. Union National Bank, Newark.

Q. Did the check accompany the letter? A. Yes, sir; it did.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

The Court: Same ruling.

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

H. V. OSBORNE,
(Seal) Judge.

Marked Exhibit S-59.

Q. I show you another of these bank letters dated January 10, 1911, and ask you whether that is one of the series of letters which you have been testifying? A. Yes, sir, it is.

Q. Do you find the name of Scarlett on that? A. Yes, sir; I do.

Q. And under what initials? A. "J. B."

Q. What is the amount of the check? A. Two thousand dollars.

Q. Drawn on what bank? A. Metuchen National Bank.

Q. To whom is the letter addressed? A. Union National Bank, Newark.

Q. Did the check accompany the letter? A. Yes, sir, it did.

Mr. Guild: I offer it in evidence.

By Mr. English: Q. When you say the check accompanied the letter, you mean that was the practice? A. Yes, sir.

Q. You haven't any recollection of it now? A. A check must accompanied the letter.

Q. And so it must be because that was the practice? A. Yes, sir.

Q. But you don't pretend to recollect a specific check four years ago, do you? A. If the check had not accompanied the letter we would have taken the amount off the letter.

Q. You say the check accompanied the letter because that was the rule and practice and not because you have any specific recollection about it? A. No.

Q. You haven't any specific recollection? A. No, sir.

Q. You are testifying from the practice? A. Yes, sir.

Mr. Guild: I offer this in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-60.

By Mr. Guild: Q. I show you another of these bank letters dated January 11, 1911, and ask you if that is one of the series of letters to which you have been testifying? A. Yes, sir, it is.

Q. Does the name of J. B. Scarlett appear on that letter? A. Yes, sir.

Q. For what amount? A. Two thousand dollars.

Q. On what bank? A. Metuchen National Bank.

Q. To whom is the letter addressed? A. Union National Bank, Newark.

Q. Did the check accompany the letter? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-61.

Q. I show you another of these letters dated January 16, 1911, and ask you whether that is one of the series of bank letters you have been testifying to? A. Yes, sir, it is.

Q. Do you find the name of J. B. Scarlett on this letter? A. S. B. Scarlett.

Q. Whenever I ask you whether you find the name of J. B. Scarlett, look and see, and if the initials are not J. B. then tell me what the initials are? A. Yes, sir.

Q. S. B. Scarlett? A. S. B.

Q. For what amount? A. Two checks

Q. What amount? A. Seven hundred dollars and two thousand dollars.

Q. On what bank is it drawn? A. Metuchen National Bank.

Q. Both on the same bank? A. Yes, sir.

Q. To whom is the letter addressed? A. Union National Bank, Newark.

Q. Do you know whether the bank had a depositor by the name of S. B. Scarlett? A. No, sir, we did not.

Q. The checks accompanied the letter? A. Yes, sir.

By Mr. English: Q. You say the bank did not have a depositor S. B. Scarlett? A. Not that I know of.

Q. Will you be sure of that? A. Yes, sir.

Q. Why will you be sure? A. Because I knew most of the depositors' names.

Q. How many depositors did that bank have? A. I couldn't tell you.

Q. You claim to know most of their names. Tell us how many there were. A. I don't know.

The Court: She said she knew them.

Q. Didn't you know there was a man named S. B. Scarlett, a brother of this defendant, had an account in that company? A. I don't think he had a check account.

Q. Are you sure about that? A. Quite sure.

Mr. Guild: I offer that in evidence.

Mr. English: Same objection and motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-62.

Q. I show you another of these letters dated January 17, 1911, and ask you whether that is one of the series of letters you were testifying about? A. Yes, sir, it is.

Q. Do you find anywhere on that letter the name J. B. Scarlett? A. Yes, sir, I do.

Q. In whose handwriting is that? A. My handwriting.

Q. Is that entry of J. B. Scarlett's there in typewriting or in handwriting? A. Pencil.

Q. When was that pencil entry made? A. It might have been late in the afternoon.

Q. On the day that the letter was sent? A. Yes, sir.

Q. What is the amount of the check? A. $2000.

Q. Drawn on what bank? A. It doesn't state the city.

Q. Does it give the name? A. It just says "National Bank"; it just says "National."

Q. There is no way of telling whether it was Albany or San Francisco then? A. No, sir.

Q. To whom is the letter addressed? A. Union National Bank, Newark.

Q. The check accompanied the letter? A. Yes, sir.

Mr. English: I object to this on the ground already mentioned, and in addition, the witness says she can't locate any bank at all. It seems to me that is entirely too remote. It is merely a pencil scratch.

Mr. Guild: The witness has testified it was her handwriting put there that day.

Mr. English: I make the same objection and motion.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-63.

Q. I show you a paper headed "Roseville Trust Company," dated January 18, 1911, and ask you what that is? A. That is a regular bank letter that was sent to Philadelphia.

Q. To what bank? A. Fourth Street National Bank.

Q. Is there anything on that paper that identifies the items that were sent? A. No, sir.

Q. What is the record on that paper?

Mr. English: I object. That is getting into the paper. It therefore is obviously improper.

The Court: Has it appeared by her examination that it is part of one of those letters sent in the usual course of business.

Witness: Yes, sir.

Mr. Guild: I offer it in evidence.

By Mr. English: Q. You say that that went to the Fourth Street National Bank of Philadelphia? A. Yes, sir.

Q. The word "Philadelphia" is not on this paper? A. I know, but that is the only Fourth Street Bank that we sent checks to.

Q. So you deduct from that that it went to Philadelphia? A. Yes, sir.

By the Court: Q. Did they clear for you in Philadelphia? A. Yes, sir.

By Mr. English: Q. You sent to the Union National Bank all New Jersey checks? A. Not all checks.

Q. What did you distinguish? A. Checks that were within the Philadelphia exchange.

Q. Does that refer to some geographical location? A. Yes, I think it does.

Q. What district of the state or in the Philadelphia exchange and what in the Newark exchange? A. I couldn't tell you.

Q. At any rate, you sent to either Philadelphia or to Union National Bank checks drawn on New Jersey, depending on whether they were on the geographical district which exchanged through Philadelphia or Newark? A. Yes, sir.

Q. You have referred to a whole lot of checks drawn on the Metuchen Bank that were sent to the Union National Bank; that indicates this bank was in this geographical exchange? A. Yes.

Q. Why do you say this went down to Philadelphia? A. The letter states that.

Q. The letter doesn't state that; the letter says Fourth Street National Bank and the word "Metuchen"; you say that Metuchen cleared through Newark. Why did it go to Philadelphia?

Objected to.

The Court: She said it was one of the same letters she has been testifying about. They will have to connect it up, and if not, you can move to strike them out.

Mr. English: There is no name on that at all, either of depositor or the person who cashed it or anything at all; it is simply the bare statement of the figures $2,000.

The Court: They will have to make it material. Certainly, if there is nothing to connect this paper with the case it cannot hurt you.

Mr. English: Same objection and motion to strike out.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-64.

Q. Looking at this Exhibit S-64, the paper which I have been asking you about, what does that show? A. It shows the word "Metuchen" and the amount, $2,000—

Mr. English: The paper speaks for itself. This witness does not have to say what it shows.

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.

H. V. OSBORNE,
Judge.

(Seal)

Witness: It shows the word Metuchen, and the amount of $2,000 twice.

By Mr. Mott: Q. And that memorandum means what?

Mr. English: I object.

The Court: This is from the witness who made the memoranda. She can explain it. Perhaps she is the only person who can explain it.

Mr. English: When a written document is put in evidence the witness cannot be called on to explain it.

The Court: I will permit the witness to 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. OSBORNE,
Judge.

(Seal)

Q. That record means what? A. That shows the two checks that were sent to Fourth Street, Philadelphia National Bank on that date.

Q. Drawn on what bank? A. It does not state what bank, but drawn on the city, in Metuchen.

Q. Some bank in Metuchen? A. Yes, sir.

By the Court: Q. Can you tell what bank in

Metuchen from that record on that paper? A. No, sir.

Mr. Mott: Q. That only contains in that column the city where the bank is that the check is drawn on?

Witness: Yes, sir.

Mr. Mott: Q. And the name of the person who made the check or presented it is not shown?

Witness: No, sir.

By Mr. English: Q. What explanation of the fact do you give, the fact that a check drawn on the Metuchen Bank sent down to Philadelphia to clear and not through the Union National Bank?

Objected to.

Q. I show you another memorandum like the last one, dated January 23, 1911, and ask you what that is? A. It is one of the bank letters that was sent out.

Q. Part of one? A. Part of one, yes, sir.

Mr. Guild: I offer that in evidence.

By Mr. English: Q. That is drawn on a New York State bank. Where do you say that was? A. Albany, New York.

Q. And this refers to a check drawn on some bank in Metuchen? A. Yes, sir.

Q. How do you explain your bank sending up to Albany a check drawn on the Metuchen Bank and not through the Union National Bank?

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. OSBORNE,
Judge.

(Seal)

Q. Why do you say the New York State Bank is located in Albany? A. That is the bank we cleared through.

Q. Do you know whether or not there are other banks of that name, so far as you know? A. Yes, but that is the only one we cleared through.

Q. In what locality did you clear through the New York State Bank of Albany?

Objected to.

The Court: You may answer that.

A. All points in New York State, with the exception of New York City, and some outside item.

Q. That means a check drawn on any bank except New York City would be sent to the New York State Bank of Albany? A. I think so.

Q. And you wouldn't put any New Jersey checks through that? A. A few.

Q. How would you pick out the few? A. I don't know.

Q. Can you give the location of any bank in New Jersey that clears through the New York State Bank of Albany?

Mr. Guild: This is not proper cross-examination at this time.

Mr. English: The mere fact that counsel has a whole lot of papers does not make it admissible. I am trying to find out the connection between this paper and the defendant.

The Court: The only question involved in this offer is whether it was a part of the bookkeeping system. She says it was. These are all brought in, all bear the same evidence on their face, that they may be connected with this case, and all admitted

on the theory that it will be connected some way, so that they are subject to being stricken out.

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-65.

Q. This paper 65 shows what? A. That a check for $2,300, drawn on Metuchen, New Jersey, was sent to New York State National Bank, Albany, on that date.

Q. Accompanied by this letter? A. Yes, sir.

Q. I show you another record of the same character as the last, dated January 24, 1911, and ask you whether that is a part of one of your regular bank letters that you have been testifying about? A. Yes, sir; it is.

Mr. Guild: I offer it in evidence.

By Mr. English: Q. This is the same kind of a paper, only it is sent to the Union National Bank this time? A. Yes, sir.

Q. A check drawn on some Metuchen bank? A. Yes, sir.

Mr. English: Same objection and same motion.

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. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-66.

By Mr. Guild: Q. I show you this paper S-66 and ask you what it shows? A. It shows that a check for $2,000 on Metuchen was sent to the Union National Bank on that date.

Q. I show you another paper of the same character as the last, dated March 1, 1911. That date is right, is it? A. March 1, 1915.

Q. And I ask you if that is part of the bank letter sent out on that date? A. Yes, sir.

Mr. Guild: I offer that in evidence.

By Mr. English: Q. What bank did this go to?

Mr. Mott: That is getting in evidence the contents of the paper before it is in evidence.

The Court: That goes to the merits of the matter and not the admissibility as part of the bank record.

Mr. English: How am I going to find out anything about it? I haven't any doubt that this is part of the bank record, but that fact does not make it evident.

The Court: You have reserved your right to object to all of this evidence, and all you are doing now is duplicating argument. By making this one statement, that they will be all connected, you are in as good a condition as you are, as you will have recourse to your objection when the time comes, if it appears that they are not connected up. The effect is the same, because they cannot be used in evidence unless they are connected. All these are going in subject to counsel's objection.

(Question read.)

A. National Shawmet Bank of Boston.

Q. What geographical position is that in?

The Court: That is the same question as the other. You are going into the merits.

Paper referred to is marked Exhibit S-67.

Q. I show you S-67 and ask you what it shows as part of your bank record?

Objected to.

Objection overruled.

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.

A. It shows two checks which were sent to Boston on March 1st, one on Fall River, Mass., one of $1,700, and one Hartford, Connecticut, for $1,000.

Q. When it was sent to Boston, Massachusetts, you mean the National Shawmut Bank of Boston? A. Yes, sir.

Q. I show you one of these series of bank letters in February 7, 1911, and ask you whether that is one of the series of letters which you have previously testified? A. Yes, sir; it is.

Q. Do you find the name of J. B. Scarlett on that? A. Yes, sir, I do.

Mr. Guild: I offer it in evidence.

Mr English: I object to it and move to strike it out.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-68.

Q. You have said that the name J. B. Scarlett appeared on there. What was the amount of the check? A. $2,000.

Q. Drawn on what bank? A. State Bank of Hartford.

Q. Connecticut? A. Yes, sir.

Q. This letter is sent to whom? A. Union National Bank.

Q. And the check accompanied the letter? A. Yes, sir.

Q. I show you a bank letter like this, which you have seen before, and ask you what is the date of that? A. April 1, 1911.

Q. Sent to what bank? A. New York State National Bank, Albany, New York.

Q Is this in your handwriting? A. Yes, sir.

Q. How does it happen that that is in pencil and not typewritten? A. Well, it may be that I had something in the—

Mr. English: Not maybe. I object to the witness guessing. If she has any recollection she ought to say so and not speculate upon it.

The Court: She has stated that her practice was in certain cases to make these entries in pencil, and in other cases to make them on the typewriter. She may indicate what the situation was.

Q. This was one that was made in pencil? A. Yes, sir.

Q. On the day of the date of that? A. Yes, sir.

Q. And what is the amount of the check? A. $1,200.

Q. Drawn on what bank? A. It doesn't state the bank.

Q. And this was sent to whom? A. New York State National Bank, Albany, New York.

Q. And where did the check come from? A. New Castle, Pennsylvania.

Q. What does that mean, New Castle, Pennsylvania? A. That is a city.

Q. That is the place where the bank was located that the check was drawn on? A. Yes, sir.

By Mr. English: Q. How do you account for the fact that the practice was not pursued in this case of setting up the name of the bank?

Mr. Guild: I object. Nothing appears here that the practice was not pursued on that letter, and I object to the question because it assumes that the practice was not pursued.

Mr. English: Her whole testimony is based upon a practice, and here is deviation from a practice.

The Court: I think she testified in certain other cases on other letters that were brought to her attention the name of the city only appears.

Mr. Mott: She has only part of a letter there, only dealings with certain columns.

Mr. English: We ought to have the whole record and not yet in fragments.

The Court: You may inquire whether it is a fragment.

Q. Is this a part of the record that went to the New York National Bank? A. That is the only part we had.

Q. Why did you have such a small sheet to go to the New York bank and such a large one in the Newark bank? A. When we only had one item we only—

Q. Why has this such a meagre set of entries; it does not give the name of the depositor or the bank upon which it is drawn? A. Well, that is the way we handled those.

Q. I want to know, when you had the other system with the other banks? A. Because that had only one item on it; letters having just one or two items we just made that one sheet out.

Q. The fact that you have only one item you do not set up who the depositor was and what bank it was drawn on? A. We could find the depositor by looking up the deposit ticket.

Q. Wouldn't that be true in every case? A. No, sir.

Q. That is not an explanation; give us another.

Mr. Mott: I ask to have that stricken from the record.

The Court: It may be left in the record as showing the method of examination.

Q. Please give me another explanation? A. Why, we just had the one item on that, why, we didn't show the rest.

Q. Please give me some other explanation besides the fact that you could look up the deposit slip?

Mr. Mott: If there is any such explanation.

A. There is not any explanation.

Q. Why doesn't that same explanation apply to all the others? Why couldn't you look up the deposit ticket of the other one? A. The letter ought to have the name on.

Q. You could look up the deposit ticket if you wanted to take the trouble? A. No, but it wouldn't be quite so easy.

Q. That is the only explanation you have to offer of this meagre entry? A. Yes, sir.

Mr. English: I object to that on the other ground stated, and on the ground that it is a fragment. I pray an exception and ask leave to strike it out.

By the Court: Q. As I understand, the reason for an entry of that kind, being only one item, there was little likelihood of confusion, where, if there were a number of entries, in order to avoid confusion, you would set them up more in detail? A. Yes, sir.

Q. As to this being a fragment, you say this is all the bank had? A. Yes, sir.

Q. The other part being where? A. Torn off.

Q. And sent anywhere or kept? A. The other part of that, the original of that, was sent with the checks.

Q. That is the reason that is all you have? A. Yes, sir.

Q. And you gave the additional information that was not contained on the letter? A. Yes, sir.

Q. By reference to the check? A. To the letter.

The Court: It will be admitted.

Mr. English: I object and move to strike it out as not connected.

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-69.

A paper is marked S-70 for identification.

By Mr. Guild: Q. I show you Exhibit S-70 for identification, a book, and ask you if you have ever seen it before? A. I have.

Q. What is that book? A. Return item book.

Q. Kept by the Roseville Trust Company? A. Yes, sir.

Q. Is that a book of original entry? A. Duplicate.

Q. Where were the original entries made? A. The original entries were sent back to the different depositors.

Q. You say that that is the return item book. What do you mean by that? A. All the checks that were returned to the Roseville Trust Company from the different banks for different reasons which went back to the different people who had deposited then and we sent one of these forms with each check.

Q. Does the name of John B. Scarlett appear in this book? A. Yes, sir; it does.

Mr. Guild: I offer the book in evidence.

Mr. English: Is this supposed to connect with any of the exhibits presented this morning or is it a brand new matter?

The Court: Do these items in this book relate to some of the items which have been testified to by Mr. Scarlett?

Mr. Mott: Yes, sir. It is a history of the checks involved in this case.

By Mr. English: Q. This is a carbon impression, this writing here? A. Yes, sir.

Q. And nothing is torn out of this book, no original paper is torn out of this book? A. No, sir.

Q. You write it on the white paper, the stub which appears here, and this is a carbon impression on the yellow paper? A. Yes, sir.

Q. What do you have before you when you make up this record? A. A check.

Q. What name is supposed to be set up in this notice, the name of the depositor? A. Yes, sir.

Q. Or the person who cashed the check or who? A. The name of the depositor.

Q. Does this apply to checks deposited for collection or to deposits or both? A. Both.

Q. And it shows the name of the depositor who deposited his check, either for deposit or for collection, and does it show the date when he deposited it? A. No, sir.

Q. I see a date in the book here in each case. A. The date the check was sent back to the depositor.

Q. In other words, the date you write this paper? A. Yes, sir.

Q. There is nothing to indicate whose check it is that is sent back, who the maker of the check is? A. No, sir.

Q. Nothing to indicate the bank on which the check is drawn? A. No, sir.

Q. Is there anything to indicate the city or the bank on which it is drawn? A. It indicates the city.

Q. And the bank on which the check was drawn; is that so? A. Yes, sir.

Q. Was the check mentioned or referred to in the book enclosed with the white slip of paper? A. Yes, sir.

Q. By you? A. Yes, sir.

Q. It was your practice? A. Yes, sir.

Q. You don't pretend to remember this particular item, but that was the practice? A. Yes.

Q. Does this refer to checks that were cashed at the teller's window and drawn on some other bank? A. No, sir.

Q. Simply checks either deposited for account or for collection? A. No, sir.

Q. And there is nothing to indicate this? A. No, sir.

Q. No notation down on the bottom or any notation of any character in this? A. I don't think so.

By the Court: Q. Are these all checks that were sent to be made good or what? A. They were not all bad checks.

Q. Under what circumstances would you send checks back? A. For the date, when the endorsement was incorrect.

Q. And not good? A. And not good.

Q. Sometimes people would forget to sign their checks? A. Yes, sir.

Q. If there was any defect on the face of the check it would be sent back to the person drawing it; is that right? A. Sent back to the depositor.

Q. Sent back to the person depositing it in order to have the defect corrected? A. Yes, sir.

Q. And it would be returned with a sheet taken from this book? A. Yes, sir.

Q. With certain writing on it? A. Yes, sir.

Q. And the writing which is contained on the yellow sheet are the carbon copies of the sheet that was sent out? A. Yes, sir.

Q. That is the reason you call it the return item book? A. Yes, sir.

Q. So far as the bank is concerned, it is an orig-

inal entry made at the same time that the other copy is made and sent to the depositor? A. Yes, sir.

By Mr. English: Q. And would be sent back for any of the varieties of reasons you gave the Court? A. No.

Q. It doesn't necessarily show that the check that is sent at the time is a bad check? A. No, sir.

Mr. Mott: We offer the book in evidence.

Mr. English: I object to it until it is further connected up.

The Court: The prosecutor stated that the items to which her attention was called were items regarding which Mr. Scarlett testified in his examination.

Mr. English: He was asked on cross-examination about a large number of items, some of which he had at least no recollection. I don't like that theory that Mr. Scarlett testified about these things, because I don't think that is the record.

Mr. Guild: They relate to questions asked him on cross-examination; they relate to a series of checks which were admitted in evidence and used or deposited as cash at the Roseville Trust Company.

The Court: It will be admitted.

Mr. English: I object to it and ask leave to strike it out if it is not connected.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-70.

By Mr. Mott: Q. I call your attention to an entry in this book under date of December, 1910; I think it is; is that correct? A. Yes, sir.

Q. And what does that entry show? A. That a check for $625 on New York State was returned protested.

Q. To whom? A. To Mr. J. B. Scarlett.

Q. How does it show it was protested? A. It has the amount of the protest fees.

Q. How much was the check? A. $625.

Q. What does the amount of $1.30 mean? A. The protest fees.

Q. Is there anything on that record that shows whose check this was or anything about its history other than the fact that it was sent back to Mr. Scarlett protested? A. No, sir.

By Mr. English: Q. The date given in that book is not the date of the check; it is the date it is sent back? A. The date it is sent back.

Q. There is no way in that book to fix what check is referred to or what check or what date is referred to? A. No, sir; not in this book.

Q. All it shows is that on that day a check for the amount stated was sent back? A. Yes, sir.

Q. But what book does not appear? A. No, sir.

By Mr. Mott: Q. Turn to the next item, please. First give us the date? A. December 24, 1910.

Q. What does your record show under that date? A. Check was returned to Mr. J. B. Scarlett, protested, $1,200, drawn on Savoy Trust Company, and the amount of protest fees was $1.30.

By the Court: Q. In the last answer you did not give us the name of any bank, did you? A. It didn't state any bank.

Q. This states the amount of the check and the name of the bank, is that right? A. Yes, sir.

Marked Exhibit S-71 for identification.

By Mr. Mott: Q. I now show you S-71 for identification and ask you whether that is the check of the same character and purpose and use as the check about which you have just testified? A. Yes, sir, it is.

Q. Can you say if the name of John B. Scarlett appears? A. Yes, sir; it does.

Mr. Mott: I offer it in evidence.

Mr. English: Same objection and same motion to strike out.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-71.

By Mr. English: Q. This white slip had printed on it the words "We return herewith a check charged to your account." A. I believe so.

Q. I call your attention to the fact that in this book S-71 there appears on the first page a printed slip on white paper and ask you what that slip is? A. That is the original slip that was sent out with the check to the depositor.

Q. You mean in each case a printed slip corresponding to this particular slip was sent to each depositor? A. Yes, sir.

Marked Exhibit S-72 for identification.

Q. Returning to this slip 73 for identification,

do you state there the reason for sending the check back? A. Not all the reasons.

Q. Look on the slip. What does that state? A. Well, there are some different reasons for returning them.

Q. What reasons are stated here? A. Returned protested, refused payment, returned for endorsement and returned as requested.

Q. What does that "Refused" mean? A. The bank refuses to pay the check.

Q. The first means one check was actually returned because it was protested? A. Yes, sir.

Q. Another refused—it means payment not made—but not protested? A. Yes, sir.

Q. And the third do, "Ditto" to return? A. Yes, sir.

Q. Returned for endorsement? A. Yes, sir.

Q. And the fourth is ditto? A. Returned as requested.

Q. And with each one of these return checks which you have testified were sent back to Mr. Scarlett a printed slip filled out with one of those causes stated was sent to him, was it? A. Yes, sir.

Q. And that would be true with all of the return items, would it not? A. Yes, sir.

Mr. Mott: I offer first, in evidence, this printed slip to show the communication that acompanies the returned check.

Marked Exhibit S-72.

By Mr. English: Q. This blank form 72 had on it the words "Charge to your account." Does that mean in the book of the bank, they charge up the amount of the check? A. Yes, sir.

Q. And also the amount of protest fees? A. Yes, sir.

Q. If the check was sent through for collection then they would not charge the amount of the check? A. No, sir.

Q. They would simply charge the protest fees? A. Yes, sir.

Q. In that case the only charge made against an individual account would be the protest fees? A. Yes, sir.

Q. Did you send one of these notices to anybody else who was mentioned on the check except the person who deposited it? A. No, sir; just the depositor.

Mr. Mott: I offer the book.

Mr. English: I object until it is further connected up.

The Court: Same ruling.

Mr. English: I pray an exception and ask leave to strike it out.

Exception allowed and signed and sealed accordingly.

H. V. OSBORNE,
Judge.

(Seal)

The book referred to is marked Exhibit S-72.

Q. Will you turn to this book and see what record you have in there of returned items of Mr. J. B. Scarlett? A. There is one December 31, 1910, Middlesex Hat Company, Incorporated, for $800; protest fees, $1.58; on January 16, 1911, on Metuchen, $2,800, protest fees, $1.68; one on January 18, 1911, check on Metuchen, $2,000, protest fees, $1.68; one on January 23, 1911, two checks on Metuchen, one for $2,000 and one for $700, re-

turned not good; they were not protested; they were returned not good. On January 24, 1911, check on Metuchen, N. J., $2,000, returned not good.

Q. Not protested? A. Not protested.

At 1 o'clock p. m., the Court took a recess of one hour.

After recess.

WILLIAM A. McCAMY, sworn in behalf of State in rebuttal:

Direct-examination by Mr. Mott:

Q. Where do you live? A. Philadelphia.

Q. What is your business? A. Connected with the Fourth Street National Bank.

Q. In what capacity? A. I work as assistant to the assistant cashier.

Q. And briefly what are your duties with reference to the affairs of the bank? A. I handle a good bit of correspondence for him and have charge of making the arrangements with banks outside of Philadelphia.

Q. How long have you been doing that kind of work? A. For five or six years.

Q. Do you know whether in the year 1911 your bank did any business with the Roseville Trust Company? A. Yes, sir.

A paper is marked Exhibit S-73 for identification.

Q. I show you S-73 for identification and ask you if you know what it is? A. Yes, sir.

Q. What is that paper? A. A letter written to the Roseville Trust Company on January 19, 1911.

Q. Signed by whom? A. Signed by W. A. Bulkley, the assistant cashier.

Q. Do you know whose signature that is? A. Yes, sir.

Q. Whose is it? A. A clerk by the name of Oas, who was doing a good deal of the work I am doing now.

Q. He signed Mr. Bulkley's name? A. Yes, sir.

Q. Without stating the contents at all, what is that document? A. Just a description—

Q. Just state what it is? A. It is a letter.

Q. Addressed to whom? A. Roseville Trust Company, Newark, N. J.

Q. Dated when? A. January 19, 1911.

By the Court: Q. Signed what? A. Signed "W. A. Bulkley, assistant cashier."

Q. Assistant cashier of what? A. It doesn't say here, but it is the Fourth National Bank.

By Mr. Mott: Q. Is it on the letterhead? A. Yes, sir; the Fourth Street National Bank.

Q. And sent from where? A. Philadelphia.

Q. Are you familiar with the way the clerk signed the letters? A. I am familiar with the way the clerk signed Mr. Bulkley's name and I can say that it is his signature there.

Q. You have some papers by you on the desk there. What are those? A. A letter here from the Roseville Trust Company enclosing two items.

Mr. English: Don't tell us the contents of the paper. Just describe generally what it is.

By the Court: Q. Under what date? A. January 18, 1911.

By Mr. English: Q. And addressed to your bank? A. Addressed to the Fourth Street National Bank.

By Mr. Mott: Q. Where did you get that letter from?

By the Court: Q. From the files of the bank or some other place? A. No, from the files of our bank.

Q. From the records you have are you able to say whether or not on or about January 19, 1911, your bank received from the Roseville Trust Company two checks for $2,000 each drawn on a Metuchen bank?

Mr. English: Will your Honor instruct the witness to answer yes or no?

The Court: Answer that yes or no. Can you tell or can't you?

Witness: Yes, sir; I can tell.

The letter from the Roseville Trust Company to the Fourth Street National Bank is marked Exhibit S-74 for identification.

By Mr. English: Q. When did you first see this letter S-74 for identification? A. This morning.

Q. That is the first you ever saw it? A. The first I saw it.

Q. You saw it when it was handed by somebody who dug it out of the files of your bank? A. Yes.

Q. So you have no personal knowledge at all? A. No.

Q. When did you first see the letter S-73 for identification? A. Just now.

Q. You didn't see that back in 1911 when it was written? A. No.

Q. You haven't any personal knowledge about that? A. No.

Q. So that anything you may be able to testify is not of your own personal knowledge, but only what these papers show; is that correct? A. Yes, sir.

Q. There is nothing in here by way of memorandum to refresh your recollection? A. No.

Q. You never saw these papers before? A. No.

By Mr. Mott: Q. Have you any other records with you relating to what you assume to be the matter referred to in S-74 and S-73, the letter, and the Roseville Trust Company letter? A. Yes.

Q. What records have you? A. I have a record of the items outgoing.

Q. What? A. A record of what items leaving our bank.

Q. A record kept by whom? A. Kept by our transit department that handles articles of that nature.

Q. What do you know about those records? A. I know that they are the records of the bank, the regular form used by that department.

Q. Where did you get these records? A. From our files this morning.

Q. Referring to these records?

The Court: What he has designated as outgoing items.

Q. Outgoing items. Do you there find any reference to the matters referred to in these two letters S-73 and 74? A. Yes, sir.

Mr. English: I object. You see, your Honor, these are not books of the Roseville Trust Company; they are books of an outside bank, and not kept by this witness, and he has no personal knowledge of them.

The Court: He has personal knowledge

of the books of the institution. Anybody connected with the business can testify to them.

Q. When did you first see the record now before you? A. This morning.

Q. So you have no personal knowledge except as you see it as to what it contains? A. Yes.

Q. There is nothing there in your writing which refreshes your memory? A. No.

By the Court: Q. When you speak of this record, do you mean the particular sheet or the book which contains that sheet? A. Well, that is a book of all the letters going out that day.

Q. You said, in response to a question, the first you saw of a certain record was this morning; now, were you referring to a particular sheet which you opened to or are you referring to this book which contained this sheet? A. I probably never saw that before this morning; I can't say that I have.

Q. How can you tell us then what it is? A. I know that is the customary book and I saw where it was taken from this morning.

Q. How do you know it is the customary book? A. There is one of these made up each day.

Q. How do you know that? A. I see that done every once in a while.

Q. Does your work in the bank bring you in contact with the particular department in which this book is made up? A. Indirectly.

By Mr. Mott: Q. How directly? A. Part of my work is routing the items, telling this department where to send particular items, and I see these boks in the course of preparation.

By Mr. English: Q. Are these books subject to your inspection as the work goes on? A. No.

Q. What do you mean by saying you see them in the course of preparation? A. Well, being up in that department part of the time I see them being made up.

Q. Did you say you direct where the checks should be sent? A. I do now.

Q. Speaking of 1911, did you at that time? A. I did at that time.

Q. Your duties have been changed since then? A. Yes.

Q. At that time did you have anything to do with the outgoing checks? A. No.

Q. Do you know whose writing that book is in? A. No.

The Court: It is typewritten.

By Mr. Mott: Q. Do you know whose duty it was to keep this book in 1911? A. No, sir.

Mr. Mott: I don't know what view your Honor has as to whether these checks are sufficiently identified as a part of the bookkeeping system of the Philadelphia bank.

The Court: It depends largely upon how much objection there is to it.

Mr. Mott: Well, I offer them.

Mr. English: I object.

The Court: I don't think they can be admitted on the testimony of this witness. He has particularly disqualified himself in testifying regarding them, because he says he has never seen them before, does not know how they are kept and has nothing to do with the department in which they are kept. There ought to be somebody produced who can testify to that.

Mr. Mott: For the present we will not

press the matter. I first offer the letter of the Roseville Trust Company to the Philadelphia Bank.

Mr. English: I object to it. The witness said he never saw it before.

By the Court: Q. I think you did say it came from the files of your bank this morning? A. Yes, sir.

Q. Brought here by you this morning? A. Yes, sir.

Mr. Mott: Now, I offer the letter which he recognizes as written by the assistant cashier.

Mr. English: I object to that. There is no proof of the signature of the assistant cashier and that it was written by a clerk.

By Mr. Mott: Q. Who did you say signed this? A. Mr. Oas.

Q. Do you know anything about, of your own knowledge, Mr. Oas' authority to sign for W. A. Bulkley as assistant cashier for the Fourth Street National Bank? A. I know he did it right along.

Q. Do you know whether he had any authority? A. I knew Mr. Bulkley knew he did it; it was customary.

Q. Mr. Bulkley was the assistant cashier. Are you the assistant to Mr. Bulkley? A. I am now, yes.

By Mr. English: Q. Have you taken Oas' place? A. Yes.

By the Court: Q. And was Oas there doing this work at the same time you were there? A. I wasn't doing it at that time; he was doing it at that time.

Q. You were with the bank? A. I was with the bank, yes.

The Court: I will receive this.

By Mr. English: Q. You have no knowledge whether Mr. Oas signed this particular letter with Mr. Bulkley's authority or anything about it, have you? A. No.

Q. All you know is you recognize that signature to be in his handwriting? A. Yes, I know that.

Q. But the circumstances of his writing it or why it was written you have no knowledge? A. No, I don't know that.

Q. Where was this letter produced from? A. I don't know.

Q. It is just shown you today? A. Yes, sir.

Mr. English: I renew the objection. There is no testimony of this witness to justify the admission of the letter.

The Court: He says that he knows of his own knowledge that Mr. Oas signed letters with the authority of Mr. Bulkley.

Q. That is all you know about his authority except the fact that you have seen him physically sign his name? A. I have heard Mr. Bulkley tell him to sign letters of that nature.

Q. You didn't hear him tell him to sign this letter? A. No ,sir, not that particular one.

Q. Can you fix the time in 1911? A. I would say so.

Q. You think you have heard Mr. Bulkley tell him to sign his name, but you didn't hear him tell him to sign his name to that one? A. Yes, sir.

Q. I say, but not this particular letter? A. No, sir.

Q. Do you sign letters now? A. Yes, sir.

By the Court: Q. You hold the same position that he did at that time? A. Yes, sir.

The Court: I will admit the letter.

Letter marked Exhibit S-73.

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)

A paper is marked Exhibit S-75 for identification.

By Mr. Mott: Q. I show you S-75 for identification and ask you if you can tell what it is. Please answer yes or no? A. Yes.

Q. What is it, without stating the contents? A. It is a letter sent out by us.

Q. "By us" you mean what? A. The Fourth Street National Bank.

Q. To whom? A. To the Roseville Trust Company, Newark.

Q. Under what date? A. January 30, 1911.

Q. How do you identify the letter? A. It is our regular transit letter.

Q. By transit letter, you mean what? Tell the jury what you mean? A. The letter is sent out containing cash items and checks sent to a particular bank.

By the Court: Q. It is a letter containing cash items—that is, checks which are sent to particular banks for collection—in other words, is that the form of letter which you send out with a check that goes out to another bank for collection? A. Yes, sir.

Q. Containing a memoranda regarding the check? A. Yes, sir.

By Mr. Mott: Q. That is on the printed letterhead of what? A. The Fourth Street National Bank.

Q. And is that the form that you would send with a check that was returned? A. Yes, sir.

Mr. English: I object. He didn't do it at that time.

Q. You have said that that is the form of the letter that accompanied a check that was sent for collection, and what other checks would go with that letter? A. The checks that were returned.

Q. What do you mean by returned? A. Checks that were to go back to a bank from which we had received them.

Q. That would include what—reasons for sending them back?

Mr. English: I don't know if this is of his own knowledge.

Q. Are you familiar with this form of letter in your bank? A. Yes, sir.

Q. And from your familiarity with the general use of this form of letter can you answer the prosecutor's question as to what reasons there would be for sending back a letter of that kind?

Mr. Mott: With checks enclosed.

Q. As of that date, your knowledge must revert to that date, what reason there would be for returning checks? A. For various reasons, not sufficient funds for endorsement.

Q. For anything else? A. Improper date, and any cause for a nonpayment.

By Mr. Mott: Q. And nonpayment itself? A. Yes.

Q. What about protested checks? A. If they were protested they would go back in the same way.

Q. Have you any reference in your book here to this letter; do you find reference in this book to this letter? A. Yes, sir.

Q. What do you find in your files that you have produced here with reference to this letter?

Mr. English: I object. It is asking for the contents of some book which has been shut out. It is the same kind of book which your Honor overruled.

Q. Have you, in the book you have produced here, a record of a copy of this letter which you say was sent? A. Yes, sir.

Q. That record appears in what book of the bank? A. The letter sent out on January 30, 1911.

By the Court: Q. You say you are familiar with sheets of that character and heading? A. Yes.

Q. Were they kept in the bank? A. In the transit department.

Q. How were they kept, in what form?

Mr. Mott: Your Honor refers to copies?

The Court: I am trying to trace this original to its original source in the bank, referring to S-75.

Witness: They are kept in the stationery closet.

Q. Where do they go from the stationery closet? A. The clerk takes them and heads them.

Q. Are they pinned in the back or are they lose? A. They are separate sheets, this and the duplicate.

Q. Do you know what is done with them when they are taken by the clerk and used, who puts this writing on them? A. The clerk who has that part of the work, that particular section of the account.

Q. And then what is done with them, if you know? A. Then the checks are inclosed with that in an envelope and mailed.

Q. That is, with the original of S-75? A. Yes, sir.

Q. Or a paper of that type? A. Yes, sir.

Q. What becomes of it then? A. It is pinned in the book.

The Court: He says there is a copy torn off and pinned this way.

Mr. Mott: I am not concerned so much with the copy. I want to prove that this was sent and it was received by the Roseville Trust Company.

Q. You didn't produce that this morning? A. No.

Mr. Mott: No, we had this.

Mr. English: Is there anything offered in evidence?

The Court: Not yet.

Not cross-examined.

CHARLES MINDNICH, re-called in behalf of the State in rebuttal:

Direct-examination by Mr. Mott:

Q. Mr. Mindnich, you have already testified that you were connected with the Roseville Trust Company? A. Yes, sir; I have.

Q. And that you were bookkeeper, were you? A. Yes, for a time.

Q. I show you a book and ask you what it is? A.

General cash book No. 2 of the Roseville Trust Company.

Q. Who kept that book on January 31, 1911? A. I did.

Q. And the entries in that— A. Are in my handwriting.

Q. I show you Exhibit S-5 for identification and ask you whether you can tell if you have ever seen that before or not? A. I have not.

Q. What? A. I have not.

Q. If this came to the Roseville Trust Company would you see it?

Objected to.

The Court: In the ordinary course of business.

Q. In the ordinary course of business? A. No, sir.

Q. What clerk of the company receives return items? A. The receiving teller, as a rule.

Q. How would you know what entries to make in the cash book? A. I would get them from white slips that were made out by the clerk that received those letters.

The Court: I suppose you are trying to trace this back to the Roseville Trust Company? Can you not call somebody who found it there? It seems to me that ought to cover the situation. It started in Philadelphia and you find it in the Roseville Trust Company.

Mr. Mott: I withdraw the witness.

ALFRED J. HARGAN, re-called in behalf of State in rebuttal:

Direct-examination by Mr. Mott:

Q. Mr. Hargan, you have been already sworn in this case? A. Yes, sir.

Q. I show you S-75 for identification and ask you if you have ever seen that paper before? A. I have.

Q. Where did you first see that? A. I first found that after I had brought from the Roseville Trust Company all the letters there down to our office and had them in my custody and made a search for this letter and found this among the Roseville Trust Company letters.

Q. When did you go to the Roseville Trust Company and get the papers among which you found this? A. I should say it is somewheres about in the neighborhood of a year ago.

By Mr. English: Q. March, 1914, that would be? A. I would say it is longer than that—yes, I would say about a year.

By the Court: Q. Who did you get those letters from among which you found this? A. I took these letters from the vault downstairs in the cellar.

Q. It has been in your possession ever since? A. It has been in my possession ever since.

Mr. Mott: I now offer it in evidence.

Mr. English: I object to it.

By Mr. English: Q. You haven't any personal knowledge of the letter; you simply found it? A. I found it among the Roseville Trust Company letters which I took from the vault of the Roseville Trust Company.

The Court: I will admit it.

Marked Exhibit S-75.

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. Mott: Q. I show you Exhibit No. 73 and ask you if you have ever seen that before? A. I have.

Q. Where did you first see that? A. I got that in the same bundle of letters as contained the other letters.

Q. That is, among the papers that you got from the vaults of the Roseville Trust Company? A. Yes, sir.

Not cross-examined.

CHARLES MINDNICH resumes the stand in behalf of State in rebuttal.

Direct-examination (continued) by Mr. Mott:

Q. Turn to your cash book under date of January 31st, I think it is 1911, and see if you find any entries there corresponding in amount to the amount in Exhibit S-75.

Mr. English: Did this gentleman make this record from this paper?

Mr. Mott: No, he made it from the white slips.

The Court: He is only asked now whether he finds any corresponding amount in his handwriting.

Witness: Yes, I do.

Q. Are those entries in your handwriting? A. Yes, sir.

Q. What do you call that book? A. Cash book No. 2.

Q. You said this is a regular book of the Roseville Trust Company, kept by you as bookkeeper? A. I have said that.

Mr. Mott: I offer the book in evidence.

By Mr. English: Q. What do you mean those entries up there (indicating)? A. From the white slip.

Q. Well, that don't mean much to me. What is a white slip? A. When these letters came in—

Q. You refer to this thing as a white slip? A. No, sir; I do not.

Q. Tell me what a white slip is? A. When these letters come in the receiving teller makes out the credit or a charge to that bank.

By the Court: Q. A letter like S-75? A. Yes, sir.

By Mr. English: Q. When that comes in the receiving teller makes some sort of a slip from it A. Yes, sir.

Q. Which you call a white slip? A. Yes, sir.

Q. Then what becomes of the white slip? A. Those slips are given to me at the end of the day's business and I put them in that cash book.

Q. Does the cash book show credits or debits A. Credits and debits, the cash book shows.

Q. To whom are the charges made? A. To the various banks or the various accounts on the general ledger.

Q. You post from this cash book into what, the general ledger? A. Yes, sir.

Q. That general ledger is run in the names of banks? A. Banks and all different accounts, dif-

ferent accounts, like interest accounts and individual deposits and bonds and mortgages.

By the Court: Q. All the accounts that the bank runs are carried in that general ledger? A. Yes, sir.

By Mr. English: Q. But not a deposit account? A. No, sir.

Q. All the clearing houses and things of that nature? A. Yes, sir.

By the Court: Q. You have two ledgers, individual ledger and a general ledger? A. Yes, sir.

Q. The individual ledger carrying the account of the depositors? A. Yes, sir.

Q. And the other ledger is a miscellaneous ledger? A. Yes, sir.

By Mr. English: Q. You didn't make that up from this thing? A. No, sir.

Q. You haven't any recollection of S-75, I take it? A. No, sir.

Q. And the only reason you can take it and point out a similarity is that you find a similarity in figures, is that it? A. I wouldn't say that because—

Mr. Mott: How is that cross-examination? I have asked this witness if he finds certain things on the books which he keeps. Now, I think at this time this examination goes simply to the question of whether he keeps this book or not.

The Court: 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. OSBORNE,

(Seal) Judge.

Q. Have you any personal recollection of making this entry?

Mr. Mott: The witness identifies his own handwriting. Whether he has personal recollection may be proper later on, but not now.

The Court: The only question is on the admissibility of this book.

Q. Are the entries in this book accurate? A. Yes, sir.

Q. As accurate as the other books that you kept?

Objected to.

Objection overruled.

A. I can't tell you.

Q. You kept the individual ledger, didn't you? A. Yes, sir.

Q. You admitted that those entries were inaccurate now? A. I know it now, but I didn't know it at the time I was in the bank that they were inaccurate.

Mr. English: I ask that that be stricken out. I ask the witness if he now admitted it.

The Court: Strike out his answer. The question is whether you have admitted it.

Witness: That is a week ago, your Honor.

Mr. Mott: I don't remember it now.

Q. Are the entries in the individual ledger made by you about John B. Scarlett accurate?

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. OSBORNE,
(Seal) Judge.

Q. Can you tell me whether the entries now in this book before us are accurate? A. Yes, sir.

Q. Why can you say that? A. Because I made them myself.

Q. You made the others yourself? A. What others?

Q. The individual ledger. Can you give us any other reason other than the fact that you made it yourself? A. No.

Q. That is the only reason you can give? A. Yes.

Q. And you made this under the general direction of Mr. Smith? A. No, sir; I copied this from slips.

Q. Who was your boss, under whose general direction did you do that? A. Well, Mr. Smith.

Mr. Mott: I offer the book in evidence.

Mr. English: I object to the book because there is nothing in it which connects with this case and it is immaterial.

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. OSBORNE,
(Seal) Judge.

Marked Exhibit S-76.

The Court: The witness is asked to point

out, if he can, any figures that refer to the figures in the letter.

Witness: Yes, sir; I find two credits here to Philadelphia of $2001.62.

By the Court: Q. Are they totalled? A. They are accompanied by another amount of $4871.05, and that is totalled.

Q. Now, you say that you find an entry there that you call a credit to Philadelphia. Read it. A. "Philadelphia, $487.05, and then two items of $2001.62, and that together with the $487.05 makes a total of $4490.29 to the credit of Philadelphia that day.

Q. What do you mean, to the credit of Philadelphia? A. I mean that Philadelphia sends us that many checks or that much money on that date, $4490.29.

Q. Will you now turn to January 18 in the book and see if you find any charges against Philadelphia relating to those items? A. There is a charge here on January 18, 1911, to Philadelphia of $4900.

Q. And that means what? A. That means that there were payable two drafts—

Objected to.

The Court: Objection sustained.

Q. And is it a credit or debit to Philadelphia? A. It is a debit to Philadelphia.

Q. That is what you find on January 18th, a debit to Philadelphia— A. Yes, sir, of $4000.

Q. One or two items? A. One item.

Q. You say you think, when you looked at this letter, at least, when you looked in your book on the previous entry, Philadelphia sent you cash for checks amounting to what? A. $2001.62.

Q. Suppose that it was a protested check that had not been paid, how would you account for the $1.62 on each item? A. That is protest fees.

Q. And if the item had been returned protested would you credit Phildelphia with it or charge Philadelphia? A. That I can't say; I don't remember.

By Mr. Mott: Q. When you sent the items to Philadelphia you charged them with them, didn't you, if you sent them?

Objected to as leading.

Q. When you sent items to Philadelphia what did you do, did you charge them or debit them? A. That is one and the same thing, charge them and debit them.

Q. I mean credit or charge them? A. I tell you I don't remember, Mr. Mott, when they sent them down did they charge them or did they credit them; I can tell you by looking at the general ledger.

By Mr. English: Q. Did you keep this ledger, is this your book? A. I can tell you as soon as I find the date whether I did or not.

By Mr. Mott: Q. What book are you looking at? A. General ledger, No. 1, No. 1 A.

Q. And the entries you are looking at are in whose handwriting? A. Not mine.

Q. Do you know whose? A. Yes, sir.

Q. Whose? A. Mr. Thompson's.

Q. Do you find some entries in the book in Mr. Thompson's handwriting of corresponding amounts to those we have been speaking of? A. Yes, sir.

Mr. English: He said he could.

Mr. Mott: Can you tell from the book if you sent the items to Philadelphia?

The Court: You have shown that Philadelphia sent certain items up here. Now, the question is what they did with them after they got them here.

Mr. English: It already appeared that they were credited and then the question is why they were credited.

Witness: They were credited to Philadelphia on January 31, 1911.

The Court: And then the question was why they were credited to Philadelphia.

Q. What do you say? A. They were credited to Philadelphia.

Q. Two items of $2000 each? A. Yes, sir, protest fees and that other item of $487.05.

CROSS-EXAMINATION by Mr. English:

Q. You can't tell why they were credited; you only know the fact why they were credited? A. That is the general custom, to credit them.

Q. What is that? A. That is the custom, to credit them.

ALEXANDER C. LITTERST, sworn in behalf of State in rebuttal.

Direct-examination by Mr. Mott:

Q. Where do you live? A. Metuchen, New Jersey.

Q. Are you connected with the Metuchen National Bank there? A. I am.

Q. In what capacity? A. I am the cashier.

Q. And besides that? A. Vice president.

Q. Who protests the check? A. I am a notary public.

Q. Do you do the protesting for the bank? A. I do.

Q. Do you have any active connection with the affairs of the bank, and did you have in 1910? A. Yes, sir .

Q. You have a book there before you. What book is that? A. It is the record of protest.

Q. Kept by whom? A. By myself.

Q. In your own writing? A. Yes, sir.

Q. Are you able to say from the records before you, or your knowledge of the bank, whether or not your bank received on or about November, 1910, two checks for $1000 each? A. 1910?

Q. Yes, sir, from the Roseville Trust Company.

Mr. English: The question is whether you are able to say?

Q. Are you able to say whether on or about November 19, 1910, your bank received two checks of $1000 each of the Middlesex Hat Company, bearing the endorsement of the Roseville Trust Company of Newark? A. Yes, sir.

Q. When your bank got those checks what was done with them? A. They were protested.

Q. For non-payment? A. Yes, sir.

Q. When were they protested? A. After three o'clock on November 19, 1910.

Q. Have you a record of it here? A. Here is the date when protested, 11/19/10.

Mr. Mott: I offer in evidence the protest book from which the witness apparently is to testify.

The Court: If it is only for the purpose of refreshing his memory it will not be

necessary to offer it in evidence. If he is testifying to the contents of it, then, of course, it should go in evidence. I am not quite clear for which purpose he is using it. You have asked him to look at it and tell us whether or not he did receive certain checks and protested them on that certain day.

By the Court: Q. Have you any recollection of this matter? A. No, sir; only except from the record.

Q. You have told us you protested certain checks. Who were the makers and payees? A. On November 19, 1910, a check dated November 15, 1910, made by the Middlesex Hat Company, C. A. Sherwood treasurer, to Stevenson, Rye & Company, and endorsed by them and the Roseville Trust Company, Newark, N. J., Union National Bank, Newark, N. J., National Bank of New Jersey, New Brunswick, N. J., for $1000 each. They are both alike.

Q. What did you do with the checks after you protested them? A. They were returned to the National Bank of New Jersey.

Q. Were they drawn on your bank? A. They were drawn on the Metuchen National Bank.

Q. And the National Bank of New Jersey was the New Brunswick Bank? A. The New Brunswick Bank; we had received them that day from them.

Q. Why were they protested? A. For a lack of funds in the account on which they were drawn.

Q. That is the account of the Middlesex Hat Company? A. Yes sir.

By Mr. Mott: Q. I show you Exhibit D-32 and

D-33 and ask you what those are, if you know? A. These are the two protests of checks of the Middlesex Hat Company that were protested on the 19th of November, 1910.

Q. The two checks which you have just told us about A. They are the same checks.

The Court: You have said that you wanted that book to go in evidence. I don't think you had it marked.

Q. And when you sent those checks to New Brunswick, where were those, in the office? A. Attached to the check or the check was attached to protest.

Q. Do you know whether or not at any time on the day of protest, or subsequently, these two checks that you protested, which you have testified about, were paid at your bank?

Mr. English: If he knows.

The Court: If you know, yes or no.

Q. Do you know? A. I have looked it up.

By Mr. English: Q. From what did you look it up? A. From the books of the bank.

By Mr. Mott: Q. Were they paid? A. No.

By Mr. English: Q. How do you know? A. By looking at the books of the bank.

Q. Books that you keep or books that your clerks keep? A. Clerks keep, and I keep some.

Q. Do you refer to your books or the clerks? A. I have a book here.

By the Court: Q. Are those books under your own personal supervision at the bank? A. Yes, sir.

By Mr. Mott: Q. Now, turn to the 28th of November, 1910, in your protest book and see whether on that protest book you protested the check

of the Middlesex Hat Company for $1000? A. Yes, sir.

Q. How many checks were there protested on that day, one or two? A. Two checks for $1000 each.

Q. What were the dates of the checks that you protested on November 28th? A. November 15, 1910.

Q. When was the date of the two $2000 checks that you protested on November 19th? A. November 15, 1910.

Q. Do you recall from memory, or can you say from your book, whether or not the two checks that you protested on November 28th, were the same checks that you protested on November 19th? A. I could not tell you that.

Q. Did they have the same date? A. They had the same date.

Q. The same date and the same amount? A. Yes, sir.

Q. The same endorsement? A. The same endorsement, yes, sir.

Q. And received from the same bank? A. The same bank.

Q. What did you do with the two checks that you protested on the 28th of November? A. They were returned to the National Bank of New Jersey.

Q. At New Brunswick? A. New Brunswick.

Q. From whom you had received them? A. Yes, sir.

Q. And those two checks were protested on November 28th for lack of funds in the account? A. Yes, sir.

Q. And after these checks were protested on

the 28th are you able to say whether or not they were on that day or any subsequent day paid at your bank? A. You mean without looking up the record?

Q. You have not looked that up? A. I believe I have, but I don't remember whether they have myself. I have got the book right here.

Q. Show me from the book. A. (Not answered.)

By Mr. English: Q. Tell us what you are going to refer to? A. I have here the charges and the credits to the Metuchen National Bank covering the period from October 1, 1910, to April 1, 1911, which the subpoena required me to bring here.

Q. And those books are kept by whom? A. By myself or clerk; it depends.

Q. They are part of the bookkeeping system of the Metuchen Bank? A. Yes, sir.

Q. Kept under your supervision? A. Yes, sir.

Mr. Mott: I want, if it is necessary, to offer in evidence the books of the Metuchen Bank.

Mr. English: No, I don't think it is necessary.

By Mr. Mott: Q. Refer to your books and refresh your memory and see if you can tell whether or not the two checks protested on the 28th were on that day or subsequently paid to your bank. A. Where do you want me to go?

Q. Far enough for you to answer the question. A. Down to the present day?

Q. How far have you looked? A. December 30th.

By the Court: Q. You said you had the data

here from which you can answer the question. A. I am sure those checks were not paid.

By Mr. Mott: Q. I have asked you whether they were paid to your bank and you said no. I ask you, were they paid to you as notary? A. No, sir.

Mr. English: I thought the witness was talking about checks protested on November 28th.

Q. What about the checks of November 19th, were they paid to you as notary? A. No, not as notary.

Q. You have testified that they were not paid? A. They have not been paid.

Q. And the same is true of the check of November 28th? A. (Examining book.) They have not been paid.

Q. Can you tell from your books whether there were presented to your bank on December 5, 1910, two checks for $1000 each, not protested, I don't say, two checks for a thousand dollars each, presented December 5th, of the Middlesex Hat Company? A. On December 5, 1910, two checks of $1000 each of the Middlesex Hat Company were returned to the National Bank of New Jersey, New Brunswick, New Jersey, as "N. G." and charged to them.

Q. Were they then protested? A. They were not protested because they had been marked "No protest." They are N. G. items.

Q. Can you tell us what the date of those checks was? A. I could not.

Q. Or the endorsements? A. I could not.

Q. Are you able to say whether subsequently those checks presented on December 5th were

paid at your bank? A. I could by running along to see whether the bank got credit—that is, we credited the National Bank of New Jersey.

Q. You say you returned them? A. They were returned on December 5th.

Q. To the— A. To the National Bank of New Jersey, N. G. There were no funds in the bank, and inasmuch as they were not protested, I think they must have been marked "No protest."

Q. Could they have been paid to your bank after they had actually gone back to New Brunswick?

Mr. English: Unless he knows.

The Court: He ought to know as cashier of the bank whether it would have been possible for anybody to go in there and pay a check in the bank if they didn't have possession of the check.

Q. Yes, after they had actually left for the New Brunswick Bank. A. We would have taken the money and recalled the checks.

Q. Can you tell me whether you did that in this case? A. I couldn't without looking through the books.

Q. Look through the books?

By Mr. English: Q. How can you tell from the books if you don't know the date of the check? A. That is it. I could only show two $1000 items.

Mr. Guild: Any check of the Middlesex Hat Company?

Q. See if you can find such an item. A. January 10th. I don't see any specific items of $1000 each, still those checks might have come

back in the letters of the National Bank of New Jersey and been paid and this book would not show it.

Q. Would those checks have had to go to any place from the New Brunswick Bank before they could have been sent back to you? A. They were returned from bank to bank until they got to the original bank, until they were deposited or the original bank that had handled them, unless we recalled them on the road, got them to be sent back to us, but I see no record of such being the case, so therefore they must have gone back to the original bank and they must have sent them on and they would go through in the regular routine.

Q. But they would have to come back from the original bank? A. Yes, sir.

Q. Will you turn to your protest book and see if you handled on the 24th day of December, 1910, a check of the Middlesex Hat Company for $800? A. On December 24, 1910, a sight draft on December 21, 1910.

Q. Sight draft on what?

The Court: Read your record of it.

Witness: (Reading:) "Middlesex Hat Company, C. A. Sherwood, Treasurer, Maker, John B. Scarlett, Roseville Trust Company, Union National Bank, National Bank of New Jersey, endorsers, $800, protested."

Q. And returned? A. And returned.

By the Court: Q. You said it would be returned. Do you find the source from which you got it? A. Yes.

Q. That would be the National Bank of New Jersey? A. Yes sir, and here is an item, "charge

to the National Bank of New Jersey," December 24, 1910?

By Mr. Mott: Q. Will you turn to the 30th of December, 1910, and tell me whether on that date you protested a check of $2000 of the Middlesex Hat Company? A. On December 30, 1910, a check for $2000 dated December 27, 1910, made by the Middlesex Hat Company, C. A. Sherwood, Treasurer, endorsed John B. Scarlett, Roseville Trust Company, Union National Bank, National Bank of New Jersey, was protested.

Q. And returned? A. And December 30th, Middlesex Hat Company check, notary, charged to the National Bank of New Jersey, item $2000; the following day, protest fees of $1.58, fees charged.

Q. That is the same check? A. The same check that was protested.

Q. Turn to January 6, 1911, and tell me whether on that date you protested a check of the Middlesex Hat Company for $2000? A. January 6, 1911, a check dated January 3, 1911, for $2000, made by the Middlesex Hat Company, C. A. Sherwood Treasurer, endorsed John B. Scarlett, Roseville Trust Company, Union National Bank, National Bank of New Jersey, New Brunswick, N. J., was protested.

Q. And the check returned? A. Check Middlesex Hat Company to notary charged to the National Bank of New Jersey, January 6, 1911.

Q. Which means? A. That this check which was protested was charged immediately to the National Bank of New Jersey, and sent the next day with a charge of $1.58, Middlesex Hat Company fees, the protest fees.

Q. Will you see how the endorsers on the check on December 30, 1910, compare with the endorsers on the check of January 6, 1911, each check being for $2000? A. $2000 check protested December 30th, and the $2000 check protested January 6th have the same endorsers.

Q. State again who they are. A. John B. Scarlett, Roseville Trust Company, Union National Bank, Newark, the National Bank of New Jersey, John B. Scarlett, Roseville Trust Company, Union National Bank, Newark, the National Bank of New Jersey.

Q. Do the dates correspond with the check protested on December 30th? A. Is dated December 27, 1910, the check protested on January 6th, that is dated January 3, 1911.

Q. Will you turn to your protest book now and tell me whether on January 7, 1911, you protested another check of the Middlesex Hat Company, $2000? A. Yes, sir.

Q. And give us the date of that check? A. December 27, 1910.

Q. And the endorsers A. John B. Scarlett, Roseville Trust Company, Union National Bank, National Bank of New Jersey.

Q. Did you return that check to the New Brunswick Bank from whom you received it? A. January 7th, the $2000 check Middlesex Hat Company, to notary returned, and charged to National Bank of New Jersey, New Brunswick; returned the following day and the fees were charged of $1.58.

Q. I ask you to compare the date of the check you protested on January 7th with the check you protested on December 30th? A. Both are December 27, 1910.

Q. And the endorsements? A. John B. Scarlett, Roseville Trust Company, Union Bank, National Bank of New Jersey. The same endorsers.

Q. Will you now turn to your book and see whether on January 12, 1911, you protested a check of the Middlesex Hat Company for $2800? A. On January 12th?

Q. Yes. A. January 12th, $800, Middlesex Hat Company, check dated January 7, 1911, maker, Middlesex Hat Company, C. A. Sherwood, Treasurer; endorser, John B. Scarlett, Roseville Trust Company, Union National Bank and National Bank of New Jersey.

Q. Was that check returned to the New Brunswick Bank? A. On January 12, 1911, Middlesex Hat Company check, notary, check $2800; check returned to National Bank of New Jersey, returned the following day, and fees charged the following day.

Q. Will you now turn to your protest book and tell me whether on January 13, 1911, you protested another check of the Middlesex Hat Company for $2000? A. On January 13th, Middlesex Hat Company check for $2000, dated January 3, 1911, protested.

Q. Endorsement? A. John B. Scarlett, Roseville Trust Company, Union National Bank, National Bank of New Jersey, New Brunswick.

Q. And returned? A. Charged National Bank of New Jersey January 13th, Middlesex Hat Company check, to notary, and returned the following day, and protest fees charged $1.58.

Q. Will you now compare the date of the two checks protested on the 6th and the 13th of Jan-

uary, 1911? A. The date of the check protested on January 6th is January 3d; a check protested January 13th is January 3, 1911.

Q. Will you now turn to your records of January 14, 1911, and tell me whether or not on that day you protested a check of the Middlesex Hat Company for $2000? A. On January 14th, Middlesex Hat Company, a check $2000, protested.

Q. Describe the check. A. Dated December 27, 1910, maker, Middlesex Hat Company, C. A. Sherwood, Treasurer; endorsers John B. Scarlett, Union National Bank, Roseville Trust Company, National Bank of New Jersey.

Q. Will you now turn to your records of checks protested December 30th for $2000? A. I have it.

Q. And that is what date? A. The check is dated December 27, 1910.

Q. Turn to your records and give me the date of the check for $2000 protested on January 7th. A. January 7th, $2000; December 27, 1910.

Q. Turn to your last record of the check of January 14, 1911, for $2000. A. Dated December 27, 1910.

Q. All three checks are dated the same date? A. Yes, sir.

Q. And the endorsements are the same? A. The endorsements are the same.

Q. Will you turn to your record and tell me whether on the 19th of January, 1911, you protested another check of the Middlesex Hat Company for $2000? A. On January 19, 1911, check Middlesex Hat Company, $2000, protested.

Q. Describe the check. A. Dated January 10, 1911, Middlesex Hat Company, C. A. Sherwood,

Treasurer; maker, John B. Scarlett, Roseville Trust Company, Union National Bank, and National Bank of New Jersey, endorser.

Q. Tell me whether on January 20, 1911, you protested another check of the Middlesex Hat Company for $2000. A. January 20th, Middlesex Hat Company, check, $2000, protested January 3, 1911.

Q. Endorsement? A. John B. Scarlett, Roseville Trust Company, Union Bank, National Bank of New Jersey.

Q. And this check returned? A. Middlesex Hat Company check to notary on January 20th, charged to National Bank of New Jersey, returned the following day, and fees charged $1.58.

Q. That means it was returned? A. Yes, sir.

Q. Will you turn to the protest of January 6th of the check for $2000 and give me the date? A. January 3, 1911.

Q. Will you now turn to the protest of check January 13, 1911, for $2000 and give me that date? A. January 3, 1911.

Q. Turn to the last one, the protest of January 20, 1911, and give me that date? A. January 3, 1911.

Q. All three checks are dated the same? A. January 3, 1911.

Q. Will you compare the endorsements on all those three checks? A. The same endorsements.

Q. Will you now turn to your protest book and tell me whether on January 24, 1911, you protested another check of the Middlesex Hat Company for $2000? A. January 24, 1911, Middlesex Hat Company, check dated January 17, 1911, for $2000, protested.

Q. Describe the check. A. Middlesex Hat Company, C. A. Eherwood Treasurer; maker, John B. Scarlett, Roseville Trust Company, Newark, Fourth Street National Bank, Philadelphia, National State Bank, Elizabeth; Fourth National Bank, Philadelphia—

Q. What bank do you call that? A. The record shows the Fourth National Bank of Philadelphia.

Q. Do you know the title of that bank? A. Fourth Street National Bank.

Q. Do you know whether there is a Fourth Street National Bank in Philadelphia? A. I know there is.

Q. Is there a Fourth National Bank there? A. I don't think there is; I am not as positive of that as I am that there is a Fourth Street National Bank.

Q. Has your bank done business with the Fourth Street National Bank? A. Yes, sir; we have handled items that have come from the Fourth Street National Bank through correspondents.

Q. Do you know whether you have handled any checks of the Fourth National Bank? A. No, sir.

Q. On January 24th did you protest another checks of $2000 of the Middlesex Hat Company? A. Yes, sir; on that day there were two checks of $2000.

Q. Will you please describe the other check? A. Dated January 17, 1911, checks 852, Middlesex Hat Company, C. A. Sherwood, Treasurer, $2000, protested.

Q. Endorsements? A. John B. Scarlett, Roseville Trust Company, Fourth Street National

Bank, National State Bank, Elizabeth, Fourth Ward National Bank, First National Bank of Perth Amboy. The same routing as the other.

Q. This record shows Fourth Street National Bank, does it? A. Yes, sir.

Q. And the same date as a previous entry? A. Protested on the same day as the checks bear the same date one is 852 and one is 853.

Q. Numbers? A. Yes, I happen to put down the numbers of these. I don't know why.

Q. The one I described first as being protested January 4th was 853; this is 852. Were both of those checks returned? A. January 24, 1911, Middlesex Hat Company check, notary, $2000; charged to the First National Bank, Perth Amboy; another check Middlesex Hat Company, notary, charged to First National Bank, Perth Amboy, also $2000; the following day the fees were charged in company with the two checks we returned on that day to the First National Bank of Perth Amboy.

Q. Do you say they were returned? A. Yes, sir; they were returned.

Q. Will you refer to your records and see whether on the 19th of January, 1911, you protested another check of the Middlesex Hat Company for $700? A. On January 19th a check of the Middlesex Hat Company for $700 dated January 13, 1911, was protested.

Q. Describe the check, please. A. It was made by the Middlesex Hat Company, C. A. Sherwood, Treasurer, John B. Scarlett, Roseville Trust Company, Union National Bank and National Bank of New Jersey, endorsers.

Q. And did you return that check? A. On Jan-

uary 19th, Middlesex Hat Company check, to notary, charged to the National Bank of New Jersey, and on the following day two checks were returned to the National Bank of New Jersey, the checks that have been protested the day preceding, one for $700 and the other for $2000, fees of $1.58 and $1.60 were charged.

Q. So the $700 check and the $2000 check were protested on the 19th and went back on the 20th? A. Yes, sir.

Q. What was the date of the check? A. January 10, 1911, a $2000 check, protested on January 19th.

Q. Did you give us the endorsers of the $1700 check? A. John B. Scarlett, Roseville Trust Company, Union National Bank, National Bank of New Jersey.

Q. Will you now return to your bank records and tell me whether between January 23, 1911, and January 26, 1911, there was presented to your bank for payment two checks, one for $2700 and the other for $2000, drawn by the Middlesex Hat Company? A. Whether they were presented?

Q. Yes. A. I couldn't tell you that from the books that I have here. If they were protested I could tell you; if they were returned not paid I can tell you, but I couldn't tell you what they represented. They might have been presented and paid.

Q. I am asking you whether you have on your books any record of the presentation of these two checks at your bank A. Not here. I haven't had the books here of the bank. I have the individual ledger and I have the charges.

By the Court: Q. Have you the individual ledger here? A. I have an individual ledger covering this date.

The Court: Have you anything showing that they had been paid?

By Mr. Mott: Q. May I call your attention to this paper and ask you whose handwriting that is, the lower entry? A. That is my handwriting.

Q. When did you make it? A. I couldn't give you the date when I made it, but I made it within the last two weeks.

Q. Have you searched the records of your bank? A. Yes, sir, I have.

Q. To find out whether or not your books disclose any reference to those two checks—

Mr. English: Objected to. He can't refresh his memory from a paper made last week when the matter goes back three or four years.

Mr. Mott: He says he has made a search and looked for it.

Q. After the search did you make this memorandum? A. I made this memorandum; I remember it now. Somebody from the presecutor's office requested me to make that examination of the books.

By the Court: Q. To search for what items? A. The items that are stated there; I don't remember; I don't carry those dates in my mind.

Q. Do you know what you found as a result of that search? A. Two items, I was asked about, if I could not find any record—

Q. At the time you made the search did you make that memorandum? A. Yes, sir.

Q. Do you need that to refresh your memory? A. About the two items?

Q. To refresh your memory for the details of the item referred to, do you need the memorandum you made at the time of the search? A. Yes.

By Mr. English: Q. Within the last two weeks? A. Within the last week, I dare say Monday or Tuesday of last week.

Q. You searched the books of the bank? A. Yes.

Q. And then you wrote down the results of that search? A. Yes.

Q. Now, you want to refer to that memorandum you wrote last week to see what the result of the search was? A. Yes, sir.

Mr. English: I don't think that is a proper memorandum for him to use.

The Court: He may use the memorandum.

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)

The Court: The only question is whether he made a search for a check dated January 23d for $2700 and the check of January 24, 1911, for $2000, of the Middlesex Hat Company, and whether the records of his bank make any reference to those two checks.

Witness: I found no record of such checks in the bank book after a search, a thorough search.

Q. You are now reading from the memoran-

dum? A. I have refreshed my mind from the memorandum.

Mr. English: I move to strike out the answer.

The Court: 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. OSBORNE,
Judge.

(Seal)

By Mr. Mott: Q. Can you now say from your own recollection, or with that memorandum before you, whether or not those two checks referred to in the previous question were presented to your bank for payment on or about those date? A. They were not.

Q. That would include between January 23d and January 26th, would it? A. Yes, sir.

By the Court: Q. Do you know what checks they are talking about? A. Two checks of the Middlesex Hat Company, dated—the dates are given there and the amounts are given there.

Q. Look at your memorandum. A. I am not charging my memory with this. January 23, 1911, $2700, and a check January 24, 1911, for $2000, both made by the Middlesex Hat Company.

By the Court: Q. Those were the checks you searched for? A. Yes, sir.

Q. And you say you couldn't find them? A. Yes, sir.

By Mr. English: Q. And you made that search at the request of the prosecutor? A. Yes.

Q. But you don't know anything about the checks, you never saw them? A. No.

Mr. Mott: That about completes our examination.

Adjourned until tomorrow, Tuesday, March 23, 1915, at ten o'clock, a. m.

SEVENTH DAY

ESSEX OYER AND TERMINER,

Tuesday, March 23, 1915.

Met pursuant to adjournment.

Adjourned until tomorrow, Wednesday, March 24, 1915, at ten o'clock, a. m.

EIGHTH DAY

ESSEX OYER AND TERMINER,

Wednesday, March 24, 1915.

Met pursuant to adjournment.
Present, counsel as before stated.

Mr. English: I would like to put a character witness on the stand out of turn.

THOMAS A. MURPHY, sworn in behalf of defendant.

Direct-examination by Mr. English:
Q. Where do you live? A. This town.
Q. How long have you lived here? A. Thirty years.

Q. What is your business? A. Lumber.

Q. What company are you in? A. Murphy-Hardy Lumber Company.

Q. Do you know John B. Scarlett? A. Yes, sir.

Q. How long have you know him? A. About fifteen years or more.

Q. Do business with him? A. Yes, sir.

Q. How long? A. Well, covering over that period at different times.

Q. Do you know what his reputation was in this community for honesty and integrity prior to March 17, 1913? A. I never heard anything against him.

Q. As far as you know, what was his reputation? A. His reputation, as far as I was concerned in a business way, was good.

Mr. Mott: I move that that answer be stricken out.

The Court: Strike it out.

Q. Leave out as far as you are concerned. Tell us, if you know, what his reputation was for honesty and integrity prior to March 17, 1913, whether you ever heard anything bad about him or not? A. No.

Q. So far as you did hear anything it was good? A. Yes, sir.

CROSS-EXAMINATION by Mr. Mott:

Q. Did you ever hear anything good of him? You say you never heard anything bad. Did you ever hear anything good? A. I can't answer that question.

By the Court: Q. Did you ever hear his reputation discussed at all? A. I never did.

ALEXANDER C. LITTERST resumes the stand.

Direct-examination (continued) by Mr. Mott:

Q. Mr. Litterst, have you been requested to examine your books in reference to a deposit made by the Middlesex Hat Company on the 21st of November, 1910? A. Yes, sir.

Mr. English: I object to that as immaterial, any deposit that the Middlesex Hat Company made in the Metuchen Bank.

Mr. Mott: We have two checks in evidence, S21 and S20, which the defendant has said were paid at the Metuchen Bank. I want to show under what circumstances. It is in relation to the two exhibits.

The Court: The question now is merely whether he made an examination of the books. I will permit that.

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 the Court: Q. Did you make such an examination of the books? A. Yes, sir.

Q. And did you find whether or not the Middlesex Hat Company made a deposit at that time?

Mr. English: I object. In the first place it is a mere conclusion from his examination of the books, and in the second place, it is immaterial whether they made a deposit or not.

The Court: I think that it should appear that the matter you refer to is connected with this case in some way.

Mr. Mott: I will withdraw my question and ask the Court to permit Mr. Guild to ask these few questions.

Mr. Guild: I am calling the attention of the witness to the testimony given by Mr. Scarlett, and I say very frankly that the object of these questions is to contradict him, as we expect to do, by this witness.

By Mr. Guild: Q. Mr. Scarlett has testified that he went to Metuchen on or about November 21, 1910, with $2000 in cash to take up two checks of the Middlesex Hat Company of $1000 each, dated November 15, 1910, and referred to in Exhibit D32 and D33, which I now show you. I ask you whether he did take up those two checks at your bank on or about November 21, 1910?

Mr. English: I object to that because it is not rebuttal. Mr. Scarlett did not say he took up any checks. He said that when he got there it was too late, or something of the kind. At any rate, he didn't take them up or pretend that he had taken them up in Metuchen. I don't think it is rebuttal of anything.

The Court: My recollection is that Mr. Scarlett got there too late to take them up.

Mr. Guild: That then he must have taken them up from the hands of the notary, and my question was, "Isn't it true that you got there too late and didn't take them up?" And he said, "I took them up from the hands of the notary."

The Court: I will permit the question. If he said that he did not take them up it can do no harm.

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. (Question read.) A. I couldn't say; I don't remember.

Q. Did you not testify that after those checks were protested by you you sent them to the New Brunswick Bank? A. On or about you say? I will refer to the book. (After examining book.) On November 19, 1910, two checks, each for $1000 of the Middlesex Hat Company were handed to the notary and were charged to the National Bank of New Jersey, New Brunswick, New Jersey. On the 21st two checks were returned to the National Bank of New Jersey and the fees charged.

Q. What was the date of the check? A. The date of the check is not given in this book; the dates of the checks are given here November 15th. This is the protest accompanying those checks which were charged on November 19th and returned on November 21st.

Q. So that on November 21st the checks left your hands? A. Yes, sir.

Q. As I understand you, you have testified, I think, that on November 21, 1910, a deposit was made in your bank to the credit of the Middlesex Hat Company. Haven't you so testified?

Mr. English: I don't remember that.

Q. I ask you whether that is true?

Mr. English: I object to that as immaterial.

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.

H. V. OSBORNE.

(Seal.) Judge.

A. A deposit of $3000 was made to the credit of the Middlesex Hat Company on November 21, 1910.

Q. And consisting of what? A. Of $2000 currency and two $500 checks of John B. Scarlett, certified on a Newark bank, a total of $3000.

Q. Do you know who made the deposit? A. I couldn't say.

Q. Now, I ask you whether out of that deposit the two checks which I now present to you of the Middlesex Hat Company of $1000 each, both of them dated November 21, 1910, and being Exhibit D20 and D21, were not paid out of that deposit made on November 21, 1910?

Mr. English: I object to that. If they were paid there is no liability of the Roseville Trust Company.

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.

H. V. OSBORNE.

(Seal.) Judge.

A. These checks came to our bank—the only date I see on here is November 23d, after November 23, 1910—that is the National Bank—the date of the National Bank of New Jersey's endorsement is November 23, 1910; they forwarded this check to the National Bank of New Jersey and that must have got there a day later, and the National Bank of New Jersey then forwarded it to us and it got there on the day following, but if one of the intervening days was a Sunday, of course, there were three days between November 23d and presentation; if there was no Sunday then it was presented on November 25th; it was either presented on November 25th or November 26th and it was paid by the Metuchen Bank out of funds on deposit in the account of the Middlesex Hat Company.

Q. I ask you if there were any other funds except this deposit of November 21, 1910, out of which those two checks would have been paid?

Objected to.

Objection overruled.

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. A deposit was made in that account on November 24th of a check for $400, which was also a certified check. Those were the deposits preceding the payment of these checks. Now there may have been other funds in that account; I didn't look up the actual balance from the day

of presentation of those two checks, but those were funds in the Middlesex Hat Company's account deposited immediately prior to the presentation of these two checks.

Q. Have you your individual ledger here? A. Yes, sir.

Q. Will you kindy refer to it? A. Refer to what?

Q. Refer to the account of the Middlesex Hat Company and see what the condition of their account was when those checks were probably presented? A. (Witness produces book.)

Q. What is this you produce? A. This is five sections of the individual ledger.

Q. Of what bank? A. Metuchen National Bank, covering the period October 1, 1910, April 1, 1911, which—

Q. And who keeps that ledger? A. The bookkeeper.

Q. Is it kept under your supervision? A. Under my supervision.

Q. Is it part of the system of your bank of book keeping? A. Yes, sir.

Mr. Mott: I offer in evidence the part of this ledger which covers the date from November 21, 1910, to November 26, 1910.

Mr. English: May I cross-examine on the offer?

The Court: Yes.

Br Mr. English: Q. You don't keep these books yourself? A. No, sir.

Q. You are cashier of the bank? A. Yes, sir.

Q. How many clerks have you got down there? A. Three.

Q. Do you look over their work every day? A. All their work?

Q. Yes. A. No, I cannot.

Q. Did you look over the bookkeeper's work every day between October and April of the years you have got here? A. It is not likely.

Q. So when you say they were kept under your direction, you meant under your general direction as a responsible officer of the bank? A. Yes, sir.

Q. You don't mean by minute inspection? A. No, sir.

Q. Isn't it probable entries were made right along by the bookkeeper of which you have no personal knowledge? A. Certainly.

Q. You presume he did—it is his duty? A. Yes, sir.

Q. That is what he was there for? A. Yes, sir.

Q. So whether he did or not you don't know from personal inspection? A. No, sir.

Q. That is true? A. Yes, sir.

Q. That is true of this book you have before you? A. Yes, sir.

Q. So, for instance, it is not a memorandum by yourself; it is a memorandum kept by the bookkeeper? A. That is right.

Mr. English: I object to the witness referring to it and I object to it going in evidence, and the further objection that it is immaterial, because there is no suggestion that it is at all connected with this case.

The Court: The prosecutor's question does not indicate any connection with this case. He simply offers certain sheets from the individual ledger without indicating in any manner their contents or any part of the contents of this document or that

those sheets are so connected, and that is the objection of counsel, and the objection is well taken.

By Mr. Guild: Q. Under date of November 21, 1910, I understood you to say that there were deposited $3000 in your bank to the credit of the Middlesex Hat Company? A. Yes, sir.

Q. $2000 in cash and two checks of $500, checks of John B. Scarlett, which were certified? A. Yes, sir.

Q. I asked you whether the two checks of $1000 each dated November 21, 1910, of the Middlesex Hat Company, Exhibits D20 and D21, had not been paid out of that deposit, and I understood you to say that you couldn't tell without referring to the ledger. Now, I ask you to refer to the ledger account, the individual ledger account of the Middlesex Hat Company, and see whether you can answer that question?

Mr. English: I object to that because it is not memorandum that he made.

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.

H. V. OSBORNE.
(Seal.) Judge.

Q. I think you said that the check would in the natural course of the business be received the 25th or 26th? A. Yes, sir.

By the Court: Q. Can you tell by reference to this book? A. I am going to see.

Mr. English: Just yes or no.

The Court: Tell us yes or no, whether you can tell by the book.

Witness: As soon as I find the account. This is the Boston form, you know. I can tell from this account that on the 21st of November $3000—

Mr. English: You are asked whether you can tell.

The Court: You are only asked whether this acount which it is necessary for you to refer to would indicate that the checks were paid.

Witness: Yes, sir, between November 22d—

The Court: You have answered the question. Now, it does appear in these sheets that the prosecutor desires to offer in evidence there is a reference to this matter. I think that from what already has appeared they are admissible in evidence— at least the group that he is referring to. He has four or five groups of sheets fastened together. Do you offer them?

Mr. Guild: I offer the one on which the record of the payment of these two checks D20 and D21 appears.

Mr. English: I object.

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.

H. V. OSBORNE.

(Seal.) Judge.

Marked Exhibit S-77.

Q. On what date do you find that D20 and D21, being the checks of $1000 each of November 19th were paid? A. Between November 22d and November 26th.

Q. The exact date does not appear? A. The exact date does not appear when $2000, one day's work was charged to this account.

Q. What do you mean, one day's work? A. There is a book in which all charges appear—

By the Court: Q. Items, you mean? A. All charge items, and the total is brought in each day's individual ledger, but I see on here the bank's mark when these checks were paid.

By Mr. Guild: Will you give us that date? A. November 26, 1910.

Q. On November 26, 1910. Could those checks have been paid without the deposit of November 21, 1910? A. No, sir.

I object to that as immaterial.

Objection overruled.

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.

Witness: No, sir, they could not.

Q. I call your attention to a check of Middlesex Hat Company dated August 15, 1912, for $350 payable to the order of John B. Scarlett, marked Exhibit S39 for identification, and ask you if you will turn to your protest book and see whether you have a record of that check. The question is whether you find the record of the protest of the check in your protest book? A. Yes, sir.

Q. Why was it protested? A. Lack of funds.

CROSS-EXAMINATION by Mr. English:

Q. Just let me look at that ledger account marked S77. That is the individual ledger of the Middlesex Hat Company? A. This is a section of our individual ledger showing the account of the Middlesex Hat company. This is known as the Boston ledger, and the accounts run in horizontal sections; this horizontal is divided into sections and we start on this account on this page in November 19, 1910.

Q. This shows what you call a debit detail? Does that show his balance? Does that mean his balance? A. The red ink are the balances.

Q. On any particular date? A. On a date at the head of the column. (Indicating.) There is the balance on November 22d, 1910, of the Middlesex Hat Company.

Q. And then I see the heading "Credit" and "Debit"? A. Yes.

Q. They refer to what? A. The items that go to the credit of that account are put under the balance.

Q. And the debit? A. And the debits are all in these columns here (Indicating.)

Q. Any checks charged against it? A. Yes, checks, drafts or notes or anything of charge.

Q. What dates have you referred to in your direct examination, between the dates of November 22d and November 26, 1910? A. Yes, sir.

Q. Then beginning on that date November 22d, the Middlesex Hat Company had to its credit over $2000? A. Yes, sir.

Q. And deposited $400? A. $400 more on the 23d.

Q. So on the 23d it had over $2500 to its credit; that is right? A. Except these items of debit which came in on there before the 23d.

Q. They could be charged against a previous debit on another date? A. No; here is the column; this is the column, and whatever is charged between these two double blue lines under date of November 22d 1910, are charged against that balance there. This is the column (indicating.)

Q. Does this show the previous deposits made on these days? A. Yes; this Middlesex Hat Company runs from here, October 29, 1910.

Q. And a substantial balance appears right along there, October 30, $1971; November 7th, $1334; November 12th, $953; November 15th, $2367; November 19th, $1399.95; November 22d, $2117, and so on down; that is the last date you mentioned. The Middlesex Hat Company was quite a depositor in your bank? A. Yes.

Q. And you can't undertake to put your finger on any particular credit entered and you say that those funds paid any particular given check, can you? A. No, I couldn't say that.

Q. All you know is the account showed a balance and the checks drawn on it were paid, that is what the book shows? A. Yes, sir.

Q. And you don't undertake to say where the money came from which made those credit accounts, do you? A. No, I can't say just—

Q. There is nothing to indicate whether it is checks or cash, for example? A. Not in this book.

Q. Or would it indicate on what bank it was drawn, if it was a check? A. Not in this book.

Q. The Middlesex Hat Company were in the habit of making large cash deposits along about that time? A. That I didn't look up. I did look up the record of November 21st.

Q. Didn't you look up to see whether they made their cash deposits so as to be ready for use right away? A. They made cash deposits right along.

Q. There wasn't anything unusual about that? A. No, nothing unusual about it.

Q. Have you got those records that you had before you on Monday when you were testifying about these protested checks? A. The books are here, yes, sir.

Q. I now turn to the record of a check which you say was protested on November 15, 1910, for $1000, or I think you said there were two checks of $1000. A. There is no such record.

Q. That was the date of the check, I guess; the protest was the 19th, referred to here in D32? A. Yes, on the 19th. I have the place.

Q. That is the check referred to in this notice of protest, isn't it? A. I would like to see it. (Examining book.) November 19th, two checks of $1000 each, protested; yes, sir.

Q. From your records, and looking at this notice of protest, can you say approximately, under the custom of the banks, whether those checks were deposited in the Roseville Trust Company, if they were deposited there? A. I should say yes.

Q. When were they deposited, would you say? A. That I couldn't say.

Q. I understood you to say when? A. I can't say that they were deposited in the Roseville Trust Company.

Q. You didn't understand my question. I want to know whether you could say from your knowledge of the custom of banks and how long it took to send one check from one bank to another, when about those checks were deposited in the Roseville Trust Company? A. It depends whether there was a Sunday in that run. I can give you the working days. These checks were, in all likelihood, deposited in the Roseville Trust Company on the 16th or 17th of November, providing the mails were delivered as usual on those days. Of course, if there was a delay of the mail, of course I can't account for that.

Q. When the bank receives a check for deposit it credits the depositor's account, does it not? A. That is the ordinary practice.

Q. If the check turns out afterwards to be no good they debit that, don't they? A. If that account has been credited that account is debited upon the return of the check.

Q. Suppose a check is deposited for collection is that credited up to the depositor's account in the ordinary custom of banks? A. No, it goes into the collection account.

Q. His individual ledger don't show any reference to it at the time it is put in the bank for collection? A. For collection, no.

Q. And afterwards if it is collected then the ledger account is credited with it? A. Is credited when it is collected.

Q. If it is not credited then his account is not charged with the protest fees? A. With the protest fees.

Q. So that is the ordinary custom of the bank generally, isn't it? A. That is our custom, yes.

Q. And in your experience that is the custom generally, isn't it? A. I believe it is.

Q. So the only question that is made when a check is put in for collection which turns out to be a bad check is the amount of the protest fees? A. Yes.

Q. Now, suppose a bank has deposited with it a check which it duly credits to the account of its depositor and the check turns out to be not good and goes around to the banks and comes back, does not the bank who receives that check from from the depositor hold it until it gets paid? A. A check that has been credited to an account on its return for nonpayment, is charged up to that account, if there is anything in the accountto charge it up against.

Q. What does the bank do with that check physically, does it give it up or does it hang onto it as an evidence of nonpayment? A. We charge up the check and the protest to the account.

By the Court: Q. What do you physically do with the piece of paper after having made the charge? A. Put it in the packet containing all charges in that account.

Q. And send it back to the depositor? A. When the book is balanced.

By Mr. English: Q. When the book is balanced, you mean send back an unpaid check? A. Why, we have charged it up.

Q. You charged it up on the theory that there was enough balance to charge it? A. Yes.

Q. Suppose there wasn't enough to pay it? A. We would hold it and we would notify the depositor that the check has come back no good, and

we look to him to make it good, if we allow him to draw on the check, which we try not to do, on uncollected funds; we try to prevent drawing on uncollected funds.

The Court: In other words, you try to prevent the depositor drawing on a check until you have collected the money and put it to his credit.

Q. Say I have an account of $500 with your bank and I deposit a check of $2000 which you credit me with, and you send it out through the regular course and it turns out to be a bad check, somebody has given me a bad check and it comes back to you, I only have $500 on deposit, and I deposit a check for $2000 and it turns out to be bad, what do you do, charge me with the $2000, that bad check? A. You start with $500 and then you put in a check for $2000?

Q. Which turns out to be bad. A. And that turns out to be bad. If we have allowed you to draw on the $2000 represented by a check, of course that account will be short to meet the $2000 when it comes back, a check that is not good but we will not allow you to draw on $2000; so when that check comes back we will still have that credit of $2000 to charge it up against.

Q. And so, if it was in fact, drawn against then you would make another debit; you had already made a debit when I drew against it? A. Yes, sir.

Q. So you would keep the checks as an evidence of my indebtedness to the bank? A. Yes.

Q. And you would undoubtedly sue me? A. Yes.

Q. That would be the practice? A. That would be the practice.

Q. So, in other words, when a bank receives a check for deposit which turns out to be bad, if the account is overdrawn or the deposit is drawn against, they keep the check as a club, so to speak, over the depositor so as to get their money back? A. Yes, sir.

Q. Now, get out your protest book again and tell me about a check dated December 27, 1910, and protested for the first time on December 30, 1910? A. I have it.

Q. $2000. Would that check be originally deposited in your bank or some other bank? A. That check must have been deposited in the Roseville Trust Company.

Q. Drawn on your bank? A. Drawn on the Metuchen National Bank.

Q. So in the course of business it came down to your bank to be paid, is that it? A. Presented on the 30th of December, 1910.

Q. And you protested it for nonpayment? A. For nonpayment.

Q. Now, you have a record of another protest of a check of the same date for the same amount on January 7, 1911, haven't you? A. $2000; January 7th.

Q. And another record of a check for the same amount, on January 13, 1911, haven't you? A. Yes, $2000; date, December 27, 1910.

Q. Dated what? A. December 27, 1910.

Q. Everything about that check which was protested three times is exactly the same, the date, the maker and the endorser and everything. A. I can't tell you that.

Q. Aren't all the items identically the same in

the check or checks which were protested under the three dates which you last named?

Mr. Guild: This witness has just said that on December 27th, January 7th and January 13th, he protested a check for $2000 which was dated December 27, 1910; the check which were protested on each of those days bore the same date and same amount, and I asked him whether the other elements were the same, the maker and endorser and all the other elements.

Mr. Mott: I don't think that the witness has said that on January he protested a $2000 check dated December 27th.

The Court: Did you say that? Refer to the last of the three.

Mr. English: Look at your record.

Witness: On January 13th, a $2000 check dated January 3, 1911, was protested.

Q. Was there a check of December 27th on January 13th? A. No, on January 14th.

Q. On December 30, 1910, you protested a check of $2000 dated December 27, 1910? A. December 30th, $2000, dated December 27, 1910. Right.

Q. On January 7, 1911, protest of a check for $2000 also dated December 27, 1910? A. Yes, sir.

Q. And January 14th, protest of check $2000 also dated December 27, 1910? A. Yes, sir, on January 14, 1911.

Q. I ask you if the maker and endorsers, the date and the amount of the check or checks which were protested on these three dates are not exactly the same? A. Yes, sir.

Q. You say you cannot swear positively that it

was all one check? A. I couldn't say it was the same check.

Q. But the details of it are identical all the way through? A. Yes, sir.

Q. Isn't it probable it was one check? A. It is possible.

Q. Is it possible it is the same check? A. Yes, sir.

Q. Just a little further, isn't it probable? A. It is anybody's guess.

Q. Getting down to probabilities, it is pretty sure? A. No, it is not a sure thing.

Q. Not a sure thing but a very sure thing.

The Court: I think you have gone far enough along this line.

Q. You have got a record of a check dated January 6, 1911. Give me the date and amount of that check. A. January 6, 1911, $2000, Middlesex Hat Company, date January 3, 1911.

Q. Have you got a record of a similar check protested January 12, 1911? A. January 13, 1911, $2000, Middlesex Hat Company, date January 3, 1911.

Q. Have you not a record of a similar check protested January 20, 1911? A. January 20, 1911, $2000, Middlesex Hat Company, date January 3, 1911.

Q. Do not the date, the amount the name of the maker and endorser appear to be exactly alike as the other two checks whose protest you have named? A. They do.

Q. So it is possible again that that is the same check, isn't it? A. Possible, yes, sir.

Q. Every time you charged up protest fees, I suppose? A. Yes, sir.

Q. And did that check come to you forwarded by the Roseville Trust Company every time? A. By the Roseville—no.

Q. Where did it come from the first time? A. Came to us from the First National Bank of New Jersey, New Brunswick, New Jersey.

Q. That was the intermediary, but where did the check start from, where had it been originally deposited? A. Roseville Trust Company.

Q. And that is true of the check or checks protested on these three dates last named? A. Yes, sir.

Q. Now, if a check is put in the bank for collection and comes back protested, is there a charge slip put through the bank first receiving it for collection, a charge slip put through the depositor's account? A. Our custom is to put the check and protest through the account.

Q. I am speaking of a deposit for collection. A. A credit slip goes through and the account is credited with the amount.

Q. You don't understand me. I am talking about a check deposited for collection and it is not paid and it comes back to the bank with the protest fee of $1.60, it is customary to put on a charge slip? A. Yes, sir.

Q. If the check was received for deposit and not met then they would put a charge for the amount of the check and the protest? A. Yes, sir, not by charge slip, but the actual cash.

Q. You just charge it up? A. Yes, just charge it up.

Q. And in your experience and practice, in the case of a check deposited for collection you put through a charge and add the protest fees? A. Yes, sir.

Q. And that is charged up to the depositor's account? A. Yes, sir.

Q. And if he has a balance it is taken care of by that balance? A. Yes, sir.

Q. And stamped paid, the charge slip is stamped paid? A. Yes, sir.

Q. They gave it back with his vouchers? A. Yes.

Q. Look at that check for $2000? A. Yes, sir.

Q. Protested on January 14, 1911. Tell me the date and amount of that. A. January 14, 1911, $2000, Middlesex Hat Company.

Q. Dated what? A. December 27, 1910.

Q. You have already had that. Have you got one protested January 14th and dated January 10th? A. No, no other check was protested on the 14th until on the 16th or 17th. Here is one protested January 19th, date January 10th, $2,000, Middlesex Hat Company.

Q. Have you got any other record of a protest of $2000 check dated January 10, 1911, besides the protest of January 19th? A. No, sir.

By the Court: Q. Only one record of the protest of such a check? A. Only one record of a check dated January 11th for $2000.

By Mr. English: Q. Now, Mr. Litterst, can you say whether any of these checks went through for either deposit or collection? A. No, sir.

Q. It may be either? A. Yes.

Q. In other words, when the Roseville Trust Company sent you down those checks you had no means of knowing whether they sent them for collection or whether they sent them as a check which had been deposited? A. No, sir.

Q. And you protested the same way in every case? A. Yes, sir.

Q. And if it was no good you sent it back with the protest fees? A. Yes, sir.

Q. Referring a moment to the deposit which the Middlesex Hat Company had with you, did you ever take statements from them of their assets and liabilities, and so forth? A. Yes, sir.

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

The Court: He has answered the question.

Objection overruled.

Q. And did that statement show the cash in banks?

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

The Court: 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. OSBORNE,
Judge.

(Seal)

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. Checks drawn on your bank and sent through for collection, does not a letter accompany such a check showing that it is sent for collection? A. If it comes direct from the receiving bank it may show it.

Q. When your attention was called to the checks referred to in the protests which are in evidence, I think you recall them, Exhibits D-32 and D-33, and I was asking when, in the ordinary course of business, the checks referred to in those protests would have been deposited in the

Newark Bank, and you attempted to give what you thought about what was the date? A. Yes, sir.

Q. Can you tell from your deposits, or do you know that those two checks were deposited in the Roseville Trust Company? A. Whether they were deposited?

Q. Actually deposited. A. You mean deposited in the sense of crediting the account?

Q. Yes. A. No, sir; I can't tell you that.

Q. They may have been cashed at the paying teller's window? A. They may.

RE-CROSS-EXAMINATION by Mr. English:

Q. These checks that you got did not come direct from the Roseville Trust Company, they came through the medium of some other banks? A Yes, sir.

Q. To the Union National Bank and to the New Brunswick Bank and then to you? A. Yes.

EDWARD R. THORNE sworn in behalf of State in rebuttal.

Direct-examination by Mr. Mott:

Q. Where do you reside? A. Albany, New York.

Q. What is your business? A. Banking.

Q. Connected with what bank? A. New York State National Bank.

Q. How long have you been connected with that institution? A. About eighteen years.

Q. So that you were there in January, 1911? A. Yes, sir.

By the Court: Q. In what capacity? A. Clerk.

By Mr. Mott: Q. In what capacity were you acting in the New York State National Bank in January, 1911? A. Clerk.

Q. You say clerk, and as clerk what duties did you perform? A. Acting chief clerk.

Q. And the duties of chief clerk as chief clerk, was it part of your duty to have anything to do with incoming checks? A. Not personally; supervision, that is all.

By the Court: Q. It came in your department? A. Not in my department.

Q. Did you have charge of the department in which they came? A. No, sir, not immediate charge.

Q. What do you mean by supervision? A. I mean I had supervision, as far as auditing is concerned, over two or three departments.

By Mr. Mott: Q. A check sent, for instance, from Newark, New Jersey, to your bank for collection, and credit, would that come under your supervision? A. Not immediate, no, sir.

Q. Well, general. A. Well, the only thing that I could certify to was the record of the bank in this case, that is all.

Q. You are familiar with the records of the bank? A. Yes, sir.

Q. Have you brought with you the record of the New State National Bank covering the period January 23d, Jaunary 24th and January 25th, 1911? A. Yes.

Q. Which would show checks forwarded to you for collection? A. Yes, sir.

Q. I ask you to produce that record. A. (Producing paper.) 23d and 24th.

Q. And I show you Exhibit marked S-65 written on a letterhead of paper bearing the mark Roseville Trust Company, January 23, 1911, addressed to N. Y. State Nat. Bank and ask you whether you have the original of that letter? A. I have a letter sent by the Rosville Trust Company dated January 23, 1911. I suppose that is a copy that you have there.

Q. What is stated in the letter which you received?

Objected to.

Q. What is the item stated in the letter which you say you received? A. The name of the item?

Q. Yes. In the first place give us the date of the letter. A. The date of the letter is January 23, 1911.

Q. Isn't there a place where the letter was apparently— A. Roseville Trust Company, Newark, New Jersey.

Mr. English: Isn't this reading in the record a paper not admitted in evidence?

The Court: I take it the purpose is to connect the paper offered with this case.

Mr. English: Does not the paper speak for itself?

The Court: The purpose of the question is to connect it with this case, and it will be admitted for that purpose.

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)

Q. Did that come through the mail? A. Yes, sir.

Q. Did anything accompany it? A. A check.

Q. What is the amount named in the letter? A. The amount of the check, $2700.

Q. Have you any record with you to show what was done with the check? A. The check was sent to the Union National Bank—

Objected to.

Q. I merely asked you whether you have? A. I have, yes.

Q. What was done with the check?

Mr. English: He could only testify from the records, he said, a few minutes ago.

The Court: It has been identified as being connected apparently with this case. Now, the question is whether you think you have laid a sufficient foundation for offering it in evidence.

Q. And this record, you say, shows what was done with the check that came with the letter dated January 23, 1911? A. Yes, sir.

Mr. Guild: I offer the record and the letter in evidence.

The Court: Counsel may cross-examine on this offer.

By Mr. English: Q. What is the record that you produce? A. A letter.

Q. Is that what you call the record? A. That is the record of the bank, the bank record of that item.

By the Court: Q. Upon its receipt by the bank and when it is filed it becomes a record? A. It becomes a record, yes, sir.

By Mr. English: Q. That is the paper you

speak of as the record, is it not? A. This is just a typewritten thing.

Q. Where did this come from? A. It is a copy of our letter to the Union National Bank, Newark, New Jersey.

Q. That is made up in your bank? A. Made up in our bank.

Q. By whom, do you know—by you? A. Not by me.

Q. Sent out by you? A. No, sir.

Q. Did you ever see it before it was handed to you to bring down here? A. I took it out of our records.

Q. Did you ever see it before that day? A. No, sir.

Q. You have no personal knowledge about it at all? A. Only as part of the records of our bank.

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

Mr. English: I don't think that makes it material or enables the witness to testify from it, because he says he has to have a record to refresh his recollection.

The Court: He has sworn that it is part of the records of the bank and is familiar with the records of the bank because he is chief clerk, and he takes this from the records of the bank and he wishes this to refresh his recollection in order to testify. I will permit it.

The two letters referred to are offered in evidence and marked Exhibits S-78 and S-79 respectively.

By Mr. Guild: The paper which you have pro-

duced as part of the records of your bank which is marked S-78 is a copy of an original letter sent out by your bank? A. Yes, sir.

Q. To whom? A. To the Union National Bank, Newark, New Jersey.

Q. What is the date of that letter? A. January 24, 1911.

Q. Do you find in that letter an item of $2700? A. Yes, sir.

Q. Does the letter show where the item is payable? A. Metuchen.

Q. Metuchen, New Jersey? A. Yes, sir.

Q. Did your bank pay the Roseville Trust Company the amount of that item? A. Yes, sir; it was credited to their account on the 24th.

Q. Now, did your bank receive the money back from any source? A. No, sir.

Q. Wasn't it charged to the Union National Bank? A. Yes, sir; it was charged to the Union National Bank.

Q. So you received it back? A. Yes, we got our money for the item.

Q. I show you a paper and ask you whether that came from your bank? A. Yes, sir.

Q. What is that?

The Court: Just tell us the general character, not its contents.

A. It is a letter enclosing a return item paid.

Q. A letter enclosing— A. An unpaid item.

Q. And to whom is it addressed? A. Roseville, Newark, N. J.

Q. Do you know what that means? A. Roseville Trust Company.

Q. And does that mean that the item referred to in that paper came to your bank for collection?

A. I believe it does, because it is a returned item.

Q. And you returned it. Can you say where it came from? A. I can't tell anything about it.

Q. You say you returned it to the Roseville Trust Company as not paid? A. Yes, sir.

By the Court: Q. And you say this letter is the paper that went back with the item in question? A. Yes.

By Mr. Guild: Q. The item referred to in this letter went back to the Roseville Trust Company with this letter? A. According to our letter, yes, sir.

Paper referred to is marked S-80 for identification.

CROSS-EXAMINATION by Mr. English:

Q. I understand you have no personal knowledge of anything you have testified to about the records of the bank? A. I have, yes, sir.

Q. I ask you, personal knowledge? A. I didn't do the actual work, no, sir.

Q. And, of course, you don't have any recollection of any specific transactions of those kinds? A. No, sir.

Q. You produce the records of the bank and see certain names and figures there; that is what you refer to when you testify? A. Certainly.

Q. And you have said in reference to this S-80 for identification that you supposed that it meant something came to your bank for collection, but you don't know that even except from the record? A. I don't know anything about it; I know it is something we handled as a returned item. It is our letter.

Q. Did your bank act as clearing house for

The Roseville Trust Company? A. We collected items for them. They had an account with us.

Q. Did your bank represent any geographical distance? A. No, sir.

Q. Any items that were sent you? A. Yes, sir.

Q. You made some mention of the Union National Bank; how did that figure in the relation between the trust company and your bank? A. We sent all our business there, our New Jersey business.

Q. They acted in New Jersey for you? A. Yes, sir.

IDA M. HICKS recalled in behalf of the State in rebuttal:

Direct-examination by Mr. Guild:

Q. I show you Exhibit S-79, which has been produced by Mr. Thorne of the New York State National Bank, and ask you whether you wrote that letter? A. Yes, sir; I did.

Q. And is it the original letter of which we have a copy marked S-65? A. Yes, sir, it is.

Not cross-examined.

EDWIN V. KENT sworn in behalf of State in rebuttal:

Direct-examination by Mr. Guild:

Q. Where do you reside? A. New Brunswick, New Jersey.

Q. What is your business? A. Banking.

Q. And you are connected with what bank? A. National of New Jersey.

Q. What position do you hold? A. Assistant cashier.

Q. How long have you been connected with that institution? A. About thirty years.

Q. In what capacity? A. Various capacities.

Q. In November, 1910, what was your connection with the bank? A. Paying teller.

Q. What is your present connection with the bank? A. Assistant cashier.

Q. Holding that position, you are familiar with the working routine of the bank? A. In a general way, yes, sir.

Q. Are you familiar with the records of the bank? A. Yes, in a general way.

Q. You were asked to produce here a record from the bank. A. Yes, sir.

Q. Have you done so? A. I have.

Q. By what name is it known? A. General ledger.

Q. What does it show? A. Transactions between different banks that have sent items to us and been returned by us to them.

Q. I desire to ask you about a number of transactions of that character. Would you be able to answer the question without referring to the record? A. No, sir.

Q. Then I ask you to produce the book under date of November 22, 1910. A. (Witness produces book.)

Q. The book which you produce is known as the general ledger? A. Yes, sir.

Q. And shows items that comes to your bank? A. Yes, sir.

Q. In the course of collection? A. Yes, sir.

Q. And if those items turn out to be not good, do they come back to your bank and returned by you to the bank from which you received them? A. Yes, sir.

Mr. Guild: I offer the book in evidence.

CROSS-EXAMINATION by Mr. English:

Q. Do you keep the book? A. I did not.

Q. Did you keep it at the time it was made in 1910, November, 1910? A. Yes.

Q. Did you have occasion to make entries in it and refer to it? A. Yes, sir.

Q. You are referring now to a book about which you have some personal knowledge? A. Some personal knowledge, yes, sir.

Q. I mean you made entries in it? A. Yes, sir.

Q. And referred to it the course of business? A. Yes, sir.

Part of the book dated November 22, 1910, is offered in evidence and marked Exhibit S-81.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. Under date of November 22, 1910, do you find a check for $1000 drawn on Metuchen? A. No, I can't tell where it was drawn on.

Q. Did you credit the Metuchen National Bank on that date with a check for $1000? A. We credited Metuchen with $1001.58.

Q. What is the $1.58? A. Supposed to be protest fees.

Q. Did you charge that item against the Union National Bank on that same date? A. There is

no such item as that appears on the ledger as a single item.

Q. Do you find an item of $1001.58? A. Not charged to Union Bank, Newark.

Q. Give the charge made against the Union on that date? A. $2003.36. I think those are the two checks in one amount.

Q. Two checks of what amount? A. $1001.58 each.

Q. And there is an additional ten cents on each check? A. An additional ten cents which we had for our collection trouble.

Q. So you have two items, you think, under that date, $1001.68 each, making the total which you have given us? A. Yes, sir.

Q. Were they both credited to Metuchen on the same date? A. They were.

Q. Can you say in a general way what those items represented—were they checks? A. They are marked checks and fee.

Q. Will you explain to the Court and jury, in addition to what you have told us, what the course of those checks was, so far as your bank was concerned, coming in and going back? A. Presumably, according to the records, they were received from Metuchen, protested, credited to that bank and charged to Union of Newark and returned to them the same day.

Q. To Union? A. To Union of Newark.

Q. Will you please look under the head of November 30, 1910? A. Yes, sir.

Q. Do you find a Metuchen item there of $1001.58? A. I do.

Q. Do you find another one of the same amount? A. I do.

Q. Those two items on Metuchen returned to you, were they credited to Metuchen? A. They were.

Q. Were they charged to Union Bank, Newark? A. Yes, sir.

Q. With ten cents additional for your trouble? A. Yes, sir.

Q. And the two items sent back to Newark? A. Yes, sir.

Q. Will you now look under the date of December 6, 1910, and see if you have not a Metuchen item on there, two $1000 items? A. There is a credit to Metuchen of $2000.

Q. There are no protest fees on those items? A. No, sir.

Q. Are you able to say whether they were checks of $1000 each? A. I am not.

Q. I suppose the fact that no protest fees appear in your record indicates that the checks were not protested? A. Yes, sir.

Q. What became of those checks or that item, were they credited to Metuchen? A. They were credited to Metuchen.

Q. What became of them? A. I presume they were returned to Union of Newark. We have a charge on that day of $2000 and something else added.

Q. What is that? A. $2021.75.

Q. You were requested to look at your records and see whether the $2021.75 did not contain the two $1000 checks. Did you do that? A. I tried to do it, but I couldn't find any record of such a transaction at all.

Q. You charged the Union $21.75 more than you credited Metuchen? A. Yes, sir.

Q. Which would indicate that the $21.75 did

not come back to you through Metuchen? A. It would indicate that, yes, sir.

Q. Under December 28th do you find an item of $801.58? A. Where would I find that item? Where do you want me to look for it?

Q. Which bank? A. The same bank?

Q. Metuchen. A. No, sir; I do not.

Q. Have you any explanation to make with reference to that item? A. No, sir; I don't know anything about it.

Q. Do you find a charge against Union under that date of that amount? A. No, sir.

Q. What do you find? A. $1.58 credited and charged to the respective banks.

Q. Did you subsequently ascertain that there had been an error in entering that item? A. Yes, sir.

Q. Will you please turn to your book and see if you can give us an explanation of it or any other record that you may have to which you desire to refer? A. I found on our journal under date of January 16th, that Metuchen was credited with $800 and Union charged with $800, marked "Error in checking."

Q. So that if proper entry had been made under date of December 28th the amount would have been $801.58 instead of $1.58; is that correct? A. Yes, sir; that is correct.

Q. Will you kindly look under date of January 3, 1911. These all refer to Metuchen. A. I have it.

Q. Do you find an item of $2001.58? A. I do.

Q. Does that mean Metuchen returned to you that item of $2000 with $1.58 protest fees? A. It is marked "checked off."

Q. That is what it means? A. Yes, that is what it means.

Q. Was it returned to Union and charged to them, the same item? A. Not that amount.

Q. I am perfectly willing you should have your ten cents. A. No, it is not that. There is charge to Union of $2324.18, but I presume it is part of that other item.

Q. Did you look that up and are you able to explain it? A. No, I couldn't find that record at all.

Q. You say it is part of the $2001.58? A. I presume so.

Q. May it not have been due to the same cause that your $21.75 which you included in a former transaction? A. Some other item.

Q. Coming from some other source? A. Yes, sir.

Q. But in any event that $2001.58 was sent back and charged to Union with something else? A. I presume so.

Q. Under this date of January 3, 1911? A. Yes, it is reasonable to presume so, but I can't swear to it.

Q. You are swearing to everything you say? A. Yes, sir; but I am not certain it was in there.

Q. Aren't you certain that $2001.58 was charged to Union on January 10th? A. No, sir.

Q. Why not? A. Because it is bunched on the book.

Q. What is your belief about that?

Objected to.

The Court: What do the books indicate?

Q. You received it from Metuchen? A. Yes, sir.

Q. And in due course it would have gone back to Union? A. If it came originally from Union it would.

Q. But you are not able to say whether or not it did go back to Union? A. No, sir.

Q. But you do find a charge against Union under that date of 23d and 24th? A. Yes, sir.

Q. You are willing to go that far? A. Yes, sir.

Q. Under date of January 9, 1911, did you find a Metuchen item of $2001.58? A. $2001.58.

Q. That means that Metuchen returned that item to your bank? A. Yes, sir.

Q. As not good? A. Not good.

Q. What did you do with it? A. It is marked check and fee—well, that was returned to the Union of Newark, the same amount, with the additional ten cents.

Q. Under date of January 10th do you find $2001.58 returned to you by Metuchen? A. Yes, sir.

Q. Not good? A. Not good.

Q. Credited to Metuchen, and what became of it? A. Charged to Union, Newark.

Q. The same date? A. The same date.

Q. And returned to them? A. Yes, sir.

Q. The date of January 14th, do you find an item of $2801.58? A. No, sir.

Q. What do you find? A. I find $2001.58.

Q. The 14th? A. January 14, 1911.

Q. Do you find $2001.58? A. Yes, sir.

Q. Which indicates that a bad check for that amount came back to you from Metuchen? A. Yes; it is marked check and fee.

Q. And what became of it? A. Returned to Union, Newark, on the same day.

Q. Under date of the 16th of January do you find $2001.58 returned by Metuchen? A. I do.

Q. Which means that a bad item came back from Metuchen for that amount? A. Yes, sir.

Q. What did you do with it? A. Returned it to Union, Newark, on the same date.

Q. On the date of the 17th of January do you find an item of $2001.58? A. Yes, sir.

Q. Which indicates that a bad check came back with protest fees from the Metuchen Bank? A. Yes, sir.

Q. And what became of it? A. Went back to Union, Newark, on the same day.

Q. Under date of January 21st do you find an item of $2001.60? A. Yes, sir.

Q. Returned as not good? A. Yes, sir.

Q. What became of it? A. Well, I presume that was included in a charge that we have against Union, Newark—

Mr. English: You ought not to presume if you don't know.

Witness: I don't know.

Q. Under that date what does your record show? A. Shows a charge to Newark, $2703.38.

Q. What does it show to Metuchen of that date? A. It doesn't show anything. We don't keep it that way. We just have the figures.

Q. You have the figures of $2703.36. What is the amount under date of the 21st you have returned to you by Metuchen? A. I have the items that day. Shall I read them off?

Q. Two of them, that make $2703.18? A. We have two items representing that amount, one for $701.58 and one for $2001.60.

Q. You find those items returned by Metuchen

as not good with the Union National Bank? A. Yes; they are a clearing house, so to speak.

Q. A forwarding bank? A. Yes, sir.

Q. These checks originally came to your bank from the Union? A. Yes, sir.

Q. When you got them what did you do with them? A. Sent them to Metuchen.

Q. That was the bank they were drawn on? A. Yes, sir.

Q. And if they were not good sent them to the Metuchen Bank and they sent them to the Union? A. Yes, sir.

Q. When they came back had you charged the Union, plus the protest fees? A. Yes, sir.

Q. There is nothing to show in your record whether they had been deposited or credited to the account? A. No, sir.

Q. And there is nothing to show that it was the same check put through two or three times? A. No, sir.

Q. So it is possible for a check of the same amount may have gone through three or four times on a certain date? A. Yes, sir; it is possible.

Q. And the protest fee would be charged up every time? A. Yes, sir.

Q. In other words, if a depositor turned in a check which came back bad, if he was sure it was good it would be sent down the second time? A. Yes, sir.

Q. And that frequently happens? A. Yes, sir.

Q. And it would be protected every time if it was no good? A. Yes, sir.

Q. That would be true whether the check was put through for deposit or collection? A. Un-

less the item was marked "No protest," then of course it would not be protested.

Q. When is an item marked that way? A. That is discrectionary with the bank, as to customer.

Q. He waives his right to protest? A. He waives his right.

Q. Anything to show that any were marked that way? A. No, sir.

Q. As far as you know, you can't say whether those checks went through for collection or the same check went through a number of times? A. No, sir.

Q. And either might have been true? A. Yes, sir.

Q. You got paid the protest fees you charged up? A. Oh, yes.

Q. That means in the ordinary case the protest fees were paid by the person who first started the check on its way?

Mr. Guild: Not necessarilly.

Mr. English: I am asking him.

A. I can't answer that question. I don't know.

Q. In the ordinary course, isn't that what it means? A. I think so, yes.

Q. If I put my check through the bank and it goes through a number of banks and comes back protested, I, as the depositor, would pay that money, and isn't that the Union Bank? A. Yes, sir.

IDA M. HICKS resumes the stand in behalf of State in rebuttal:

Further direct-examination by Mr. Guild:

Q. I show you a book and ask you what it is? A. Return item book.

Q. Of the Roseville Trust Company? A. Yes, sir.

Q. Did you keep those books? A. Yes, sir; I did.

Q. Did you write the letters that appear in that? A. I did.

Q. And that letter contains what, a carbon? A. The carbon of the letter sent out with that check.

Q. And which letter you say you wrote? A. Yes, sir.

Mr. Guild: I offer the book in evidence.

The Court: This is one of a series of books.

Mr. English: I make the same objection, that it is not material and is not rebuttal, and ask leave to strike it out if it is not connected up.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-82.

Q. Under date of April 1, 1911, Exhibit S-82, what do you find? A. A letter addressed to Mr. John B. Scarlett.

Q. Please read it. A. Returning a check on Syracuse, New York, $2700 check, with protest fees of $1.30.

Q. Was the check sent back with the letter? A. Yes, sir.

Q. I show you another similar book under date of April 28, 1911, and ask if you wrote the letter appearing at the place indicated? A. A. I wrote the original letter.

Q. Of which this is a carbon? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: 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.

H. V. OSBORNE,

(Seal) Judge.

Marked Exhibit S-83.

Q. Read it. A. A letter to Mr. John B. Scarlett concerning a protested check on New Castle, Pennsylvania.

Q. I ask you to read the letter. Are you reading the date too? A. April 28, 1911, returning a $1200 check to Mr. John B. Scarlett on New Castle, Pennsylvania, protested, $1.52 protest fees.

Q. Did the check accompany the letter? A. Yes, sir.

Q. Directed to Mr. Scarlett? A. Yes, sir.

Q. When you are asked to read them read them fully. I was a printed form letter, as I understand it, and what appears in these books is only what was written in the form in order to complete the matter? A. Yes, sir.

Q. I show you another similar book and call

your attention to date of January 21, 1911, and ask you whether that is a carbon of a letter written by you? A. Yes, sir; it is.

Mr. Guild: I offer it in evidence.

Mr. English: 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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-84.

Q. The date of the letter is— A. January 31, 1911.

Q. Addressed to whom? A. Mr. John B. Scarlett.

Q. Is the adress given? A. 810 Broad street, City.

Q. And returning what, if anything? A. A $2000 check on Metuchen, New Jersey, protested, $1.62 protest fees.

Q. Did the check accompany the letter? A. Yes, sir.

Q. Outside of doing the work which you have told us about as clerk in the Roseville Trust Company, was it part of your duty to send out letters to the directors of the meeting of the board of directors? A. It was.

Q. Did anyone besides yourself do that? A. No, sir.

Q. Did you send letters to Mr. Scarlett notifying him of meetings of the board or directors?

Mr. English: I object to that unless the

letter is produced. I don't suppose she can say after four or five years.

The Court: First we must ascertain whether there were such letters.

Mr. English: Mr. Smith testified that copies of those letters were sent. I think before the witness is allowed to answer we ought to have the copies or have their absence explained.

The Court: The objection is overruled.

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

H. V. OSBORNE,
(Seal) Judge.

The Court: Answer the question. Did you send letters to Mr. Scarlett?

Witness: I believe I did.

Q. Down to what date? A. I can't remember the date.

Q. With reference to the closing of the bank? A. I can't remember the date.

Q. You don't remember when the bank closed?

Mr. English: It was in August and she says she left in June.

Q. What year? A. I believe August, 1913.

Q. You were not there when the bank closed? A. No, sir; I was not.

Q. When did you leave? A. In June, 1913.

Q. The question is whether up to the time you left did you send Mr. Scarlett letters or notices of meetings of the board of directors up to the time you left?

Mr. English: I object to that as leading.

You can ask her when she sent them and what date. You cannot suggest the answer.

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.

H. V. OSBORNE,

(Seal) Judge.

By the Court: Q. Did you send them? A. I don't remember up to what date I sent them.

By Mr. Guild: Q. Did you send to him notices of the meetings of the directors when you sent them to other directors? A. Yes, sir; I did.

Q. And that is true of all meetings of directors you sent out before you left the bank? A. I can't say that I sent them out to Mr. Scarlett up to that time because I can't remember.

Q. That is what we are trying to find out. whether you did send him letters of the meetings of the board of directors when you sent them to the others? A. I did, as a rule.

Q. Did as a rule? A. Yes, but I don't remember it as to date.

Q. I understood that you sent out, as long as you were there, notices to all of the directors of the meetings of the directors? A. Yes, sir.

Q. No one else but yourself did it? A. No, sir.

Q. Now, I ask you whether you sent a letter to him when you sent letters to the other directors? A. If he was on the board of directors—

Q. I didn't ask you if he was on the board of directors; I merely asked whether you sent him notice? A. I don't remember.

CROSS-EXAMINATION by Mr. English:

Q. Will you undertake to remember the names of the board of directors up to the time that you left? A. I don't remember; I can remember—I don't know whether I can remember all of them.

Q. All you remember about the thing is that it was your duty to send word to directors? A. Yes, sir.

Q. And whether you sent them out to any particular individual you don't remember? A. No, I don't remember.

Q. Those are written on a blank form or a separate letter, the letters to the directors? A. Written on the letterhead of the Roseville Trust Company.

Q. A separate letter in each case? A. Yes, sir.

Q. And you made a carbon copy? A. I believe we did.

Q. Is there anything in this return item book to indicate that the checks referred to in the letters which are copied in that book were deposited for credit or went through for collection? A. Not in the book.

Q. So far as the book goes, the same kind of an entry was made in either case? A. No, sir.

Q. Is there anything entered to indicate it? A. Why, the words "Charge your account" would be crossed out. "We charge your account" would be crossed out.

Q. You are speaking of something else besides that book. Is there anything in that book to indicate— A. Not as it stands here.

Q. You don't pretend to have any independent recollection of the things outside of the book? A. If it had been crossed out—

Q. Well, then—

Mr. Guild: Let her answer the question.

The Court: She may answer the question.

(Question read.)

A. If the words "Charge your account" had been crossed out on the original copy the pencil mark would show on the book.

Q. Does it show? A. I haven't looked.

By the Court: Q. Just take your time to each one of those and see if you find any pencil mark indicating that the words "Charged to your account" have been crossed out? A. There is one.

By Mr. English: Q. You refer to letter now which is marked Exhibit D-72? A. Do you mean in Scarlett's or generally?

The Court: She now points to an item in the book of the same character indicating that the words had been crossed out.

Q. It reads "Dear sir: Enclosed please find charged to your account" and you would cross out the words "Charged to your your account," so it would read "Enclosed please find," and that was the case when? A. When checks were sent out for collection.

Q. You think that if that pencil mark does not appear in here it indicates that it was not sent through for collection? A. Yes, sir.

Q. Are you sure that you always made that kind of a mark in the hurry of business? A. I am not sure.

Q. Is it possible that a good many checks went out— A. I don't say a good many.

Q. Well, some, which you, in your hurry, in haste, would have sent out—

Mr. Guild: She has not said that at all.

Q. Well, were you ever in a hurry when working in the bank or did you have all the time in the world? A. No, I didn't have all the time in the world.

Q. You had a good deal to do with all of these duties? A. Yes, sir.

Q. Isn't it true that sometimes in your hurry you would forget to run your pencil through these three words on this letter? A. I can't say whether I did or not.

Q. It is quite probable you did? A. Well, I might have.

Q. In that case letters would go out containing checks which had really been sent for collection and which you forgot to run your pencil in those three words? A. If I forgot to cross them out.

Q. Now, those letters undertake to show the amount of the check which was sent back and also the protest fees? A. Yes, sir.

Q. Would you have before you the check and the protest when you prepared these letters? A. Yes, sir; I would.

Q. And that is what you prepared them from? A. Yes, sir.

Q. After that had been done, I mean after you prepared this letter, did you prepare the charge slip for the amount of the protest fees or the check or both, as the case may have been? A. No, sir; I didn't do that.

Q. Who did do that? A. The teller.

By the Court: Q. Did you say you had before you the check from which you prepared these letters? A. Yes, sir.

Q. What was there about that check which you

had before you that indicated to you whether it had been charged to the account or not, which enabled you to run your pencil through the words? A. Sometimes I was told and sometimes the item itself would be marked "For collection."

Q. How was it marked, in pencil or pen or a rubber stamp? A. Sometimes in pencil and sometimes a slip attached to it.

Q. You have slips for that purpose? A. We didn't attach the slip.

Q. Who did? A. The bank returning the check attached the slips.

Q. When you got an item, its journey originating there, which you would enclose in one of these letters, how would it be marked, "For collection"? A. It wouldn't be marked in any way.

Q. How could you tell whether to scratch off the words "Charged to your account" or not? A. Why, I was told when it came back, why, it had this slip on, or marked in some way.

By Mr. English: Q. Who was the person that told you the check was for deposit or for collection? A. In sending it out?

Q. Yes. A. The receiving teller usually.

Q. Who was that? A. At what date?

Q. The date that we are speaking of, that you have been testifying about here. A. Mr. Thompson.

Q. If anybody told you he told you? A. Not always.

Q. Who else? A. Mr. Smith would tell me sometimes.

Q. So you used to get this information as to whether a check had gone through for collection when it didn't appear physically among the pa-

pers either from Mr. Smith, the treasurer, or Mr. Thompson, the teller? A. In sending it out? Yes, sir.

Q. And then you would enter it up the way they told you? A. I would send it out.

Q. I mean you would send it out the way it was told you? A. Yes, sir.

Q. Did they invariably tell you or did checks go out about which you had knowledge one way or the other? A. I don't know about that.

Q. Is it possible that you sent out checks without knowing whether it was sent out for collection or deposit? A. No, sir; I don't think so.

Q. When Mr. Smith told you to do that or Mr. Thompson told you to scratch out the words "Charged to your account"— A. They didn't tell me that; they just told me what it was for.

The Court: She said they told her what it was for and she, pursuant to what they told her, scratched it out. (To the witness:) Is that right?

Witness: Yes sir.

The Court: Do I understand you correctly?

Witness: Yes sir.

Q. I show you S-64 which refers to two checks charged to Metuchen for $2,000 each and sent down to the Fourth Street National Bank which you say is in Philadelphia; I want you to explain to me why a check drawn on the Metuchen Bank was sent down to Philadelphia instead of going through the Union National Bank?

Mr. Guild: She is not here as a bank expert.

The Court: If you know.

A. I don't know.

By the Court: Q. Who had the direction or under whose direction were the banks selected to which checks should be sent for collection? A. Mr. Smith's I believe.

Q. Then you sent the checks where you were told to send them? A. No, sir; I knew where to send most of the checks.

Q. And you would send them where you thought they ought to go? A. In most cases.

Q. Unless you were directed to the contrary? A. Yes, sir.

By Mr. English: Q. Ordinarily a check drawn on Metuchen would be sent by you to the Union National Bank? A. Yes, sir.

Q. And if you sent a check to some other bank that was because somebody else told you to do it? A. Yes, sir.

Q. When you sent those checks referred to in S-64 down to Philadelphia you did that because Mr. Smith told you that? A. It may have been Mr. Smith.

Q. Some superior officer of yours? A. Yes, sir.

Q. And you have no knowledge why they were sent down to Philadelphia? A. No, sir.

Q. And you sent that there because you were told to do it. Is the same thing true of S-65, which shows a Metuchen check for $2,700 sent to the New York State National Bank, which you say is in Albany, under date of January 23, 1911? A. Yes sir; it is.

Q. Smith told you to send that up to Albany? A. Not necessarily Mr. Smith.

Q. If Mr. Smith didn't who in the bank did? A. One of the tellers.

Q. Either Mr. Thompson or Mr. Jennings? A. Yes, sir.

Q. One of the three told you to send that up to Albany? A. Yes sir.

Q. You said when you were first on the stand the New York State National Bank of Albany acted as clearing house in the State of New York excepting New York City? A. Not in all cases. They had other items also; they collected other items.

Q. From what location did they collect other items? A. I don't know, but I know there were other items outside of New York State.

Q. When you say other items, you mean some banks in other places than New York State? A. Yes, sir.

Q. Could you name any of them? A. New Hampshire was one.

Q. What else? A. Vermont.

Q. New England States? A. Not all.

Q. But some New England States? A. Yes, sir.

Q. Pennsylvania, wasn't that in the New York State Bank District? A. No, sir.

Q. Vermont and New Hampshire you remember now? A. Yes, sir.

Q. Pennsylvania? A. No, sir.

Q. Why did you send S-69 then which is a letter referring to a check of $1,200 drawn on New Castle, Pennsylvania, up to the New York State National Bank, Albany? A. I must have been told to do so.

Q. By Mr. Smith or Mr. Thompson or Mr. Jennings? A. Yes, sir.

Q. You don't know why they told you to do it, they gave you no explanation? A. No, sir.

Q. You simply did as you were told? A. Yes, sir.

Q. Look at S-71 one of these return item books which mentions an amount and the name of Middlesex Hat Company; that identifies the amount of the check and what else? A. The protest fees.

Q. What else? A. What is the name?

Q. Middlesex Hat Company. A. That is the maker of the check.

Q. So that entry contains the amount of the check and the maker of the check? A. Yes sir.

Mr. Guild: It contains also the name of the person to whom it was addressed.

Q. And this entry is supposed to show those facts, the maker of the check and the amount of the check? A. Not in all cases.

Q. What is it supposed to show in other cases? A. In some cases it shows what bank it is drawn on and other cases the city.

Q. How do you distinguish when you make an entry showing the bank the check was drawn on? A. Let me see the book.

Q. (Indicating.) I call your attention to another entry in this book, where it gives the amount and says "Metuchen, N. J.;" it don't give the maker of the check. Why in one case would you record the maker of the check and in the other case record the location of the bank on which it was drawn? A. I don't think I had any reason for doing that.

Q. You can't give any explanation of that at all? A. No sir

Q. Whereabouts on this form S-72 would you write in the name of the maker of the check? A. I don't know any specified place.

Q. Whereabouts would you write in the name of the place where the check was drawn if you

didn't write in the maker? A. I would take this line for either the maker or the place where the check was drawn.

Q. You can't tell why you did one sometimes and why you did the other sometimes? A. No, sir.

Q. Any instructions about that from headquarters? A. No, sir.

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

After recess.

IDA M. HICKS resumes the stand:

Cross-examination (continued) by Mr. English:

Q. In connection with your duties in the bank you had occasion to see the charge slips that were put through when a check came back not good? A. Not always, no, sir.

Q. Did you ever see them? A. Sometimes.

Q. Do you know how they were made out? A. They were made out in the party's name.

Q. The party it was charged to? A. The party it was charged to, with the amount of the check and the reason why the check was being returned.

Q. And the amount of the protest fees was put on? A. Yes, sir.

Q. When a check went through which was deposited you would charge on that the amount of the deposit and the protest fee, wouldn't you? A. I believe that was the way, yes, sir.

Mr. Guild: The witness says she did not have anything to do with that part of it. The point of my objection is that he is asking this witness questions regarding the bookkeeping which she had actually nothing to do with.

(Question read.)

Mr. English: She testified about checks which turned out to be no good.

The Court: She has only testified to what she did. She may have some idea of what the general system in the bank is. I think the objection should be sustained.

Witness: I only know from the general system.

Q. You had nothing to do with that part of the work? A. No, sir.

Q. And had nothing to do with your work? A. No, sir.

Witness: I wish to make an explanation of the statement I made this morning in regard to the New York State National Bank. I should have said that all Pennsylvania items go to the New York State National Bank with the exception of items in Philadelphia.

Q. Then the New York State included Pennsylvania in the district? A. Yes, sir.

ALFRED J. HARGAN, re-called in behalf of the State in rebuttal:

Mr. Guild: The papers which I propose to examine Mr. Hargan about have not been offered for identification or in evidence,

and it is necessary that it should go in in order to establish a basis for the examination of the witness that we expect to call next.

DIRECT-EXAMINATION by Mr. Guild:

Q. Mr. Hargan, I show you a package of papers and ask you what they are? A. They are the exchanges—

Mr. English: He is not a banker. He found some papers. I do not think the prosecutor ought to characterize the contents of the paper. Can't they be marked for identification and then be proved by the proper person? I presume that Mr. Hargan found those among other papers and that is all he knows. He cannot prove the contents of the paper or their materiality.

The Court: He may be able to tell what they are. If it was a bundle of cancelled checks it would not take an expert to know that.

Mr. English: They can be produced and speak for themselves.

The Court: It will appear by subsequent questions that these papers were part and parcel of the records taken from the bank and produced here. The question is what these papers are. If you can answer the question you may do so. Objection overruled.

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. They are exchanges of the Union National Bank sent by the Roseville Trust Company, on the different dates affixed.

Q. Do the dates appear on the papers themselves? A. The dates appear on the papers themselves.

Q. You say they are exchanges; what do you mean by exchanges? A. Why, the amount and list of checks that went to make up the exchanges sent to the Union National Bank by the Roseville Trust Company on different dates.

The Court: I rather think this witness's answer is subject to being stricken out, because I think he goes entirely too far in characterizing these papers, and I will strike it out without any motion for that reason.

Q. Where did you find these papers? A. In the cellar of the Roseville Trust Company. In a number of cases all papers which were filed were there.

Q. That was after the failure of the trust company? A. A very short time ago.

Q. Have they been in your possession ever since? A. Since I took them away from the bank last week.

Q. Last week? A. Yes, sir.

Q. When did you make the search? A. Last Saturday.

Q. And you found them there among papers of the bank? A. Yes, sir.

Not cross-examined.

The papers referred to are marked Exhibit S-85 for identification.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JOHN B. SCARLETT,
Plaintiff in Error.

On Indictment for Overdraft.

Brief for Defendant in Error.

The indictment in this case is founded on Chapter 192 of the laws of 1906, page 343.

The indictment charges (page 4) that John B. Scarlett, etc., being then and there a director of the Roseville Trust Company, etc., and a depositor in and having an account with said Roseville Trust Company, unlawfully, wilfully and knowingly, for his own private use and benefit, did *overdraw* his said account with said Roseville Trust Company in the sum of $350, by then and there wilfully and knowingly withdrawing from said Roseville Trust Company by means of a bank check, dated March 17, 1913, drawn upon said Roseville Trust Company payable to the order of John B. Scarlett, for the sum of $350, signed by him, the said John B. Scarlett, the said John B. Scarlett then and there well knowing that he did not have to his credit with said Roseville Trust Company money of the amount of $350, with intent to defraud said Roseville Trust Company.

The check in question was dated March 17, 1913, for $350, drawn by John B. Scarlett to the order of John B. Scarlett (pages 140, 141,

142). The check was admitted in evidence and marked Exhibit S. 5 and is printed on page 1012.

Smith testified (page 142) that he saw the check after it came back from the exchange, and took it from the paying teller's cash and put it in box 55. "Box 55 was a safe deposit box where I kept a great many checks which had been paid over the counter and never charged to the various accounts of the makers of the checks."

Smith further testifies (page 142) that on March 17, 1913, he certified this check at the request of Scarlett, and on page 143 he says that Scarlett's balance at the time the check was certified was $1.30.

> "Q Has the check been paid by the Roseville Trust Company? A It has; yes, sir."

Smith further testifies (page 143) that the check in question was sent to him by Scarlett by a messenger, and that it was accompanied by a letter dated March 17, 1913, which letter was admitted in evidence and marked Exhibit S. 12 and is printed on page 1013.

The letter is as follows:

> "Newark, N. J., March 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."

Smith further says on page 144, that on receipt of the letter he certified the check and sent it back to Scarlett by his messenger.

In the letter of March 17th, Scarlett refers to a conversation he had with Smith the previous week.

Smith says (page 146) that this conversation related to money that Scarlett needed.

> "As far as I can recollect, your Honor, it was that he needed some money to meet some interest charges that were past due. * * * I agreed to let him have it."

Smith further says (page 146, line 40) that at that time he had a talk with Scarlett about the condition of his account with the Roseville Trust Company.

> "Q What did you say to him? A I told him his account was in awful shape, but I had paid a great many checks that did not appear on his account at all; that I had been obliged to make entries of certain kinds to take care of his check; that it put me in a very mean position with the institution.
>
> Q What did he say? A He said he knew I was running certain risks on his account and that he intended to make good; he had several irons in the fire, but he hoped to have payments made that would more than cover the items that I have taken care of."

The attention of the Court is directed to the letter Exhibit S. 14 (page 1014), being a letter Scarlett wrote Smith under date of March 4, 1913, and to Exhibit S. 16 (page 1015), being a letter Scarlett wrote Smith under date of February 19, 1913.

In each of these letters Scarlett requests Smith to certify the enclosed check, and the letters clearly show that Scarlett knew that his account was not good for the checks which he asked Smith to certify.

According to Scarlett's own check book, on March 17, 1913, his account was *overdrawn* $2,423.33 (page 932, line 16).

On March 17, 1913, before the $350 check was certified Scarlett's account was *overdrawn* $7,655.82. After this check was certified his account was overdrawn $8,005.82 (page 85).

On page 12 of his brief, counsel for the plaintiff in error says:

> "When the Trial Judge charged the jury that the evidence showed that the check had been paid by the Trust Company, he withdrew from them one of the essential questions in the case."

The language of the charge is as follows (page 986, line 35):

> "The fact that the check of $50,654.23 was paid by the Roseville Trust Company to the Union National Bank, March 18, 1913, does not, standing alone, necessarily establish such payment, but there is evidence in this case that it was paid by that check—that is to say—by this check of $50,654.23."

In theory of law the check was paid when it was certified. Due act of certification overdrew the account.

> "The bank owed no duty to the drawers to certify the checks, but it could certify them, if it saw fit, at the request of either the drawers or holders, and if it certified them, it became bound directly to the holders or to the persons who should become the holders. In either case the bank would charge to the account of the drawer the amount of the check, because by certification it had become absolutely liable to pay the check when presented."

Minot v. *Russ,* 156 Mass., 458.

Times Sq. Auto Co. v. *Rutherford Nat. Bank,* 48 Vr., 649.

Point I.

As stated in brief of counsel for the plaintiff in error, this point is as follows:

> "The Trial Judge erred in his charge to the jury with reference to the payment of the check and in refusing to charge as requested."

On page 178, *et seq.,* Smith testifies from the books and records of the company that the $350 check was included in and paid by the $50,654.23 check given to the Union National Bank in settlement of the exchanges for the 18th of March, 1913.

This testimony, we respectfully submit, sustains the charge of the Court when the Court says, "There is evidence that it was paid by that check, that is to say, the check of $350 was paid by the check of $50,654.23."

We respectfully insist that the $350 check was, in fact and in law, paid when the bank certified it.

As to requests to charge numbers 35, 36 and 37, it will be observed that each one of these requests involves the proposition that the jury could not accept the testimony of Smith and Thompson, unless they were corroborated by other credible evidence.

This, we submit, is not the law.

The only effect of proof that a witness has been convicted of crime is to affect his credibility. There is no rule of evidence, or principle of law, in this State to the effect that the jury may not accept the testimony of a witness

who has been convicted of crime, unless his testimony is otherwise corroborated.

On page 994, line 25, the Court charged:

> "In determining what weight you will attach to the testimony of Smith, Jennings and Thompson, you have a right to consider the fact that they have been convicted of a crime. This is a fact for your consideration in determining the weight you will attach to their evidence and to what extent it affects their credibility."

We respectfully submit that the charge of the Court on this point is unobjectionable.

As to requests numbers 22 and 23, we respectfully submit these requests were properly refused, because they ignored the fact that the check was certified by the bank. We insist that it was the act of certification which constituted the overdraft, because by that act the bank became liable to the holder of the check for the amount of the check.

Point II.

This point, as stated in the brief of counsel for the plaintiff in error, is as follows:

> "The Trial Judge erred in his charge to the jury upon his question of the extent of the overdraft."

The portion of the charge objected to, with the pertinent context, will be found on page 990, line 40, as follows:

> "The overdraft arises when a customer of a bank draws from that bank more money than he has to his credit in the bank. It is not material whether the account was actually overdrawn for $350, if, in fact, it was overdrawn by the defendant on the day in

question, knowingly. The essence of the offense is the overdraft and not the amount."

We respectfully submit that this is a correct statement of the law of the case. If this is so, then requests to charge Nos. 9, 10, 11 and 31 were properly refused.

Point III.

In his brief on page 66, counsel for the plaintiff in error, says:

> "To say that Ferguson corroborated Smith was equivalent to an effort to hoist oneself over the fence by one's boot straps. Ferguson could rise no higher than the records, and the records could rise no higher than Smith; for they were the false records which had been kept by Smith. The testimony which Ferguson gave was simply a re-statement which Smith had made for himself in the records of the bank, and amounted to no corroboration whatever."

Ferguson testified (page 876) that in his examination of Scarlett's account he used not only the books of the company, which he named, but the checks which he had drawn against his account, which were admitted in evidence.

Ferguson's testimony, therefore, did not rest solely upon the books of the bank.

Point IV.

Under this point counsel discusses assignments Nos. 15, 17, 18, 20, 21, 24, 120, 127 and 140.

Assignment No. 17 is based on the admission in evidence of Exhibits S. 9 and S. 10. Exhibits S. 9 and S. 10 were the receiving teller's proof books (page 1013). These books were part of

the system of bookkeeping used at the bank and were duly proved, and we submit that there was no error in their admission.

Assignment No. 15 is based on the admission over the objection to the following question:

> "Q The question is whether that check was paid by the Roseville Trust Company (page 86). A Simply by looking at the check I cannot tell whether I have ever seen it before, but by looking at the book I can tell whether I have seen it or handled it."

We respectfully submit that the admission of this question and the answer could not possibly have harmed the defendant.

Assignment No. 18 is based on the admission of the following question:

> "Q I want to know whether that check was paid by the Roseville Trust Company, and, if so, in what way and on what day? (page 99, line 20). A No, I can't tell you that particular check was paid. The only thing—" (page 100, line 10).

We respectfully submit that the admission of this question and answer could not possibly have harmed the defendant.

Assignment No. 20 is based on the refusal of the Court to strike out the following question and answer (page 102, line 1):

By the Court.

> "Q Has it been paid or not? A Yes, the check has been paid."

We respectfully submit that the question was proper.

Assignment No. 21 is based on the following question, "That does not pay it?" (page 102, line 20).

We respectfully submit that this question, in connection with the preceeding question, was proper, and that there is no error either in the question or in the answer.

Assignment No. 24 is based on the refusal of the Court to strike out the answer of the witness to the question, "Has it been paid or not?" (page 102, line 1).

We respectfully submit that the question and answer were proper, and should not have been stricken out.

Assignment No. 120 is based on the following question:

> "Q Were they paid, or either of them, by the bank upon which they were drawn? A Yes, sir" (page 682, line 38).

We respectfully submit that this question, in connection with the preceeding question, was proper.

The question upon which Assignment No. 127 is based will be found on page 749, line 10.

This question was objected to, but no ground of objection was stated.

We respectfully submit that the question was proper.

Assignment No. 140 is based upon the following question asked of the witness Ferguson:

> "Q Are you able to say whether it was paid?" (page 888, line 15.)

We submit that this question, taken in connection with the previous question, was proper. The witness was testifying solely from what the books of the bank showed. The witness had qualified as an expert, and he had just testified that he had examined the books for the purpose of ascertaining whether this check was paid by the Roseville Trust Company. He was not,

therefore, expressing an opinion or an inference, but was stating what the books of the Trust Company showed.

Point V.

This point relates to the charge of the Court with reference to the question of whether Scarlett was a director of the Trust Company.

The testimony shows that on January 14, 1913, Scarlett was elected a director of the Trust Company (page 15), and Smith, who was secretary of the company testifies (page 15):

> "He continued as a director until the company was closed—the doors of the bank closed August 13, 1913."

On the 3rd day of February, 1913, Scarlett took the oath of office (Exhibit S. 3, page 1010), and this oath of office was duly filed with the commissioner of banking and insurance on February 5, 1913.

From the testimony of Charles C. Lurich (page 845) it appears that after the Trust Company failed meetings of the Board of Directors were called by William P. O'Dell, the president. Lurich says that, as acting secretary, at the request of Mr. O'Dell, he sent notices of the calling of the meeting of all the directors, including Scarlett (page 847). Scarlett attended this meeting. The minutes of this meeting will be found on page 851.

Harvey Mott, one of the directors, testifies (page 862) that he attended these meetings; that Mr. Scarlett was present, and that he participated in the proceedings of the Board.

Smith testified (page 767) that he received from Scarlett his oath of office, accompanied by a letter signed by Scarlett, which was intro-

duced in evidence, and marked Exhibit S. 114. This exhibit is printed on page 3 of the addenda to the state of the case, and is as follows:

"Newark, N. J., February 3, 1913.
Mr. Raymond E. Smith,
Roseville Trust Company,
Roseville, N. J.
Dear Sir:
Enclosed herewith find oath of director.
Yours truly,
J. B. Scarlett."

Exhibit D. 37 (page 7 addenda of the state of case) is a carbon copy of a letter, the original of which Scarlett testified he mailed to Smith.

Smith testified (page 16) that he had no recollection of having received from Scarlett the letter of February 3 tendering his resignation.

This alleged letter of February 3rd (Exhibit D. 37) was addressed "To the Directors of the Roseville Trust Company."

There is nothing in the letter, itself, to show that it was ever sent to Smith.

Scarlett testifies (page 294) that he sent this letter to Smith. "Some messenger from my office took it up at the same time he took up my oath of office as a director" (page 294, line 31).

Scarlett further says that the report referred to in this letter is a report of the election of directors, and he admitted his signature to that report (page 295, line 1).

Scarlett admitted on cross examination (pages 301 and 302) that on November 17, 1913, he was examined as a witness in the bankruptcy proceedings in the matter of Raymond E. Smith.

On page 302, line 33, referring to his testimony in the bankruptcy proceedings, he was asked this question:

"Q And were you not asked this question: 'And were you not a director of the institution at the time the bank was closed,' and did you not answer, 'I think so; yes, sir?' A I answered 'I think probably I was; yes, sir.'"

The messenger by whom Scarlett says he sent the alleged letter of resignation of February 3rd to Smith was not produced, and there was no evidence in the case that the letter ever reached Smith. Smith denied all knowledge of the letter, and there was certainly no evidence of any kind, inferential or direct, that the letter ever reached the Board of Directors to whom it was addressed.

A careful reading of the letter of February 3rd (Exhibit D. 37) will disclose the fact that nowhere in that letter does Mr. Scarlett say "I hereby resign as a director," or words to that effect. He does speak of signing a report, "With the understanding that my resignation take effect immediately after."

He does not pretend that he offered any other resignation than Exhibit D. 37.

A resignation cannot take effect until it is actually tendered.

Assuming that D. 37 is a genuine document, all it amounts to is the statement on the part of Mr. Scarlett that he will sign the report, with the understanding that his resignation is to take effect immediately after. This is only a declaration of intention to resign. He does not pretend that, either before or after signing the report, he actually sent any other communication tendering his resignation.

In view of his testimony in the bankrupcty proceedings that he was a director at the time

the bank failed, and in view of the fact that after the failure of the bank he attended regularly called meetings of the Board of Directors and participated in their proceedings, we respectfully submit that the evidence clearly established the fact that Scarlett was a director of the bank on the 17th day of March, 1913, when he overdrew his account.

Admitting that no formal acceptance of the resignation by the Board of Directors was necessary in order to make the resignation effective, we respectfully insist that a resignation cannot be effected until it is actually legally tendered. An offer to resign is not a resignation.

Requests to charge, Nos. 47 and 49, were properly refused: First, because they both assume that the letter of February 3rd, was in fact written and sent as Scarlett stated, and second, because they both assume that the letter of February 3rd was in fact a letter of resignation, and was intended to be such.

The insistment of the State at the trial was that the letter of February 3rd was in fact a fabrication, and was not written and sent to Smith as Scarlett stated; and that assuming that it was so written and sent, it was not, and was not intended to be, a letter of resignation.

The indictment in this case was returned against Scarlett on the second Tuesday in December, 1913.

Scarlett's testimony in the bankruptcy proceedings that he was a director at the time the bank failed was given on November 17, 1913. That testimony becomes utterly irrational, if we assume that the letter of February 3 was written and sent as Scarlett said it was, and was intended at the time to operate as a resignation of his office of director.

We therefore respectfully insist that there was no error in the refusal of the Court to charge requests Nos. 47 and 49.

Point VI.

It appears from the testimony of Scarlett (page 300) that after the bank failed Deputy Banking Commissioner Vredenburg handed Scarlett his pass book.

Scarlett was asked this question on direct cross examination (page 300, line 20):

> "Q What did you say to him and what did he say to you about it when the book was handed over?"

We respectfully insist that from every legal standpoint this question was properly excluded.

It appears from the testimony of Scarlett (page 426 and 427) that after the failure of the bank and after Scarlett had been put in bankruptcy, he went to see Mr. Frazer, the referee in bankruptcy, and on page 427 he was asked this question:

> "What was your object in calling upon Mr. Frazer?"

We respectfully submit that it is perfectly immaterial to the issue before the court and jury what the defendant's object in calling on Mr. Frazer at that time was.

Point VII.

This point relates to the testimony given by Alexander C. Litterst, cashier of the Metuchen National Bank (pages 548 and 549).

We respectfully submit that the course pursued with regard to this matter was proper, and that in no event was the defendant harmed by this testimony.

Point VIII.

This point is based on the admission in evidence of Exhibits S. 6 and S. 17.

Exhibit S. 6 was two pages of the individual ledger of the account of John B. Scarlett with the Roseville Trust Company (page 1012) and Exhibit S. 17 was a check drawn on the Roseville Trust Company by John B. Scarlett (page 1016).

Exhibit S. 6 was admitted in evidence on page 56, and Exhibit S. 17 was admitted in evidence on page 225.

We respectfully submit that Exhibit S. 6 was properly submitted, because it showed the account of the defendant with the Roseville Trust Company and was a part of the bookkeeping system of the company.

Exhibit S. 17 was a check for $1,247.76, which was certified and was paid out of the funds of the Roseville Trust Company (page 222).

We respectfully submit that this check was properly admitted in evidence, because it was one of the items that entered into the question of whether or not Scarlett's account was overdrawn on March 17, 1913.

Point IX.

This point is based on the refusal of the Court to permit certain questions to be asked the State's witness, Smith, on cross examination and is based on Assignments Nos. 40, 41, 42, 43, 45, 46 and 47. The questions involved in these assignments will be found on the following pages respectively: Assignment No. 40, page 201; assignment No. 41, page 203; assignment No. 42, page 204; assignment No. 43, page 205; assign-

ment No. 445, page 220; assignment No. 46, page 221, and assignment No. 47, page 221.

These questions were objected to because they were not at that stage of the trial proper cross examination. The situation is disclosed on page 203, when objection was made to the question involved in assignment No. 41.

> *The Court says:* "I suppose that this is all in the same catagory of questions and the purpose is to show the witness the note for the purpose of identification."
>
> *Mr. English.* "Yes, sir."
>
> *The Court.* "I think when you have shown him the note and he identifies it you have gone far enough."

In his brief on page 47, counsel for the plaintiff in error insists that it was important for the defendant to secure from the lips of Smith, if possible, an admission that the Long note for $2,500 and the Sica note for $1,247.46 were among items which went to make up the total of the so-called trust agreement.

The so-called trust agreement was Exhibit D. 29 (page 1038) and mentions an indebtedness of Scarlett to Smith for $9,700.

When the case had advanced to the point where Smith was open to full cross examination, it will be seen by reference to page 776, that counsel for plaintiff in error obtained from the lips of Smith the information which he insists was so important to the defendant.

> Q "I want you to tell me again the items that made up the total of ninety-seven hundred odd dollars."
>
> A "$4,200."
>
> Q "You mean your personal check for $4,200?"
>
> A "Yes, sir."

Q "What else?"

A "$2,500. Reynolds' note, two notes of Zacareilli, $750 and $500, and Spinoza's note for $1,247.76 I think it is."

The note known as the Long note originally bore the name of Reynolds as maker. After Reynolds' death Sica was substituted as maker and Long as endorser. (Pages 278 and 869.)

The Spinoza note was the Sica note, Spinoza being the maker and Sica the endorser. (Page 244.)

Counsel then proceeds to cross examine the defendant in detail as to the various items that went to make up the total of $9,700.

The history of the $4,200, item above referred to, will be found on pages 752, 753 and 754.

We respectfully insist that there was no error in the ruling of the Court on the matters involved in the above assignments and that, in any event, the excluded questions were subsequently answered.

Point X.

The question involved under this point will be found on page 395, line 28, and is as follows:

Q "Had you been keeping up your notes on your $10,000 loan at that time, July, 1912?"

A "I didn't know whether it was all paid or not."

We respectfully insist that this question and answer could not possibly have harmed the defendant.

The other question mentioned under this point will be found on page 397, line 9, and is as follows:

Q "Up to the time the $350 check, which is the check in the indictment, was certified and paid, had you paid the note of $10,000 held by the Trust Company?"

A "No, the note was unpaid at that time. It was a due note and—"

We respectfully insist that this question and answer did not harm the defendant.

We therefore respectfully insist that there is no error in the record and that the judgment below should be affirmed.

Respectfully submitted,

J. HENRY HARRISON,
Prosecutor of the Pleas.

WILBUR A. MOTT,
Assistant Prosecutor.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, Defendant-in-Error, v. JOHN B. SCARLETT, Plaintiff-in-Error.	On Indictment for Overdraft. On Writ of Error to the Supreme Court.

BRIEF FOR DEFENDANT AND PLAINTIFF IN ERROR.

John B. Scarlett was indicted as a director of the Roseville Trust Company for having overdrawn his account while such director.

The statute under which he was indicted was section 171 of the Crimes Act (2 C. S., page 1796), which reads as follows:

> "Any director of any incorporated bank, trust company, safe deposit and trust company, or savings bank in this state, or any cashier, bookkeeper, or other officer, employee or agent of any such incorporation, who shall knowingly overdraw his account with the corporation of which he shall be a director, cashier, bookkeeper, or other officer, employee or agent for his own private use and benefit, or shall purloin, embezzle or convert to his

> own use any money, bank bill or note, the property of the said corporation, with intent to defraud the said corporation, or wrongfully to make use of the same; or any cashier, bookkeeper, or other officer, employee or agent of any such corporation who shall make, or cause to be made, any false entry on any book of account of the said corporation, or in any way falsely keep the accounts of the said corporation, with intent to cheat or defraud the said corporation, or any person dealing therewith, shall be guilty of a high misdemeanor."

After a long trial Mr. Scarlett was found guilty by the jury and sentenced to a term in State's prison of not less than 18 months nor more than three years at hard labor (page 8, line 1).

The defence to the indictment was a direct denial of the three essentials of the State's case: *a.* that he had overdrawn the account; *b.* that he had done so knowingly; and *c.* that he had done so while a director.

The indictment was founded upon a check for $350, dated March 17th, 1913, which it was alleged he had knowingly overdrawn (page 5, lines 10-20). The indictment was that the defendant had overdrawn a specific amount, namely, $350, by means of a bank check dated March 17, 1913. The charge against the defendant was the specific one of having overdrawn his account to a specific amount, namely, $350.

There is no suggestion in the indictment that the check was certified, nor is the indictment drawn on that theory, although as a matter of fact the check bore a certification stamp upon its face. There was no reference whatever to the alleged certification, however, in the records of the

trust company; and we contend that the alleged certification was not binding on the trust company.

Mr. Scarlett had been a director and depositor in the Roseville Trust Co. ever since the organization of the trust company in 1909. The treasurer of the trust company was Raymond E. Smith, who became friendly with Mr. Scarlett as result of their business relations. Mr. Scarlett was engaged in a number of business affairs of considerable magnitude, in connection with which he required capital. Mr. Smith, besides being treasurer of the trust company, was financially interested in a number of enterprises, and particularly the Oakland Garage and a large ice business in Pennsylvania, out of which he made considerable sums of money.

Mr. Scarlett had at various times discounted notes aggregating $12,000 with the Roseville Trust Company, which loans, however, had been submitted in writing to the board of directors, and accepted and approved by the vote of a majority of the board, as required by section 15 of the Trust Company Act (4 C. S., 5661), and no question has ever been raised as to the bona fides or legality of those loans. Except as he had borrowed moneys from the trust company in that manner, he denies that he ever borrowed any other money from the trust company direct. He did borrow money personally from Raymond E. Smith; he, because of his outside business activities, being in a position to accommodate him in that respect.

The best proof of this is found in the fact that in October of 1912, Smith and Scarlett entered into an agreement with Nicholas R. Sica, as trustee, by which Scarlett conveyed to Sica, in trust for Smith, a valuable property located on Johnson Avenue, Newark, appraised at upwards of $30,000, and having an equity of $14,000 to secure Smith

against the advances which he had made to him. Pursuant to this arrangement a deed to Sica was executed, which was joined in by Mrs. Scarlett, and the amount of the advances thus secured totaled $9,700 (see Exhibits D. 27-29, pages 1037-1039). At the time the trust agreement was actually entered into, Smith had already advanced to Scarlett $5,500. Upon the signing and delivery of the papers Smith drew his personal check, dated October 25th, 1912, to the order of Mr. Scarlett (Exhibit D. 26, page 1036) for $4,200, and at the same time Smith wrote out in his own handwriting, and had Scarlett sign, a statement or letter addressed to him, agreeing to reimburse Smith for the moneys thus loaned out of such sums as should be paid him in the near future from two certain building and loan associations in which Scarlett had applied for loans on properties owned by some of his companies (Exhibit D. 27, page 1037). Smith swore that it was a trust company matter, and not a personal one, but the documentary evidence is all against him.

This arrangement was regarded by Scarlett, and undoubtedly was, a personal one as between him and Smith, and not a matter with which the trust company had anything to do. Later on, when Scarlett required further funds, he made application, not to the trust company, but to Smith personally, the arrangement between them being that Smith would advance the money to Scarlett's account in the Roseville Trust Co., so as to take care of the account against any drafts which Scarlett might make against it. The letters, Exhibits S. 12, S. 14 and S. 16 (pages 1013-1015) were written by Scarlett pursuant to that arrangement and relying upon Smith's protecting his account. The evidence in corroboration of this situation is that Smith actually did from time to time deposit his

personal moneys in Scarlett's account, to his credit (page 171, lines 1-8; page 188, lines 1-17); for example, $300 in December, 1912 (page 188, line 15); and again January 26, 1911, $1,000 (page 731, line 35).

All this evidence bore directly on Mr. Scarlett's contention that any overdraft of his account, if made by him, was not done knowingly.

It was a disputed question in the case whether or not he had in fact overdrawn his account, and if so, to what extent. The State shifted its position twice during the course of the trial; at one stage of the trial claiming that on the date of the check named in the indictment there was a balance of $1.30 to his credit, and at another stage of the trial claiming that on the same day there was an overdraft against him of over $8,000. On the other hand, there was evidence that checks to the amount of $5,700 which Mr. Scarlett had deposited, as evidenced by a duplicate deposit slip dated February 8, 1911 (Exhibit D. 17, page 1035; page 1082; and page 41, lines 20-30) had never been credited to his account; that of the checks thus deposited, one for $3,000, which had been endorsed "To deposit Roseville Trust Company, John B. Scarlett" (Exhibit D. 18, page 1082) was used by Smith for some other purpose (pages 807 and 809); that two checks of $1,000 each, deposited November 19, 1910, as evidenced by a duplicate deposit slip of that date (D. 69, and the two checks D. 20 and 21), each of which were stamped paid, were never credited to his account; that two checks for $1,000 each were sent up for deposit November 16, 1910, for which no credit was given (page 747, lines 20-40). Smith claims that he cashed these checks, but this was denied by Scarlett, who claimed that they were deposited and subsequently paid (page 351, line 18; page 353, line 35).

Following his indictment, and prior to his trial, Mr. Scarlett was thrown into bankruptcy, with the result that he was dispossessed of all his books and papers, and they were taken possession of by his trustee, Spaulding Frazer, Esq. Prior to the bankruptcy, Mr. Scarlett had filed a claim against the trust company, for moneys which he claimed it owed him in excess of the amount for which he was credited, and which, if sustained, would have wiped out any alleged shortage of his accounts. Following the bankruptcy proceedings that claim was disallowed by the trust company, but Mr. Scarlett was powerless to act in the matter without the aid of his trustee.

The charge against Mr. Scarlett necessarily under the statute involves him as a director. It was one of the mooted questions in the case whether he was a director, he having resigned from that office some six weeks prior to the drawing of the check upon which the indictment was founded.

Many exceptions were taken at the trial, and out of an abundance of caution error was assigned on all of them. Causes of reversal have also been specified. Without waiving any of them, the defendant on this argument, however, relies particularly upon those which are herein specifically argued.

POINTS.

I.

The Trial Judge erred in permitting evidence, both oral and documentary, as to the state of Scarlett's account prior to March 17, 1913, the date of the check named in the indictment.

(a) The Trial Judge erred in permitting Smith and Ferguson to testify that Scarlett's account was overdrawn on various dates prior to the date named in the indictment.

The indictment alleges that the account was overdrawn by a check dated March 17, 1913. Over the objection of the defendant both Smith and Ferguson, the bank expert, were asked and allowed to answer as the condition of the account on various dates prior to that date, as follows: It appears from the testimony of Mindnich, the bookkeeper, testifying from Mr. Scarlett's ledger account with the bank, that on March 17th, 1913, the ledger showed a balance of $1.30 (page 22, line 20). He testified further that the last entry prior to that date was December 23, 1912, which showed a credit of $300 (page 22, line 30, page 23, line 20). That being the situation, the Prosecutor asked Smith to state the balance of Mr. Scarlett's account on September 13, 1912, six months before the date named in the indictment. This was objected to and exception taken as follows (page 232, line 14), and error assigned thereon (No. 50, page 1052; No. 51, page 1099):

"Q. On September 13, 1912, what was Mr. Scarlett's balance in the Roseville Trust Company as shown by his ledger account?

Objected to as immaterial.

Objection overruled.

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. The ledger shows a balance on that date of $15.67—I beg pardon—no, that is wrong, $1.30.

Q. For how long a time prior to September 13, 1912, had that balance stood? A. Since August 9th.

Q. And down to what date after September 13th, 1912? A. To December 23rd.

Q. What year? A. 1912."

So when Ferguson, the bank expert, was on the stand, the following questions were asked and answered over objection (page 886, line 14 etc.):

"Q. I show you check of John B. Scarlett, dated March 4, 1913, $500, being Exhibit S13, and ask you what the books and records of the Roseville Trust Company show was the condition of his account on the date of the certification of that check?

Mr. English: I object to the question because we are not concerned with what the situation was before or afterwards. We are charged here on a specific date that we overdrew our account. It doesn't matter what we did before or afterwards. If we didn't do it on that date it is not material.

The Court: I will admit the evidence.

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

H. V. OSBORNE,
(Seal) Judge.

A. Immediately prior to the payment of the check the overdraft—

Q. I asked you about certifying the check? A. Immediately prior to the certification of the check the overdraft was $6965.82.

Q. That is a check for how much? A. $500.

Q. What was the condition of the account when the check was paid by the Roseville Trust Company? A. There was $465.82.

Q. What? A. Overdraft.

Q. I show you check dated February 19, 1913, made by John B. Scarlett, check for $400, certified February 19, 1913, being Exhibit S15, and ask you what was the condition of his account the day that check was certified?

Mr. English: The same objection.

The Court: Same ruling.

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

H. V. OSBORNE,
(Seal) Judge.

A. Immediately prior to the time the account was $6,165.82 overdrawn and immediately after—

Q. Immediately after what? A. Immediately after the check was certified."

* * * * * * *

(Page 888, line 6):

> "Q. I would like you to see what the condition of the account was immediately prior to its being certified. A. $6165.82 overdrawn.
>
> Q. And after the check was certified? A. $6,565.82 overdrawn."

Upon the exceptions taken error has been assigned, page 1110, lines 10-28; page 1063, lines 24-40).

This evidence was improper and harmful. The error in this respect is identical with that which caused a reversal of the conviction in State vs. Foster, 97 Atl., 787. The Foster case was one of the same series of cases which have grown out of the failure of the Roseville Trust Co. Foster was a director of the bank and was indicted under the very same statute, section 171 of the Crimes Act (2 C. S., page 1796) under which Mr. Scarlett was indicted. The issue in his case was identical with the issue in this case. The indictment in the Foster case charged a specific date upon which it was alleged he had overdrawn his account—August 9th. The indictment in this case charges a specific date upon which it is alleged Scarlett overdrew his account—March 17th. In the Foster case the State sought to sustain evidence that would tend to show the defendant's knowledge of the state of his account on July 17th, a date prior to the date charged in the indictment. This evidence was held to be such error by Justice Swayze, speaking for the Supreme Court, as to require a reversal. In the course of his opinion he said:

> "To infer an overdraft in August from evidence from which an overdraft in July might possibly be inferred would not be permissible."

That ruling applies with full force here, and to infer from an overdraft on Sept. 13, 1912, or on February 19th, or March 4th, that there was an overdraft on March 17th, the date named in the indictment, is equally unpermissible. The error which resulted in a reversal of the Foster case is equally pertinent to require a reversal of this case.

The admission of this evidence cannot be justified on the ground that the whole account of Scarlett's was thrown open to examination over a period of several years. The whole question at issue under that evidence was whether on March 17th, 1913, Scarlett did or did not have a balance to his credit. What the condition of his account may have been on any particular date prior to that, had as pointed out in the Foster case, no bearing upon what the condition of his account was on March 17th. The only purport of the evidence concerning the account covering a period of years was to make it possible to strike a balance on March 17th, and to say whether on that date there was or was not a balance in his favor.

(b) The Trial Judge improperly admitted Exhibits S. 13, S. 14, S. 15 and S. 16 in evidence, and in permitting Smith to testify to alleged conversations with Scarlett with reference thereto.

S. 13 was a check for $500 dated March 4, 1913, and S. 14 was a letter which Scarlett had written Smith asking him to certify that check.

S. 15 was a check for $400 dated February 19, 1913, and S. 16 was a letter of that date written by Scarlett to Smith, asking him to certify that check.

The admission of these letters and checks in evidence were objected to, and exception taken (S. 13, page 154, line 10; S. 14, page 155, line 10; S. 15, page 158, line 1; S. 16, page 158, line 25; and page 159, line 22).

Error was assigned on these exceptions (Assignments numbers 32, 33, 35 and 36, page 1049; and numbers 33, 34, 36 and 37, page 1096).

Smith was also permitted to testify over the objection of the defendant to conversations which he thought he had had with Scarlett at the time these checks were certified. The conversation was originally supposed to be limited to that which took place at the time Smith certified the check for $350 of March 17, 1913—the check named in the indictment (page 146, line 40). The State having got past that point proceeded to ask Smith concerning other and earlier checks, namely, the one of February 19th and March 4th, and the letters which had accompanied them, on the theory that they had all been mentioned in the conversation relating to the check of March 17, 1913. The witness, however, did not say that they had been so mentioned. His testimony was as follows (page 157, line 19):

"Q. You think that a month after this, or about a month after this, you could talk over the telephone to Mr. Scarlett and mention this check and the date and the amount and all about it? A. No, sir.

Q. So that you didn't have this in mind and didn't refer to it specifically? A. No, sir.

The Court: That calls for two separate answers.

Witness: I would like to qualify that answer.

The Court: Very well.

Witness: I have the check in mind, but I didn't refer to it specifically.

Mr. English: I object to it. He says he had it in mind and didn't give expression, but that certainly ought not to be binding on the defendant.

The Court: It is quite apparent that this check comes within the same category as the other. It will be admitted for the same reason."

The State sought to justify all this evidence upon this ground (page 154, line 33) (and the Trial Judge adopted it):

"Mr. Guild: It is offered for the purpose of showing knowledge on the part of the defendant as to the character of his account, and no other purpose whatever."

And again (page 159, line 10):

"Mr. Guild: I want it understood, too, that the offer of these checks and ledger prior to March 17th are put in principally for the purpose of showing knowledge on the part of the defendant and the condition of his account and that he was asking favors."

The situation with reference to these exhibits and conversations is exactly like that in the case of State vs. Foster, 97 Atl. 787, where a similar class of evidence was held to have been improperly admitted, and resulted in a reversal of the conviction. The attempted justification in that case was identical with that here, namely, that the evidence would tend to show the defendant's knowledge of the state of his account. The Supreme Court by Judge Swayze said (page 788):

"Smith testified that the note for which Foster received credit was purchased by the trust company at a time when Foster was a director. He was then asked: 'Was that note submitted to the board of directors before it was purchased?' This was objected to on the ground that Foster was not on trial for any such offense. The reference was obviously to the crime defined in section 15 of the Trust Companies Act (C. S., page 5661). The state undertook to justify the question on the ground that the evidence would tend to show the defendant's knowledge of the state of his account. The argument was that, if Foster was in such a financial condition that he found it necessary to do an illegal act in order to get credit, he must have known that his account was overdrawn. The note was credited to the account July 17th. The indictment does not charge any then existing overdraft. The two overdrafts charged in the indictment are both averred to have been made on August 9th; in fact, the check which constituted the overdraft was charged to the account on that day. The only difference between the two counts is that one charges the overdraft to have been the amount of the check; the other charges it to have been the total overdraft at the close of business on August 9th; the difference consisting of charges on August 4th and August 8th. If we assume in favor of the state that the credit of the note on July 17th was illegal under the Trust Companies Act, that accomplished illegality does not tend to prove an overdraft in August."

The Court said further:

> "To infer an overdraft in August from evidence from which an overdraft in July might possibly be inferred would not be permissible."

The importance of this evidence both with reference to the admission of the checks, and the evidence with reference to the state of Mr. Scarlett's balance on the date the check was drawn, cannot be over-estimated. It was the subject of comment by the Trial Judge in his charge to the jury, and must have been very influential in its effect upon the mind of the jury. In his charge he said (page 986, line 40, etc.):

> "Nor is there any question but that the defendant drew certain other checks for $500 dated March 4, 1913, and for $400, dated February 19, 1913, and procured these checks to be certified by Raymond E. Smith, secretary and treasurer of the Roseville Trust Company.
>
> Now, I wish to call your attention, however, to the fact that these last two checks referred to by me are not made the basis of the State's charge, but are received in evidence solely for the purpose of proving knowledge on the part of the defendant of the condition of his account leading up to the time when the overdraft charged in the indictment is alleged to have occurred. Upon the trial of a person for one crime, evidence of other offenses is not ordinarily admissible; but when the act charged to be criminal may reasonably be innocent and is criminal only when performed with a certain intent or with knowledge of a certain fact, in such case, other acts of the defendant, though criminal, may be ad-

duced to prove that he had such specific intent or knowledge. So that you will bear in mind that the evidence regarding these two checks just referred to by me, with the accompanying letters, have been admitted in evidence, not to prove or to permit the inference to be drawn by you that the defendant, because he may have overdrawn his account on other occasions, is guilty of overdrawing it on this occasion, but solely for the purpose of proving knowledge on his part of the condition of his account on the 17th day of March, 1913."

This is almost the identical language with which the Trial Judge commented on a similar state of facts in the case of State vs. Foster, supra.

(c) The Trial Judge improperly permitted cross-examination on the defendant's $10,000 loan.

The defendant had a $10,000 note with the trust company, which, pursuant to section 15 of the Trust Company Act, had been properly passed upon by the board of directors and was in all respects a proper legal and bona fide loan. It had nothing whatever to do with the issue growing out of this indictment. Nevertheless the Prosecutor on cross examination was permitted to ask the defendant the two following questions:

"Q. Had you been keeping up your notes on your $10,000 loan at that time, July, 1912?" (page 395, line 28).

This was objected to, the objection overruled, and exception taken (page 395, line 40). Error was assigned by assignment 61 (page 1054, line 9); (#62, page 1101, line 14).

"Q. Up to the time the $350 check, which is the check in the indictment, was certified and paid, had you paid the note of $10,000 held by the trust company?" (page 397, line 9.)

The objection to this was also overruled and exception taken (page 396, line 20), and error assigned by assignment 62 (page 1054, line 14); (#63, page 1101, line 17).

There could have been no object in asking these questions except to prejudice the defendant. They were utterly immaterial to the issue, and ought not to have been permitted.

II.

The Trial Judge improperly refused to permit the defendant to show the efforts which he had made to ascertain the true state of his account following the closing of the trust company.

Scarlett was asked, but was not permitted to answer this question:

"Q. What was your object in calling upon Mr. Frazer with this letter?" (page 427, line 10).

It appeared that Scarlett had been thrown into bankruptcy following the failure of the trust company, and Spaulding Frazer, Esq., had been elected his trustee. Some time after the failure of the bank Scarlett received from the banking department a letter, dated January 29th, 1914, Exhibit D42 (page 416, lines 18-40). This letter notified

Mr. Scarlett that his claim had been disallowed and that if he would protect his interests he must bring suit. Scarlett, however, was in bankruptcy, and could do nothing except as he acted through his trustee. Accordingly he took the letter and sought out Mr. Frazer, and showed him the letter (page 426, line 25). He was then asked what his object was in calling upon Mr. Frazer with the letter. The materiality of the offer appears in the discussion before the Court (page 427, line 27):

> "Mr. English: On the cross examination of Mr. Scarlett, his testimony was in chief that he regarded himself as entitled to a credit on the books of the bank of from $3,000 to $9,000, whatever the figures are. On cross examination, counsel adverting to that, said: 'Didn't you file a claim setting forth what you claimed against this trust company some time in July?' the only purpose being to discredit the witness, and the witness said yes, he did file such a claim, and then he explained why, and was interrupted, and this morning explained why he filed the claim for that amount. He is notified by the commissioner that his claim is rejected and if he is sincere he must sue on it. He is in bankruptcy. He has got to act through his trustee, and my object is to show that he did act through his trustee as an evidence of sincerity.
>
> "The Court: It could only come in as in the class of self-serving declarations; what he said and did after all this is over on a subsequent proceeding like this, to make his good faith appear ostensible efforts, if they were in good faith."

The question being overruled, exception was taken (page 428, line 25), and error was assigned

thereon by assignment 66, page 1054, line 38), (No. 67, page 1102, line 1).

The Court will remember that early in 1911 Smith claimed to have "lost" Scarlett's bank book, and that Scarlett was more or less in the dark after that as to the true state of his account. It further appeared that after the trust company had closed in August of 1913, Mr. Vredenburgh, the deputy banking commissioner, who had been placed by the department in charge of the bank, handed to Mr. Scarlett this supposed "lost" bank book. In connection with that transaction Scarlett was asked this question: "What did you say to him and what did he say to you about it when the book was handed over?" (page 300, line 20). This was objected to as incompetent, and overruled, and exception taken (page 301, line 22). The ground for asking the question was, as stated by counsel (page 300, line 29): "It corroborates his claim that he didn't see this book from 1911 until the bank closed, and also bearing on the question of ascertaining the state of his account with reference to deposits he made and never got credit for;" and further (page 301, line 10): "Mr. Vredenburgh was the representative of the state department. The state department had taken over all the records of the bank, and he spoke in authority with reference to the situation in the bank."

Upon the refusal to permit this question exception was taken and error was assigned by assignment 54 (page 1053, line 1); (No. 55, page 1100, line 10).

These questions referred to matters of the greatest importance to the defendant. The sincerity of his attitude was attempted to be impeached by the State, he had been subjected to a very severe cross-examination, and his efforts to secure payment of the moneys which he claimed to be due him were

of the greatest importance as bearing on the question of his attitude toward his claim and his sincerity in contending that there was a balance due him rather than that he was the debtor of the bank.

If he had been allowed to state the object of his visit to Mr. Frazer, very material evidence would have been adduced. The State claimed Scarlett was not sincere in his claim that the trust company owed him money, rather than that he owed the trust company money, because he had not followed up the disallowance of his claim by a suit, as directed in the letter of January 29th, 1914 (Exhibit D-42). To answer this attack, Mr. Scarlett testified that he went to Mr. Frazer with the letter. Why did he do so? He was asked that question but not allowed to answer it. If—as was the fact—he had gone to Mr. Frazer with the object of endeavoring to get him to bring suit, as his trustee, and on his behalf, surely that fact was a very material and important one in the case. There was nothing of a "self-serving declaration" character about it. His visit to Mr. Frazer was the first and necessary step in any suit to be brought under the notice (D-42). That he made an effort to have such a suit brought was absolutely essential to the sincerity of his claim that the trust company owed him money.

Had he been allowed to state the conversation with Mr. Vredenburgh, the efforts which he then made, on receiving his lost bank book for the first time would have appeared; and also the admissions then made by Mr. Vredenburgh with reference to the state of the account as between Scarlett and the trust company would have appeared. Both facts were highly material.

The refusal of the trial judge to permit these questions to be answered must necessarily have been damaging to the defendant.

The Supreme Court in defense of these rulings said (page 1089):

> "6. We think the Court properly overruled the examination of Scarlett as to what he said to Vredenburg when Vredenburg handed Scarlett his pass-book."

It will be observed that the Supreme Court says nothing about what was said to Frazer. To our mind nothing can be said in defense of the trial judge's ruling. The question went to the very essence of the case, and refusal to permit the defendant to answer it deprived him of an answer to the State's contention, and an argument to the jury, which would have been invaluable to him.

III.

The Trial Judge improperly permitted the State's witness Litterst to use a memorandum which he had made during the trial.

Litterst was the officer of the Metuchen Bank through which it was claimed certain checks which had been deposited by Scarlett had passed. The transactions in connection with these checks took place in January of 1911. Mr. Litterst was asked whether two checks for $2,700 and $2,000 respectively, and dated in January, 1911, had been presented at his bank for payment (page 546, line 22). He replied that he could not tell except from his books, and that the books were not in court (page 546, lines 30-40). He then produced a memorandum which he had made "within the last week" (page 548, line 11), which was during the trial, and he was allowed to testify from this memorandum.

Not only that, but he was allowed to testify from this memorandum that he had searched his books, and found no record of the checks inquired about (page 548). Defendant's counsel objected to the use of the memorandum (page 548, line 20), and moved to strike out his answer (page 549, line 10). Both motions were refused and exception taken, and error assigned by assignments 102 and 103 (page 1059, lines 3-15), Nos. 103 and 104 (page 1105, lines 35 &c.), and by cause of reversal No. 4 (page 1127, line 10).

We recognize that it is quite common to permit a witness to refresh his memory from a memorandum which he has made, and whether or not the memorandum is recent enough in point of time to the matter about which he testifies, is largely in the discretion of the trial court, but the situation here was entirely different from anything of that character. The witness was not asked to refresh his mind from a memorandum dealing with the facts made at any time. The only thing from which he could have refreshed his mind would have been entries which he had made in the course of business. Instead of that, he was permitted to testify from a memorandum giving the results of an examination of the books which he had made the week before he testified. It did not even appear that the records which he examined would have been proper records for him to refresh his mind from, had they been produced, whether they had been made by him, or under his direction, or anything of the kind. Furthermore he was asked to state a negative, not a positive fact, namely, that the books which he had examined did not show a record of the checks in question. The best evidence, of course, would have been the production of the books, and then proof by the person who made the entries. Counsel would then have had

an opportunity to cross examine as to how the entries were made, and under what circumstances, and the Court could have said whether they were accurate and admissible in evidence. But instead of that, the witness was permitted to examine some records four years old, write down what he had found, or had not found, and then from that memorandum to testify at the trial as to what his search of those books had shown.

Such evidence as that goes beyond the judicial discretion. It was clearly the admission in evidence of incompetent testimony, and ought not to have been allowed. It was necessarily damaging to the defendant, because the evidence related to two checks for $2,000 and $2,700 respectively, which Smith claimed had not been paid by the defendant, and to pay which he testified he had appropriated the moneys received on the drafts paid by the Irving National Bank. This was a phase of the case upon which the State laid much stress, and the defendant ought not to have been damaged by such highly incompetent and improper evidence as this with reference to so important a matter.

In defense of this ruling of the trial judge, the Supreme Court said (page 1089, line 10):

> "7. The testimony given by the cashier of the Metuchen National Bank with the assistance of memorandum made by him two weeks before the trial we think was proper. The memorandum was made when he was searching the books of his bank to see whether they showed the check had been paid. It was properly used by the witness, and the testimony was competent. Meyers vs. Weger, 62 N. J. L., 432."

With all deference to the Supreme Court, it misapprehended both the facts and the law.

The Supreme Court says the memorandum was made two weeks before the trial. This is wrong. The memorandum was made after the trial had actually commenced and was in progress. The witness testified on Monday March 22, 1915 (page 449, line 7), after recess (page 509, line 15), and said he made the memorandum "Within the last week, I dare say Monday or Tuesday of last week" (page 548, line 11).

The trial began on Monday March 15, 1915 (page 10, line 8), so when this witness said "Monday or Tuesday of last week," he necessarily spoke of a time during the progress of the trial, and not two weeks before.

He had no knowledge apart from the memorandum which he had made (page 549, line 30). The Supreme Court cites Meyers vs. Weger, 62 N. J. Law, 432. A quotation from the opinion in that case will show how inapt the ruling there was, as applied to the situation here (page 440).

> "The defendant further assigned for error the admission of the plaintiff's books, upon the ground that a loan of money cannot be so proved. This is the rule. Inslee vs. Prall, 1 Dutcher, 665. It does not appear, however, that any books were admitted. One book only, the cash book, was produced. So far as the record shows it was not received in evidence. The trial Judge distinctly stated that it was available only as a memorandum to be used by Mr. Wischman, who made the entries, to refresh his memory. He was allowed to read from the book the following entry: 'April 13, 1899, George Myers, Atlantic City, cash for note at one year, five per cent.,' and to say that the book contained a record of the successive annual

> renewals of the note down to April 7th, 1894, when it amounted to $525, of which $25 was one year's interest at five per cent. It does not appear that the witness was testifying from the book, except in reading the entry above quoted. He said, in answer to a question from the Court, that he was using 'the books,' referring apparently to the cash book, merely to refresh his recollection. This was permissible. North Hudson County Railway Co. vs. May, 19 Vroom, 401, 403; 1 Phil. Ev., *586, note 170; 2 id., *917, note 587."

In the Myers case the witness had made the entries in the ordinary course of his business. They were his entries and proper to refresh his recollection from. But here the witness had examined some books of the Metuchen Bank. What books they were, or who made the entries, did not appear. Certainly they had not been made by the witness. The books were not in court and counsel for the defendant could not cross examine upon them. Under any rule of evidence that we are aware of the most that can be said is that the witness might have refreshed his recollection from the books themselves, and testified from them, had they been in Court and subject to cross examination, and been proved to have been proper entries for such purpose. But the procedure here cannot be justified. The witness testified from a memorandum of a memorandum, and there was no evidence that the memorandum from which he made the memorandum from which he testified, was in itself one from which he could have refreshed his recollection. Much less was the memorandum of that memorandum one from which he could have refreshed his recollection.

IV.

The Trial Judge erred in his charge to the jury with reference to the payment of the check, and in refusing to charge as requested.

The trial judge charged the jury as follows (page 986, line 29):

> "A *bona fide* holder of such a check though fraudulently issued, can collect, and there is evidence in this case indicating that the check was paid by the Roseville Trust Company. The fact that the check of $50,654.23 was paid by the Roseville Trust Company to the Union National Bank March 18, 1913, does not, standing alone, necessarily establish such payment, but there is evidence in this case that it was paid by that check—that is to say, the check of $350 was paid by this check of $50,654.23."

Exception was taken to this part of the charge (page 997, line 30) and error was assigned thereon by assignment 143 (page 1111).

One of the great questions in the case was whether the check which had been declared on in the indictment had been paid. To begin with ,the check was not stamped paid. It had never been returned to the defendant with the vouchers upon any balance of his account. The evidence showed very clearly that in the ordinary course of banking practice, if a check has been paid it is stamped paid (page 82, lines 20-28). The Roseville Trust Company was accustomed to stamp its checks with a rubber stamp "paid" when they had in fact been paid, and there was no such stamp on this check (page 117, lines 25-33).

Smith admitted that in the last analysis a check is not paid until it is stamped paid, and that it is not stamped paid as a rule until it is charged to the depositor's account (page 224, lines 30-35). The check was not charged to Scarlett's account.

The State was therefore compelled to resort to other evidence to prove, if it could, that the check had been paid, and endeavored to do this by introducing in evidence some of the books of the trust company, coupled with the evidence of Thompson, the former teller, and Smith, the treasurer. Thompson had pleaded *non vult* to making improper entries (page 128, line 10), and Smith was the self confessed wrecker of the trust company.

The State, therefore, introduced in evidence a book known as the "return item book," which purported to show checks which came back in the exchanges from other banks (page 95, line 22; page 96, line 10). These checks were listed by their amounts only. (See Exs. S. 9 and S. 10, pages 1012-1013.)

This book was kept by Thompson. He swore that he had no recollection whatever of the check. He said (page 186, line 1):

> "By looking at the check I can't remember ever seeing it before,"

and he said again on cross-examination (page 120, line 13):

> "Q. Now, you have no recollection of seeing this particular check held in the cash or anything of that character, have you? A. I have no recollection of it, no, sir.
>
> "Q. And you have no recollection as receiving teller as having had that check in your drawer, and as having turned it over to the

paying teller as cash? A. I have no recollection of it, no, sir."

Moreover he swore that he could not tell whether that particular check had been paid. His testimony was (page 100):

"No, I can't tell you that particular check was paid."

He was then allowed, however, to refer to two of these return item books, S. 9 and S. 10, for the date of March 18, 1913, and these books were offerred in evidence (page 98, line 36). Even then he was unable to swear that any of the entries in the book referred to this check. His evidence was (page 98, line 23):

"Q. You can't swear whether the entry of $350 in that book refers to that check at all, can you? A. No."

Photographic copies of these two return item books appear in the printed case between pages 1012 and 1013. Return item book, S. 10, contains a column of figures, the next to the last figure being $350. The book, S. 9, contained a series of totals for the date of March 18, 1913, and also has pasted in on the left-hand side a machine list containing a column of figures, in which the figure $350 appears. Although the witness had no recollection of the check, and although there was no entries in these books in any way referring to the check, other than the similarity of the figure $350, Thompson was nevertheless allowed to state his conclusion that the figure $350 in the book S. 10, referred to the check mentioned in the indictment (page 121, lines 20-32), and he also testified that the total of $50,654.23, paid the Union National

Bank on March 18th, covered the amount of exchanges received from that bank on that day, and included the check in question, although that again was necessarily his conclusion from the similarity of the figure $350, he having no accurate knowledge of the matter (page 106, line 25, page 107, line 3).

Smith, when put on the stand, referred to some additional books, known as the A-L and M-Z debit book (page 136, line 34), from which he secured a series of totals making a total of $50,654.23 (page 180, lines 30-40), which was the total of the check paid to the Union National Bank (Exhibit S. 11, page 181, lines 1-10), and he too testified that there was included in that total this check of $350, although he admitted that there was nothing in the book to indicate what check it was, nor whose check, that it was merely an item containing the figures $350 (page 180, lines 15-20), and that the items were spread through a total of half a dozen pages (page 178, line 13). When he had finished looking through that book, he had to admit that there was nothing there which had any reference to this check (page 179, lines 10-22). He finally stated his conclusion from the total of the debits (page 180, lines 20-40), which he found in three separate books (D. 24, D. 25 and S. 10; 132, line 30), and his sole ground for saying that the check in question was included therein was a similarity of an item of $350, which corresponded with the amount of the check (page 183, lines 1-10). He also endeavored to support his conclusion by pointing to the entry *cert.*, meaning certified, in the return item book S. 10. That entry read: "W. & L. *cert.* 236.96," meaning that a check drawn by Willett & Lawrence for that amount had been certified (page 184, lines 10-19), and he admitted that the blank space under the words

"W. & L. *cert.*" amounted practically to a ditto (page 124, line 27), so that if that evidence was to be believed the item of $350 appearing in the return item book (s. 10) referred to a certification of a check drawn by Willett & Lawrence, and not to the check of the defendant.

In addition to all this, there was no positive proof that the $350 check had come back from the exchange on March 18th. The State rested its entire case on the theory that the payment of this check had been included in the check of $50,654.23 paid to the Union National Bank on March 18th. Under the State's theory, if it was not paid by that check, it was not paid at all.

There was no evidence that this check came back through the exchanges on that day. It appeared that the Roseville Trust Company used to send down to the Union Bank for the exchanges (page 105, line 22). The checks were not sent back by the Union Bank by mail, but the Roseville Trust Company depended on its messenger to get them, and they were brought back whenever they sent the messenger down. Thompson's testimony on this was as follows (page 124, line 26):

> "Q. Who was the messenger in the matter? A. We had different ones. Ordinarily it was the janitor that we sent down with the exchanges.
>
> "Q. And who did that in March, 1913? A. I presume it was the janitor.
>
> "Q. But you don't know? A. I don't know.
>
> "Q. You say those checks were brought back whenever he was sent down? A. Yes.
>
> "Q. When the checks came back from the exchange they were entered up that same day in the various records? A. Yes, sir."

The messenger who had been used in March, 1913, was not called as a witness. There was absolutely no evidence that any messenger had been sent down on March 18th, and in the absence of proof that the check had been received by the Roseville Trust Company on the 18th, the State's case failed, and the whole force and effect of the evidence of Smith and Thompson, and the return item books, as well as of the check for $50,564.23, was lost.

Furthermore, on the State's own theory, the check was not paid on March 17th, the date named in the indictment, because the State claimed the payment was made when the check for $50,564.23 was charged against it by the Union Bank, and that by all the evidence was not earlier than March 18th, whatever the actual date of the charge.

Upon any view of the matter most favorable to the State it was at the most a question for the jury to say whether the bank had included the payment of Scarlett's check in the check which it paid to the Union Bank.

Moreover the evidence showed that the check of $350 was paid, if paid at all, not by the Roseville Trust Company, but by some other depositor, or by some other bank.

Smith on his cross examination (pages 168-172) revealed the manipulations by which he had juggled the accounts of the trust company's depositors. He had a system by which he would credit the account of A. by taking money from the account of B., and subsequently credit B., by taking money from the account of C., and so on (page 820, lines 29-37). Sometimes he advanced the money himself, and sometimes he took the money that was paid in by some other bank.

In describing some of these manipulations by

which he had paid certain checks which he said were overdrawn, he testified (page 730):

"Q. And you say paid? How were they paid? A. A day or two prior to January 26th, we sent out for collection to the Irving National Bank, of New York, several saving bank drafts left by one of our depositors on the 26th of January. We received advices of credit to several of these, and on that date they were charged to the Irving National Bank.

"Q. When you say they were charged, what do you mean?

"By the Court: Q. The saving bank's drafts? A. Yes, sir, these drafts advised by the Irving National Bank were cashed and were not credited to the depositors who left them. The $4,700 was paid by charging the Irving Bank with some of these collections.

"By Mr. Guild: Q. And you say you used these funds to make these checks good? A. I did.

"Q. Make them good to whom? A. I used the funds to take them out of the cash."

It appeared that he had concealed the check for $350 in Box 55, which was a locked box in the deposit vaults, which he made use of, and that he charged the various checks which he kept in that drawer by charging the different accounts. His testimony was (page 187, line 3):

"Q. Where did the money in drawer 55 come from? A. Charging different accounts that I have stated before.

"Q. Was it your money or some of the depositors' money? A. Most of it was depositors' money.

"Q. And that was money which you had borrowed yourself, so to speak, at the expense of a depositor, wasn't it? A. Not quite that way, no, sir.

"Q. Well, you had taken it out of the bank and charged it up to some depositor? A. Yes, sir.

"Q. And therefore you say it might have been paid by taking out of Box 55, which previously had been taken out of somebody's account and charging to him? A. Yes, sir.

"Q. So it comes down to what I said; in the last analysis it comes down to what I said, that some time it was paid by money that belonged to some depositor or some bank or by you yourself? A. Yes, sir."

Smith admitted that this specific check for $350 upon which the defendant was indicted, had in fact been charged to some other account (page 184, line 30, to page 185, line 12).

Viewing this phase of the case most favorably to the State, it was a question for the jury whether the account had not been paid by some depositor, as opposed to the bank, and hence, whether the bank had in any sense paid the check at all.

This being the state of the evidence, the trial judge charged the jury in effect that the check had been paid by the trust company. He referred to the check of $50,654.23 paid by the trust company to the Union Bank, told the jury that that check, standing alone, did not necessarily establish that the trust company had paid the check of Scarlett, and then said (page 986, line 37):

"But there is evidence in this case that it was paid by that check—that is to say, the check of $350 was paid by this check of $50,654.23"?

In so charging the trial judge usurped one of the most important functions of the jury in the case. It was essential to the State's case to prove that the trust company had paid the check, else, of course, there would have been no liability from Scarlett to the trust company. The State attempted to meet this burden by claiming that the trust company had included the amount of the check in the check which it paid to the Union Bank. Under the doubtful character of the evidence, however, the witnesses having no recollection of the matter, giving their conclusions from a series of items about which they had no personal recollection, and which did not specifically, or even necessarily, refer to the check for $350, the evidence of the State was at best circumstantial as to whether such payment had been made. If the evidence was such that the State was entitled to the benefit of it, it was necessarily evidence of such a character as had to be passed upon by the jury, and when the trial judge charged the jury that the evidence showed that the check had been paid by the trust company, he withdrew from them one of the essential questions in the case.

The trial judge substantially instructed the jury that the check of $50,654.23 included the Scarlett check, and that the trust company had thus paid his check.

The Trial Judge in his charge made no reference whatever to the situation growing out of the testimony of Smith, tending to show that the check had been paid by some depositor's money, as opposed to the bank's money, by reason of the manipulations of Smith. The defendant requested the Judge to charge by request 22 (page 1003, line 1) that unless the jury found that the trust company paid the check there was no overdraft of the

account by that check, and by request 23 (page 1003, line 9), that the evidence was that the check had been paid by either Smith personally, or by some other person's cash, or by being charged to the account of some other depositor or other bank, and unless the jury found that the check was in fact paid by the Roseville Trust Company the charge in the indictment had not been made out. These requests were denied, and exception taken (page 997, line 3), and error was assigned thereon. Assignment 162 covers request 22, and assignment 163 covers request 23 (page 1118).

That part of the charge here complained of and the requests to charge which were refused, went to a vital part of the case. Whether or not the defendant as a director had become liable to the trust company by reason of overdrawing his account was the issue under the statute upon which he had been indicted. If the trust company had not paid the check there could have been no liability. Under the facts adduced at the trial the questions relating to payment were for the jury not only but the defendant had the right to have the jury charged as requested.

The Supreme Court answered the contention that it was a jury question whether the check had been paid, by suggesting, first, that there was evidence to that effect, and, second, that this was entirely aside from the legal effect of the certification of the check "which we think was in effect payment of it" (page 1088, line 10). The Supreme Court answered our contention with reference to the failure to charge requests numbers 22 and 23 by saying that they were properly refused, "because they ignored the fact that the check was certified by the bank" (page 1088, line 22). We deny that the check was certified by the Roseville Trust Company.

The check itself bore a certification stamp. There was no other record to indicate that it had been certified by the trust company. There was no record in the certification book of this check, although certified checks in the ordinary course of business were so recorded (page 109, line 20; page 112, lines 14-20). Furthermore no responsible officer in the bank, except Smith, had any knowledge of the fact that the certification stamp had been put on the face of the check. Smith had personally done it (page 160, line 1). Because it was not recorded in the usual manner, it was not possible for any other responsible officer of the bank to learn of the attempted certification.

The certification, in order to bind the trust company, must have been the product of the trust company's corporate action or made by its authorized agent, or ratified by it.

Thompson vs. Central Passenger Ry. Co., 80 N. J. Law, 328, page 330;
Beach vs. Palisade Realty & Amusement Co., 86 N. J. Law, 238, page 241.

Smith, who affixed the certification stamp to this check, was engaged in the perpetration of a fraud, and it was essential to the carrying out of the fraud that he should conceal the real facts from his principal, and such a situation would have destroyed any presumption of law either that he had communicated the facts to his principal, the trust company, or that he, as principal, and the trust company, were one in the transaction.

Camden Safe Deposit & Trust Co. vs. Lord, 67 N. J. Eq., 489, page 492;
Campbell vs. Perth Amboy Mutual Loan Association, 76 N. J. Eq., 347, page 355.

Smith was certainly not acting within the scope of his authority when he certified this check, if there was in fact no money to meet it. Nor had the trust company ever placed him in a situation to do that class of acts.

Corona Kid Co. vs. Lichtman, 84 N. J. Law, 363, page 369;
Nick vs. Corporation of Royal Exchange, 87 N. J. Law, 607, page 614.

Taking the situation at its worst against Scarlett, and assuming for the sake of argument, that Scarlett was *particeps criminis* in the fraud, that does not aid the state on this indictment. Scarlett was indicted for overdrawing his account as a director. No other charge was made against him. Viewing the case most favorably to the State, the certification was a fraudulent thing. On the State's own theory the check could not have been enforced by Scarlett against the trust company. It was, therefore, not the act of the trust company as such. That being the situation, the law applicable to the ordinary certified check as an obligation of the bank has no place in this case. This check was not paid by the fact that it bore a certification stamp on its face. We respectfully submit, therefore, that the Supreme Court is in error in both the grounds on which it attempted to justify the matters here complained of, namely, that the Trial Judge usurped the functions of the jury in charging in effect that the evidence showed that the check had been paid, and secondly, that the legal effect of the certification of the check was not in effect payment of it.

In this connection the Court improperly admitted in evidence the check of $50,654.23, S. 11.

S. 11 was objected to and exception taken (page

134, line 25), and error was assigned thereon by assignment of error 28 (page 1048, line 28).

S. 11, the check to the Union National Bank, was not proved to have been connected with the case. Giving full credit to the various items which were supposed to dove-tail in with it, it could have no materiality except as it was proved that the $350 check was returned to the bank on March 18th, and included in the larger check. As already suggested, there was absolutely no proof of this.

This offer in evidence was followed by the offer of Exhibit S-5, the check for $350, mentioned in the indictment. This, too, was admitted over objection and exception taken (page 141, line 35), and error assigned thereon by assignment of error 29 (page 1048, line 33).

The materiality of this check could only be to show that it had been paid in overdraft of the defendant's account. The State's claim for payment was rested on the ground that it was included in the larger check, S 11. If, however, S 11 was not properly admitted in evidence, then certainly S 5 could not be, for the one depended on the other.

V.

The Trial Judge improperly admitted in evidence Exhibit S-17, and and improperly ruled upon questions asked with reference thereto.

Exhibit S-17 was a check signed by Scarlett, to the order of H. J. Stanley, Collector, and given to pay taxes (page 222). It was claimed by the State that it had been paid, and was a proper deduction from any credits which Scarlett claimed himself

entitled to. The check, however, was not stamped paid, and there was no evidence, other than surmise, as to whether it had been paid by the funds of the bank. Consequently its admission in evidence was objected to, and exception taken (page 225, line 10). In the course of the cross examination upon the admission of the check, defendant's counsel asked Smith if it was paid in the same manner in which the $350 check (85) had been paid, either by his personal money, or by being charged to the account of some other depositor, or to some other bank, and this question was overruled, and exception taken (page 223, lines 19-35), and error assigned by assignment No. 48 (page 105, line 38).

On the witness stand, Stanley was also permitted to testify, over objection, that he had deposited the check, persumably for the purpose of showing that it had been paid, but the one did not necessarily prove the other, especially in view of the evidence. Exception was taken to this also (page 241, lines 19-30).

Error was assigned on these various rulings by assignments 48, 49, 51 and 52 (page 1051, line 38, to page 1052, line 28, #49, 50, 52 and 53, page 1099).

The admission of this check in evidence and the overruling of the defendant's questions as to whether or not it had been paid by being charged to some other account, or in some other way, were necessarily harmful to the defendant. If the check had not in fact been paid, it was not a proper charge against the defendant's account, and if it was not a proper charge against the defendant's account it ought not to have been admitted in evidence against him. It could have had no materiality to the case except on the theory that it had been paid and was a proper deduction against the defendant's account.

VI.

The Trial Judge refused to permit the defendant to cross-examine the State's witness Smith on certain of the items which went to make up the total stated in the paper, D. 28, and to question him as to certain of the notes representing those items.

Exception was taken to the refusal to permit each of these questions, and error has been assigned thereon by assignments 40, 41, 42, 43, 45, 46 and 47 (page 1050, line 16; page 1051, line 31), #41, 42, 43, 44, 46, 47 and 48 (page 1097, line 25 &c.)

The defence was that the account was not overdrawn because the defendant had, or had a right to suppose that he had, funds on deposit in excess of any drafts against his account on March 17, 1913. The defendant's evidence was that he had entered into a personal arrangement with Smith, quite apart from his capacity as treasurer of the trust company, to loan him certain moneys for which he gave him security by the transfer to a trustee, one Sica, of the defendant's Johnson Avenue property. The proof of this seemed to be ample. A trust agreement was proved to have been signed by Smith, Scarlett and Sica (Exhibit D 29; page 1038), and in addition Scarlett signed a letter written in Smith's handwriting, agreeing to further reimburse Smith for the funds out of certain moneys which he then expected shortly to receive (D 27, page 1037), and Smith, in addition, drew his personal check for $4,200 to the order of Scarlett in further carrying out of the agreement between them. This check appears as Exhibit D 26 (page 1036). (See testimony of Scarlett, page 269, line 32, to page 274.)

Among the items which Scarlett claimed went to make up the total of $9,700 which was the consideration named in Exhibits D 27 and D 28, were two notes, one referred to as the Long note, for $2500 (S. 21, page 269, lines 1-11), and the so-called Sica note (S. 22) for $1247.76, (page 269, lines 12-18). These notes at the time the trust agreement was signed were represented by renewal notes, they having been continued from time to time. It was important for the defendant to secure from the lips of Smith, if possible, an admission that these notes were among the items which went to make up the total of the consideration of the trust deed, and also to show that these notes were kept by Smith, apart from the records of the bank, and thus to be in a position to argue to the jury that they were his personal transactions, as Scarlett claimed, and not his official transactions, as Smith claimed. Accordingly Smith was asked on cross examination (he having already identified the trust agreement) if the Long note was not one of the items which went to make up the total (page 201, line 28). He was also asked if the Sica note then produced was not a continuation of an earlier one of the same series (page 203, line 28). He was also asked where he kept that note (page 204, line 20), and where he kept it after it was delivered to him or the predecessor note which began the series (page 205, line 36).

He was also asked if the total consideration named in the trust agreement did not include the amount of the Sica note (page 220, line 31), and if the total mentioned in the letter in his handwriting signed by Scarlett (D 27) did not include both the Sica note (page 221, line 1), and the Long note (page 221, line 17).

All of these interrogations were overruled to

the prejudice of the defendant. Had counsel succeeded in securing Smith's affirmative answer to these questions, it would have gone a long way toward conclusively establishing the defendant's contention that he had a right to rely on the arrangement which he claimed to have made with Smith that the moneys which he claimed to have borrowed from him personally would have been deposited to the credit of his account.

Furthermore, it would have tended to further corroborate the other testimony in the case that the relations between the defendant and Smith were personal. Quite apart from the moneys mentioned in the trust agreement, which Scarlett claimed Smith had agreed to loan him personally, Smith had admitted that he had deposited to Scarlett's account other moneys on at least two separate occasions. In December, 1912, he authorized a deposit to his credit for $300 (page 188, line 14). On January 26, 1911, he had deposited to Scarlett's account the sum of $1000 (page 731, line 38). Scarlett claimed that these deposits were in fulfillment of the arrangement which he had with him to personally loan him money.

The questions which were asked and overruled with reference to the Long and Sica notes were along the same general line, and equally material to show the personal relationship which the defendant claimed existed between him and Smith with reference to the loaning of moneys.

The Supreme Court sustained the rulings complained of on the ground that the questions were not proper cross examination (page 1089, line 26). This objection was made only to the question at page 205, line 36. No such objection was made to the questions at page 201, line 28; page 203, line 28; page 204, line 20; page 220, line 31; or page 221, line 1.

Smith was under cross examination with relation to the check for $350 (mentioned in the indictment), and whether it had not been paid by him, personally, as opposed to the Trust Company. (See page 159, line 40, and pages following.) At page 188, line 1, etc., it appeared that Smith had previously placed money personally to the credit of Scarlett's account. This logically led to the question of whether Smith had not advanced other moneys, pursuant to the terms of the Trust Agreement (page 196), and whether the $9700 consideration mentioned in that agreement, did not include the Long and Sica notes (pages 201-205). Even though the objection of "not cross examination" had been made, it would have been error to have overruled the questions on that ground, for they were relative to the examination in chief, and were relevant to the issue.

Jones on Evidence, section 821, page 1041, says:

> "Although the court may exercise a reasonable discretion in regulating or limiting the cross-examination, yet it is clearly error to exclude cross-examination upon subjects included in the examination-in-chief, where such ruling is prejudicial. So far as such cross-examination of a witness relates either to facts in issue or facts relevant to the issue, it may be pursued by counsel as a matter of right."

VII.

The Trial Judge erred in his charge to the jury with reference to the question of whether Scarlett was a director of the trust company, and in refusing to charge as requested.

One of the essential facts for the State to prove was that Scarlett was a director of the Trust

Company at the time of the alleged overdaft of the account. The evidence upon this was conflicting. It, therefore, became a question for the jury, and the judge undertook to submit that question to them (page 990, line 10).

It appeared that Scarlett had been elected a director at the annual meeting held January 14, 1913 (page 15, line 21). Smith said that he continued to act as a director until the bank closed August 14th, 1913 (page 15, line 30). On February 3d, 1913, Mr. Scarlett took the oath of a director (page 12, line 2). Scarlett claimed, however, that he had immediately thereafter resigned, and had attended no meetings of the board. He did not in fact attend any meetings between the date of his resignation, and the failure of the Trust Company. There was an effort by the State to show on rebuttal that he had after the failure of the bank attended meetings of the directors, but it was a disputed question whether those meetings were meetings of the directors officially. They were attended by gentlemen who were directors, and also by depositors.

Mr. Lurich, who acted as secretary of those meetings, was at one time a director of the Roseville Trust Co. He kept the minutes in a separate book, not the regular minute book of the bank (page 850, line 22), and he testified on cross-examination that the gentleman who attended those meetings attended as individuals (page 850, line 20), and that he acted as secretary with the sanction of those present (page 850, line 27). The object of the meetings was to rehabilitate the Roseville Trust Company, and conserve the interests of the depositors (page 850, line 37). Others than the directors met with the board (page 859, line 23), namely a committee of depositors (page 859, line 25). Counsel of depositors was also

present (page 861, line 10). Apparently all hands interested in the bank worked for its rehabilitation without distinction as to whether they were directors or not (page 861, lines 25-40).

The question of Scarlett's resignation hinged upon a letter which he wrote and forwarded to Smith as secretary of the board at the time he turned in his oath as director. A carbon copy of this letter was offered in evidence as Exhibit D-37 (page 293, line 13). It reads as follows:

"February 3rd. 3.

"To the Directors of the Roseville Trust Co.

"Gentlemen:

"Mr. Smith has requested me to sign a report to be sent to the State Banking Department in reference to the election of directors.

"You will remember that at the meeting of the directors just previous to the election I stated that I was unable to serve as director, and gave my reasons for believing it would be better for all concerned that I should not continue in that capacity.

"I understood that the same course was to be followed with reference to my election as director as was agreed to with reference to Mr. Wm. J. Banister who had stated to Mr. Odell and others that he could not serve. This was that immediately after the election, Mr. Banister's place and my own were to be filled by the board; and it was with that understanding that my name was put up for election.

"Mr. Smith states to me over the 'phone that it was necessary to sign this report with reference to the election and that it was only a matter of form, and that the Board would fill the vacancy caused by my resignation at their convenience;

Mr. Smith also stating that the Banking Department were insisting on having the report as to the election filed at once.

"Under the circumstances, it seems to me I would not be justified in declining to sign the report and I will do so with the understanding that my resignation take effect immediately after.

"I beg to assure you of my appreciation of the courtesies extended and trust that at some future time when my personal affairs are in better shape we can assume our former agreeable relations.

"Yours respectfully,"

This D-37 was Scarlett's carbon copy of the letter which he had sent to Smith. On the first day of the trial, which was March 15th, 1915 (page 10, line 8), the defendant served the prosecutor with a notice to produce the original letter (page 13, line 12). Mr. Vredenburgh, the deputy commissioner of the banking department, in charge of the Roseville Trust Co., was asked if he would be good enough to search and see if he could find the original letter. He testified that it would probably take a week to search for it (page 14, line 1). When he was asked if he would not be good enough to put a man to work looking for it, he said,

> "I haven't any one to put at that work, no one in my employ" (page 14, line 10).

Quite evidently neither the prosecutor, nor the deputy banking commissioner were particularly anxious to facilitate the production of this letter. The trial, which began on March 15th, was not finished until March 31st, 1915, two weeks and a half after the day it began. Nevertheless the State made no effort to either produce the original letter

or to explain why they did not produce it. Smith testified (page 16, line 23):

> "I don't remember such a letter at the present time,"

and said:

> "I don't remember having received such a letter" (page 16, line 32).

He was careful, however, not to deny that such a letter had been received. He remembered that Mr. Banister, a co-director of Scarlett's, had expressed a desire to resign, and G. Rowland Munroe, Esq., a member of the bar, testified that he had been present at a meeting of the executive committee held on December 30, 1912, and remembered that

> "the matter was discussed whether Mr. Scarlett or Mr. Banister should stand for re-election" (page 313, line 14).

He also testified that Mr. Scarlett had expressed the view that owing to his financial affairs, he had better not stand for re-election (page 313, line 30) and finally that (page 314, line 1):

> "Somebody suggested that it would be better not to have a vacancy left at that time, as it was so near the election, and we had made no provision for anyone else, that after the election if there were any resignations they could be acted upon and the vacancies could be filled by the board."

This evidence tended to corroborate the statement of Mr. Scarlett that he had resigned, as he said he had, through this letter of resignation.

Furthermore it appeared from the testimony of Smith that it was customary to send out notice to the directors of the directors' meetings, and that carbon copies of these notices were kept by the bank (page 19, line 38, to page 20, line 10). This rule was pursued following February 3, 1913, which was the date of Scarlett's resignation (page 20, line 13). The notices were made out and mailed by a stenographer, named Miss Hicks (page 20, line 20). Miss Hicks was subsequently called by the State in rebuttal, but had no recollection of having sent out any letters to Mr. Scarlett up to the time she left the employ of the bank, which was in June, 1913 (page 595, line 34; page 596, line 20). She said:

> "I can't say that I sent them out to Mr. Scarlett up to that time, because I can't remember."

She testified, however, that she made a carbon copy of what letters she did send out (page 597, line 20).

The State produced no carbon copies of any notices to Mr. Scarlett to attend directors' meetings after February 3d, 1913, undoubtedly because his resignation had been received and accepted.

In his charge to the jury the judge discussed the question of the alleged resignation and commented upon the letter of February 3d, 1913. He said (page 989, line 12 etc.):

> "One of the important, and, in fact, essential questions in this case is whether he was in fact a director, for if he was not, the charge of the State necessarily falls. He executed the oath of a director in which he declared himself to be such on the 3d day of February, 1913. It is true that he apparently attended

> no meetings from then on until the closing of the bank, but he did attend meetings of the Board of Directors after the close of the bank, held for the purpose of reorganization, or, as one witness put it, of rehabilitating the bank. He testifies that he resigned, and produces a carbon copy of a letter of resignation which he says was sent with his oath of office. There is, however, no evidence that this letter was ever received by the Board of Directors. There is evidence that he discussed the question of his continuing as a director with certain members of the board at one of their meetings, but, in the face of his oath of office, and the fact that he did subsequently attend meetings of the board after the company closed its doors, can be now, when charged with the responsibilities of the office and the consequences of his acts as such director, be heard to say that he was not, at the time in question, a director in fact."

Exception was taken to this (page 998, lines 1-25) and error was assigned thereon by assignment 143 (page 1065, line 32, etc.) (144, page 1112, line 20). The matter is also covered by cause of reversal No. 3.

In thus charging the jury the trial judge fell into error of law.

He improperly charged the jury that there was

> "no evidence that this letter (February 3d, 1913), was ever received by the board of directors."

Remember that the carbon copy of the letter was produced and offered in evidence, that Mr. Scarlett testified positively that he had sent it,

and Mr. Smith refused to say that he had not received it, and that the prosecutor made no effort to produce the original. Further, that notices were sent to the directors of directors' meetings up to the time the bank was closed that carbon copies of these notices were kept, that Mr. Scarlett denied that he had ever received any such notices after the date of his letter of resignation and that the State had produced no carbon copies of notices to him.

It would seem, therefore, as though the evidence clearly established the fact that Mr. Scarlett had resigned by his letter of February 3d, 1913. Certainly there was no ground to say that the trust company had not received his letter of resignation. The view most favorable to the State that could be taken from that state of facts, was that it was for the jury to say whether the Trust Company had received the letter of resignation. The Court, however, withdrew this question from the jury. He precluded them from considering this question by charging them categorically that there was no evidence that the letter was ever received by the board. Under this charge the jury were precluded from saying whether or not he had resigned as a director as he had claimed.

In connection with this same question the defendant submitted certain requests to charge which were refused and exception taken.

Request 47, which is covered by assignment 175 (page 1076, line 10), was that under the terms of the letter of February 3d, 1913, it was immaterial whether the resignation was accepted by the directors or not if the jury found that the defendant did in fact sign the report mentioned in the letter.

In the letter Mr. Scarlett wrote:

> "Under the circumstances it seems to me I would not be justified in declining to sign the

report, and I will do so with the understanding that my resignation take effect immediately after."

It appeared from the testimony of Mr. Vredenburgh, the deputy bank commissioner, that the oath of the director is regarded as the report of a director's election (page 433, lines 25-40). In his letter, Mr. Scarlett stated that Smith had told him over the 'phone.

"that it was necessary to sign this report with reference to the election."

He therefore signed the report (the oath), and forwarded it with the letter of resignation, with the statement that he had signed it with the understanding that his resignation took effect immediately thereafter. The report mentioned in the letter was the oath which Mr. Scarlett signed (page 429, lines 10-33). If, therefore, the report was in fact signed upon those conditions, it was immaterial whether the resignation was accepted or not.

See *International Bank* vs. *Faber,* 86 Fed., 443, Shipman, C. J., said (page 445):

"His term of office was not regulated by statute and the manner by which a resignation must take effect had not been prescribed. Under such a state of facts that his resignation was effected, though not accepted by the board, has been sufficiently established by the authorities. *Briggs* vs. *Spaulding,* 141 U. S., 143; *Olmsted* vs. *Dennis,* 77 N. Y., 378; *Bruce* vs. *Platt,* 80 N. Y., 379; *Van Amburg* vs. *Baker,* 81 N. Y., 46."

Briggs vs. *Spaulding,* 141 U. S., 143, Fuller, C. J., said (page 154):

"The resignation was orally tendered to the president and manifestly accepted by him since the sale of the stock was made at the same time, and the President informed the cashier of the fact a few days afterward. Putting a resignation in writing is the more orderly and proper mode of procedure, but if the fact exists, and is adequately proven, the result is necessarily the same as applied to this case. We do not understand that because Section 5145 of the Revised Statutes provides that directors shall hold office for one year, and until their successors have been elected and have qualified, this prohibits resignations during the year; and while the banking law is silent as to the time when and the method by which the office of director may be resigned, we think that leaves it as at common law and this resignation was effective. *Rex* vs. *Mayor of Ripon,* 1 Lord Raymond, 563; *Olmsted* vs. *Dennis,* 77 N. Y., 378; *Chandler* vs. *Hoag,* 2 Hun, 613; *Bruce* vs. *Platt,* 80 N. Y., 379; *Port Jervis* vs. *Bank of Port Jervis,* 96 N. Y., 550."

The text, as well as the cases collected in Cook on Corpn., 6th ed., Vol. II, Sec. 624, shows that a director may resign, and no formal acceptance or entry thereof on the minute book of the corporation is necessary to complete the resignation.

A resignation to take effect on the termination of the term for which a director is elected is effectual and he does not hold over though no successor is elected. *Van Amburgh* vs. *Baker,* 81 N. Y., 46. A resignation takes effect upon its delivery even though not accepted. *International Bank* vs. *Faber,* 86 F., 443.

A resignation is complete when it is tendered

and its validity does not depend upon acceptance by the directors or the election of a successor. *Manhattan Co.* vs. *Kaldenberg,* 165 N. Y., 1.

See also *Chandler* vs. *Hoag,* 2 Hun, 613, where

> "on the 27th of January, 1872, the defendant became a trustee of the Star Publishing Company. * * * On the 20th day of August, 1872, he sent in a written resignation and ceased thereafter to act as trustee. The resignation was not acted on, or entered on the minutes of the company until November following. Held, that his trusteeship lasted from January 27th to August 20th, 1872, and not longer."

If this be good law then request 47 should have been charged, for if the jury found that the defendant did in fact sign the report, then his resignation became effective. It was so expressly stated in his letter.

Request 49 was also pertinent and should have been charged. This is covered by assignment 177 (page 1076, line 29). It requested the judge to charge the jury that if they found that the paper referred to in the letter of February 3d, 1913, was in fact the oath of the defendant as director, and that the word "report" in the said letter referred to the oath, and that the oath was in fact signed by the defendant, then the resignation did take effect and he was not a director at the time charged in the indictment. Under the cases *supra*, that was equally pertinent, for the signing of the report was with the express understanding that his resignation should take effect immediately thereafter.

It was of the essence of the State's case to prove that the defendant overdrew his account while a director. If he was not a director he was not guilty as charged. The charge of the trial judge, there-

fore, and his refusal to charge as requested, were most material as affecting the interests of the defendant.

The Supreme Court simply comments on this that there was no error in the charge in this respect (page 1088, line 37).

We respectfully submit that there was error.

VIII.

The Trial Judge improperly permitted witnesses to state their conclusions on matters which were properly questions for the jury.

a. The Trial Judge permitted the witness Thompson to give his conclusions as to whether the check for $350 had been paid upon entries which on their face contained no reference to the check and about which the witness had no personal recollection.

This evidence was all admitted subject to the defendant's exception, and his motion to strike it out was refused, and error was assigned thereon by assignments 16, 18, 19, 21, 22 and 25 (page 1093, line 36, and page 1095, line 20).

From the discussion of the evidence in Point IV of this brief, it appears that the State endeavored by the witness Thompson, together with the return item books, S. 9 and S. 10, to show that the check for $350 had been paid. It was claimed that it had been paid by including it in the check paid the Union National Bank for $50,654.23. Thompson, however, frankly admitted that he had no recollection of the $350 check, never having seen it. There was nothing in the return item books

which he testified from, which connected them with the check, except the bare similarity of the figures $350. The whole essence of the proof, however, depended on it being established that this $350 check was received on March 18th by the trust company from the Union National Bank, and that element of the proof was utterly wanting. Nevertheless Thompson was allowed to give his conclusion, which was nothing more than a mere guess on his part, that the check had been paid by being included in the larger check to the Union National Bank. If the return item books were admissible at all, their greatest value was as items of evidence for the consideration of the jury, and in the absence of any personal knowledge by Thompson as to the relation between the various items and the check, it was for the jury to say, and not for the witness to guess, whether the one referred to the other.

b. The Trial Judge permitted the witnesses on rebuttal to give their conclusions as to the payment of checks.

Jennings was shown in rebuttal two checks of the Middlessex Hat Company, for $2,000 each, and each dated January 17th, 1911, and he was asked to say whether they were paid by the bank upon which they were drawn, which was not the Roseville Trust Co. (page 682, lines 12 and 37). He said that he could tell from an inspection of the instrument. The question was objected to on the ground (page 682, line 27): "it speaks for itself and anybody can tell as much about it as the witness." Nevertheless he was permitted to answer the question, and exception was taken (page 386, line 10), and error assigned by assignment 121 (page 1107, line 37).

The attention of the witness Smith was directed to a balance of $4,000 which Scarlett claimed he was entitled to in February of 1911, and he was then asked this question (page 749, line (10):

> "Q. In view of your official connection with the bank, the Roseville Trust Company, and your familiarity with Mr. Scarlett's account, and by referring to the books of the bank, will you tell us whether or not it is true, as claimed by Mr. Scarlett, that on or about February 4, 1911, he was entitled to a credit balance of from four to six thousand dollars?"

This was objected to, the objection overruled and exception taken (page 749, line 25), and error is assigned by assignment 128 (page 1108, line 28).

This was a question which the jury were entitled to answer, and not have the witness speculate about. The evidence was conflicting, the bank's books were inaccurate, and the whole character of the evidence was such as to make a question of this kind a jury question, and the witness ought not to have been permitted to give his conclusion on a matter which was really one of the essential points in the case.

The same situation applies to a question which the Court permitted the bank accountant, Ferguson, to answer (page 888, line 15):

> "Q. Are you able to say whether it was paid?"

His attention was directed to a check for $400, dated February 19, 1913, and he was allowed to give his conclusion as to whether it was paid or not. Exception was taken to this ruling (page

889, line 18), and error assigned by assignment 141 (page 1110, line 28).

The Supreme Court justifies the question and answer as applied to Jennings, the teller, because he was looking at the books, which were competent (page 1088, line 32, etc.). If that situation justifies the evidence as given by Jennings, it in no wise justifies the evidence as given by Ferguson. Ferguson was an outsider. He had never been employed by the trust company and had no familiarity with the books, as the result of having used them or made entries in them during the course of business. The question nevertheless required him to answer from the books (page 888, line 12):

> "Q. Have you examined the books for the purpose of ascertaining whether this check was paid by the Roseville Trust Company? A. I have; yes, sir.
>
> Q. Are you able to say whether it was paid?
>
> Mr. English: I think that is one of the questions in this case for the jury to say, whether the check was paid, particularly as it was not stamped paid."

If the reason assigned to sustain Jennings, the teller, is sound (which we question)—it certainly has no application to Ferguson, the outside bank examiner.

These various questions upon which the trial judge permitted the witnesses to state their conclusions were all of vital importance to the case. Whether or not the check for $350 had been paid, whether the defendant was entitled to certain credits, what his balance at any given period prior to the date of the indictment check was, were all questions which under the confused state of the evidence were properly for the consideration of

the jury. Any witness could have hazarded a guess, but only the jury could say what the real fact was. The trial judge therefore erred in permitting the witnesses to state their conclusions which were in the last analysis merely their guesses at the situation.

IX.

The Trial Judge erred in his charge to the jury upon the question of the extent of the overdraft.

In his charge the trial judge said (page 990, line 39):

> "In brief, he says that no overdraft in fact occurred. An overdraft arises when a customer of a bank draws from that bank more money than he has to his credit in the bank. It is not material whether the account was actually overdrawn for $350 if, in fact, it was overdrawn by the defendant on the day in question knowingly. The essence of the offence is the overdraft, and not the amount."

Exception was taken to this (page 998, line 30), and error was assigned thereon by assignment 144 (page 1067, line 10).

In connection with the same matter the defendant requested the judge to charge to the effect that the State was required to prove an overdraft to the amount stated in the indictment, namely, $350, and if there was any balance in the account on March 17, 1913, the verdict must be for the defendant.

(See requests to charge 9, 10 and 11, page 1000, line 28, etc., and request 31, page 1004, line 24.)

These requests were refused and exception was taken (page 997, line 2), and error was assigned thereon. Assignment 150 covers request 9; assignment 151 covers request 10; assignment 152 covers request 11; see page 1115, and cause of reversal #1 covers request 31 (page 1125).

In presenting its case the State introduced in evidence and relied upon the records of the bank, particularly the individual ledger account of the defendant, which showed that on March 17, 1913, the date of the check, he had a balance of $1.30 (page 22, line 20). It appeared quite conclusively that the books of the bank in general, and this particular ledger account, were inaccurate (page 29, line 26) and that they had been manipulated by Smith and others in his employ (page 37, line 14).

The defendant proved that he had made a number of deposits for which he had received no credit on the books of the bank and which ought to have been properly credited to him on the ledger. It appeared further—and this was evidently a part of Smith's scheme in concealing from the depositors his manipulation of their accounts—that Mr. Scarlett's bank book had been sent up for balance early in 1911, but had become "lost." At any rate, he never succeeded in getting it back and a duplicate deposit book, which began with the arbitrary amount then on deposit, without reference to the previous balance, was given him in substitution (page 256, lines 20-40). He never got his vouchers back at all (page 257, line 3).

It conclusively appeared that the ledger account did not show all the deposits to which he was entitled (page 30, line 18). The defendant produced and offered in evidence at the trial a duplicate deposit slip, initialed by the receiving teller, showing a deposit of $5700 for which he received

no credit on the ledger at all (page 41, lines 20-30). He also claimed that he was entitled to credit for other deposits which he had made, and for which he received no credit.

Mindnick, the bookkeeper, admitted that if his ledger account had accurately set forth the deposits there would have been at least $2,000 in excess of what the balance showed on December 23rd, 1910 (page 73, line 14).

On rebuttal the State shifted its position entirely and devoted the larger part of the time of the trial to an effort to overcome the balance which the defendant claimed he was entitled to, and which would have precluded the possibility of any overdraft by means of the check named in the indictment. That part of the record from page 449 to page 980 is taken up with the State's case in rebuttal. Upon rebuttal the State repudiated the records of the bank, which it had previously offered in evidence to substantiate its case, and instead of a balance of $1.30, as shown by the ledger (page 890, line 30), claimed an overdraft of $6,165.82 (page 888, line 9).

This last figure was arrived at by the banking department's expert, Mr. Ferguson, who made up what he considered an ideal statement of the account from all the records of the bank.

The question of overdraft or no overdraft was therefore one of the mooted questions in the case. The trial judge left it to the jury to say whether upon a correct statement of the account "the defendant actually had a balance in his favor on the 17th of March, 1913, sufficient to meet the check of that date for $350" (page 993, line 37). The trial judge, however, did not stop with that, but charged the jury that it was not material whether the account was actually overdrawn for $350 if in

fact it was overdrawn by the defendant on the day in question, knowingly, and that the essence of the offence was the overdraft and not the amount.

There was a great variety of evidence with reference to the fact of the overdraft at all, and also as to the extent of the overdraft.

According to the evidence of the defendant there was a balance in his favor. According to one theory of the State there was a balance in his favor of $1.30. According to another theory of the State, there was a large overdraft against him. The state of the evidence on the question of the overdraft and the amount of the overdraft was peculiarly one for the jury, and there was evidence from which the jury could find a balance for some amount in his favor on March 17, 1913, whether they found a total balance of $350, the amount of the check, or not.

The trial judge, however, specifically charged the jury that they must find a balance of at least $350, if such balance was to avail the defendant.

The defendant was indicted on the charge of having overdrawn his account to the specific extent of $350. That was the case which the State was required to prove. The trial judge, however, by his charge materially lessened the burden of the State, to the damage of the defendant. He told the jury in effect that even though the defendant had had a balance of say $349.99, that would have availed him nothing if he did not have the full balance of $350 on the date he drew the check.

This indictment is under the statute (4 C. S. 5661, Section 15), which makes it a misdemeanor for a director of a trust company to become liable to the trust company by reason of overdrawn account. The State elected to go to trial upon an

indictment charging the defendant with having become liable to the trust company on account of an overdraft for a specific amount. Sections 47 and 50 of the Criminal Procedure Act (2 C. S. 1835-1836), which lessen the strictness of pleading and proof with reference to embezzlement or allegations as to money, have no application here. The amount of overdraft mentioned in the indictment is not laid under a *videlicet*. It is not like the indictment in the *State* vs. *Barr*, 61 N. J. Law, 131, where the charge was that the defendant did "receive certain moneys, to wit, the sum of $3,000." The State did not charge the defendant here with having overdrawn his account in any general terms, to wit, $350, but has specifically averred that he overdrew in the specific sum of $350.

This being the allegation, would he have been guilty as charged had he overdrawn a less sum than $350? It would seem not. If not, then the trial judge erred in his charge, and in refusing to charge as requested.

The Supreme Court says that the trial judge's charge in this respect was accurate, but gives no reason for such a conclusion. We respectfully submit that there was error.

The reason of the ruling in State vs. Foster (supra) applies here.

X.

The Trial Judge erred in his charge to the jury with reference to the corroboration of Smith by Ferguson.

In his charge the trial judge said (page 992, line 28, etc.) :

"The defendant also claims that on February 8, 1911, he made a deposit aggregating $5,700 as represented by the deposit slip marked D-17, and that the reason this was not entered into his pass book at the time was because the pass-book had been lost. He says that this deposit consisted of a certain check of $3,000 marked D-18, and two other items of $1,000 and $1,700 respectively, regarding which he has no recollection. He says that he should have received credit for these items. In explanation of this $5,700 deposit slip Smith says that the $3,000 check was applied by him to take care of a then existing indebtedness of Scarlett's to the bank and that the other two items of $1,000 and $1,700 were returned to Mr. Scarlett for the reason that he, Smith, was unable to use them in connection with Scarlett's account with the bank or in liquidation of his obligations to the bank. Smith is corroborated in his testimony regarding the application made by him of the $3,000 check by Mr. Ferguson."

Exception was taken to this (page 999, lines 1-10), and this part of the charge is complained of in No. 2 of the causes of reversal (page 1126).

The defendant proved that he had deposited $5,-700 and this was evidenced by a duplicate deposit slip dated February 8, 1911, marked D-17 (page 262, lines 22-38), showing a deposit for that amount. No credit for this deposit was given on the ledger of the trust company. The $5,700 was made up of three checks as follows: One was a $3,000 check certified by the National State Bank of Newark (page 135, line 13); another was a check for $1,000, and another a check for $1,700. These were outside checks, that is to say, drawn on outside banks (page 263, line 18). According to the testimony of Smith, when these checks were received he applied

the $3,000 check on account of certain other checks which Smith claimed he had been holding for lack of funds (page 733, lines 20-33), and he claimed that he had returned to Scarlett the other two checks of $1,000 and $1,700 each (page 734, line 30). This Scarlett denied (page 344, line 40).

Smith claimed that two checks of $2,000 and $2,700 respectively, put through the bank by Scarlett, had not been paid (pages 725-729), and that he had subsequently appropriated $4,700 of drafts which had been paid by the Irving National Bank, to take care of them (page 730, line 10). He then claimed that when the $5,700 deposit was made he applied the $3,000 check of that deposit on this $4,700 worth of checks (pages 807 and 809). If he did this, there is no suggestion that he ever told Scarlett of it, nor did Scarlett know it. Scarlett denied the indebtedness of $4,700, and it was a question whether Smith had any right under any circumstances to take the $3,000 which had been deposited, and misapply it. Scarlett had deposited it for credit to his account. It never went to the credit of his account, and Smith claimed to have applied it as already suggested.

Even if he had a right, as a matter of law, to have applied the deposit to the supposed overdraft, it certainly was a question of fact whether any such overdraft existed, on account of which he could have applied the deposit. There was throughout the case a sharp issue of fact between Scarlett on the one hand, and Smith on the other, with reference to deposits, credits and payments of checks, so much so that the judge charged the jury that it became

> "chiefly a question of veracity between Smith and Scarlett, supplemented by such other evidence as you may find in the case bearing upon the disputed question" (page 993, line 27).

Ferguson, the bank expert, who was called by the State, and who made up what he considered an ideal statement of the account, said that he gave Scarlett credit for $3,000 of the $5,700 deposit (page 901, line 3). He said that he did not give him credit for the remaining $2,700 of that deposit "because the bank didn't get the money" (page 901, line 25), and he said he found that out from what the books showed (page 901, line 27). He admitted that there was nothing on the ledger account to show it (page 901, line 30) although the ledger account ordinarily would show such a fact (page 901, line 35).

In all his testimony Ferguson admitted that he went entirely by the records of the bank (page 937, line 25). He reiterated in his testimony that if the bank's records were wrong, then he was wrong page 914, lines 15 and 27 page 916, line 15).

All his testimony amounted to, therefore, was that he, a banking expert, went over the concededly inaccurate and incomplete records of the back and pieced them together in such a way as with the aid of his general banking knowledge, to make up a statement which he thought accurately represented what the state of the account should be.

Now, it will be remembered that these records were made under the instructions of Smith. The clerks who made the entries were dominated by him, and they were virtually his records. When, therefore, Ferguson was offered as a witness in the case, he was simply bringing his skill as an accountant and bank expert to bear upon the records which Smith had made.

Moreover, Ferguson's statement was not made up entirely from books and documents which were in evidence in the case. He testified that in mak-

ing up his statement he had supplemented it by outside inquiries (page 879, line 14); "where our books were not clear as they should be, we inquired from the other bank." When asked what banks he had inquired from, he said (page 879, line 16): "Union National Bank, Metropolitan National Bank, National Bank of New Jersey, Forty-ninth Street National Bank, Philadelphia, National Shawmut Bank, Boston, the B. M. C. Durfee Safe Deposit & Trust Company, and Fall River, and some bank in New Haven;" that he had had a series of correspondence with these various banks, and that it had taken some considerable time to get the thing in shape (page 879, line 26).

Smith was a self-confessed embezzler. He was serving a State's prison sentence upon the indictments to which he had pleaded *non vult*. Concededly his testimony was not entitled to full faith and credit, and the Judge left it to the jury to say what weight they would give to his evidence in view of his conviction of crime (page 994, line 30). Concededly, therefore, Smith needed corroboration. The Trial Judge thereupon charged the jury that in the sharp issue of fact which was raised between him and Scarlett with reference to the state of the account, he was corroborated by the testimony of Ferguson, and particularly with reference to the application of the $3,000 check which was included in the $5,700 deposit.

To say that Ferguson corroborated Smith was equivalent to an effort to hoist oneself over the fence by one's own bootstraps. Ferguson's testimony could rise no higher than the records, and the records could rise no higher than Smith; for they were the false records which had been kept by Smith. The testimony which Ferguson gave was simply a re-statement of the testimony which Smith had made for himself in the records of the

bank, and amounted to no corroboration whatever.

Besides, as already pointed out, Ferguson's testimony from his statement, was not limited to the records of the bank, but was made up from outside sources of the bank, which the defendant had had no opportunity to cross examine.

The Supreme Court, in passing on this point, simply said: "We find no error in what the Judge said in regard to Ferguson corroborating Smith" (page 1088, line 28).

We respectfully submit that there was error.

We respectfully urge 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 of John B. Scarlett,
Plaintiff-in-Error.

CONOVER ENGLISH,
of Counsel.

(Pros)

Wm P. ODELL, President. Wm FAIRLIE, 1st Vice Pres. H.W. FOSTER, 2nd Vice Pres. RAYMOND E. SMITH, Secy-Treas.

Roseville Trust Company

Newark, N.J.

L.D. 27 for Ident

L.D. 2 for Ident

Oct 25 1912

In consideration of certain sums of money amounting to ninety seven hundred & 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 Benefit B & L Assn of Newark N.J. and the Central B & L Assn of Belleville N.J. from loans on properties owned by the Ridgewood Land Co and part of the Big Lock Manor.

John B. Scarlett

Witness D. A. Thompson

055 L.D. 26 for Ident

Newark, N.J. Oct. 25 1912 No.

Roseville Trust Company

Pay to the order of John B. Scarlett $4200.00

Forty two hundred & 00/100 Dollars

104

CERTIFIED OCT 25 1912 ROSEVILLE TRUST NEWARK N.J.

Ray Smith

5016

Dl for rec Jan 17/16
Exd Jan 17/16

TO ALL TO WHOM THESE PRESENTS SHALL COME,

I, Nicholas R. Sica, of the City of Newark, County of Essex and State of New Jersey, send Greeting:--

WHEREAS, on the 4th day of October 1912, John B. Scarlett personally conveyed to the said Nicholas R. Sica, a certain tract of land, situated in the City of Newark, County of Essex and State of New Jersey, more particularly described as follows:--

Beginning at a point in the Westerly line of Johnson Avenue distant Southerly Five Hundred Twenty-two feet and Seventy-five Hundredths of a foot (522 75/100) from the intersection of the same with the Southerly line of Clinton Avenue. Thence (1) along the Westerly line of Johnson Avenue South 22°40' West Ninety-eight feet (98'); thence (2) North 76°55' West One Hundred Fifty feet (150'); thence (3) North 22°40' East Ninety-eight feet (98); thence (4) South 76°55' East One Hundred Fifty feet (150) to the point and place of beginning.

Now, Know Ye, that I, the said Nicholas R. Sica, in consideration of One Dollar ($1) to me in hand paid by Raymond E. Smith and John B. Scarlett, both of the City of Newark, County of Essex and State of New Jersey, hereby make known, admit and declare that the said premises were so conveyed to me and that I now hold and will continue to hold the same in trust only for the uses and benefits of the said Raymond E. Smith and John B. Scarlett, under the terms and conditions which appear below and that I, Nicholas R. Sica, have no beneficial interest therein.

The conditions under which this declaration or trust is given are as follows:-- That the said Raymond E. Smith has advanced to John B. Scarlett the sum of Ninety-seven Hundred Dollars ($9700) and this conveyance is made to the said Nicholas R. Sica, in trust,

as security for the said Raymond E. Smith and upon the payment, by the said John B. Scarlett to Raymond E. Smith, of the amount of money so advanced together with the interest thereon, the said Nicholas R. Sica hereby agrees to convey the said property back to the said John B. Scarlett or to any other party that he may name.

It is understood between all the parties of this agreement that the said property is subject to a first mortgage, held by the Franklin Savings Bank, for $12000 and a second mortgage, held by David Goldsmith, for $4000.

In Witness Whereof, the said Nicholas R. Sica, Raymond E. Smith and John B. Scarlett have signed, sealed and delivered these presents this 26th day of October 1912.

Nicholas R. Sica

John B. Scarlett

Raymond E. Smith

Amounts
Loans 1000
check 4200
Note 1247 —
Note 2500 —
Mrs Penn 800
9747

MIDDLESEX HAT CO.
METUCHEN, N. J.

No. 868 Ex D 30 for Ident. METUCHEN, N.J. November 19 1910

THE METUCHEN NATIONAL BANK

PAY TO THE ORDER OF Stevenson Pyr Co $1000.00 ✗

One thousand 00/100 ✗ DOLLARS

MIDDLESEX HAT COMPANY

C A Sherwood

TREASURER

H. E. NELSON & CO. 24-6 MARKET ST. NEWARK, N.J.

DEPOSITED IN THE

ROSEVILLE TRUST CO.

OF NEWARK, N. J.

By Jno R Scarlett

11/19 1910

PLEASE LIST EACH CHECK SEPARATELY

	Dollars	Cents
Gold Coin		
Silver Coin		
Bank Notes		
CHECKS	1000	
	1000	
	2000	
Duplicate		
A Bu[illegible]		

MIDDLESEX HAT CO.
METUCHEN, N. J.

No. 868 Ex D 21 for Ident METUCHEN, N.J. November 19 1910

THE METUCHEN NATIONAL BANK

PAY TO THE ORDER OF Stevenson Pyr Co $1000.00 ✗

One thousand 00/100 ✗ DOLLARS

MIDDLESEX HAT COMPANY

C A Sherwood

TREASURER

H. E. NELSON & CO. 24-6 MARKET ST. NEWARK, N.J.



DEPOSITED IN THE

ROSEVILLE TRUST CO.

OF NEWARK, N. J.

By Jno B Scarlett

11/19 1910

PLEASE LIST EACH CHECK SEPARATELY

	Dollars	Cents
Gold Coin		
Silver Coin		
Bank Notes		
CHECKS	1000	
	1000	
	2000	

Duplicate

DEPOSITED IN THE

ROSEVILLE TRUST CO.

OF NEWARK, N.J.

By John B Scarlett.

Feb. 8 1911

PLEASE LIST EACH CHECK SEPARATELY

	Dollars	Cents.
Gold Coin		
Silver Coin		
Bank Notes		
CHECKS		
	1000	
	1700	
	3000	
	5,700	—

JOHN B. SCARLETT,
MANAGER,
Home Office Expense Account.

No. 4222

NEWARK, N.J. Feb 8 1911

NATIONAL STATE BANK

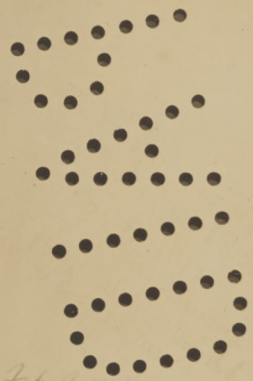
FORM No 2

7

E. R. 13, Feb. 9. 1916
Thomas J. Adams, Special Master.
L. T. 58. Nov. 17, 1913

[illegible]

To deposit Rosenthal Trust
John B. Scarcell



E. R. 1. Feb. 9. 1916
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Exhibit S-104—Charge Slip of the Roseville Trust Co., January 11, 1911	679	1032
Exhibit S-105—Charge Slip, January 4, 1911, for $1.68	679	1032
Exhibit S-106—Charge Slip, January 23, 1911, for $3.38	680	1032
Exhibit S-108—Deposit Slip for $2,000 to the credit of John B. Scarlett	696	1032
Exhibit S-109—Slip of paper bearing the name, National Shawmet Bank, March 4, 1911	739	1033
Exhibit S-110—Slip of paper bearing the name, National Shawmet Bank, March 6, 1911	739	1033

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Exhibit S-111—Letter, of Roseville Trust Company to New York State National Bank, March 13, 1911	744	1033
Exhibit S-112—Telegram, March 15, 1911, Syracuse, New York	745	1033
Exhibit S-113—Paper bearing the name New York State National Bank, Albany, March 17, 1911	745	1033
Exhibit S-114—Letter, Accompanying Oath as Director of John B. Scarlett, February 3, 1913	767	1033
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Exhibit S-117—Minutes of Alleged Meeting of Directors, August 27, 1913	859	1034
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Exhibit D-22—Duplicate Deposit Slip to the Credit of Scarlett, dated July 21, 1911		1036
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	Offered	Printed
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VOLUME II.

Supreme Court
of the
State of New Jersey

THE STATE, Defendant in Error, vs. JOHN B. SCARLETT, Plaintiff in Error.	On Indictment for Misdemeanor.

RAYMOND E. SMITH re-called in behalf of the State in rebuttal:

Direct-examination by Mr. Guild:

Q. I show you Exhibit S-85 for identification, being a package of papers, and ask you to look them over and tell the Court and jury what they are. A. They are exchange slips which come from the different institutions, banking institutions of Newark, to us, through the Union National Bank.

Q. Wha do you mean by exchange slips? A. Those slips that accompany checks which come through the exchanges each day.

Q. That is, a package of checks or other papers sent up to the Roseville Trust Company by the Union National Bank is accompanied by a slip upon which figures appear? A. Yes, sir.

Q. And a total of the figures? A. Yes, sir.

Q. Which represent as exchange, checks drawn on the Roseville Trust Company and checks which the Roseville Trust Company may have sent out and returned "No good" for some other defect? A. Yes, sir. These represent those exactly.

Mr. Guild: I desire to offer these papers in evidence.

By the Court: Q. Do you identify them as papers which have been in possesion of your bank, the Roseville Trust Company? A. Yes, sir.

Q. Where were they kept there? A. They were kept in the files of the Roseville Trust Company.

CROSS-EXAMINATION by Mr. English:

Q. Those are what you call machine lists, is that right? A. I think most of them are.

By the Court: Q. By machine lists, you mean the amount of checks placed on the lower slips of paper, one under the other, by an adding machine of some kind of a contrivance to print the figures. A. By an adding machine.

Q. And when checks go to the bank they are accompanied by slips? A. Yes, sir.

Q. And the checks are supposed to accompany them? A. Yes, sir.

By Mr. English: Q. Did all these that are produced here go to the Union National Bank? A. Yes, sir.

Q. I see a slip, Roseville Trust Company, from Manufacturers' Bank, Newark, New Jersey, does that mean checks drawn on the Roseville Trust Company, cashed by the Manufacturers' Bank, and then sent for collection through the Union National Bank? A. Yes, sir, all those checks were checks on the Roseville Trust Company.

Q. What are you referring to? A. The manufacturer's list.

Q. Does this ticket show checks drawn by depositors on the Roseville Trust Company? A. Yes, sir.

Q. Anything else? A. Yes, it would also show returned checks, checks which have been returned by the Union National Bank.

Q. Drawn on the Roseville Trust Company? A. No, checks that have been sent through the Union for payment and have been returned.

Q. For payment or for collection? A. It is the same thing.

Q. This contains a list of the checks drawn on the Roseville Trust Company and actually cashed at some other bank? A. Presented at some other bank.

Q. And also a list of the checks deposited in the Roseville Trust Company, either for deposit or collection, and sent through some other bank for payment? A. Not necessarily.

Q. Does that include those things or doesn't it? A. It includes those and perhaps more.

Q. What else does it include? A. It wouldn't include a check that went through for collection only.

Q. Why? A. Because a collection item is not treated as a cash item.

Q. Do you distinguish between collection and collection only? A. All of the letters—

Mr. English: Q. Just a moment. Answer the question.

The Court: Mr. English objects. It may be quite a proper answer.

Mr. English: I think that can be answered yes or no.

The Court: In your previous answer you said for collection, that is, for collection only, which brought from Mr. English the question as to whether you distinguish between checks for collection and checks for collection only.

Witness: Yes, sir; I do.

Q. What is the distinction? A. Checks that go through as cash go through for collection and credit to our different correspondents; a check going through for collection only would go through separately or with another lot of checks that are sent through for collection only and not as cash and credit.

By the Court: Q. Checks that come to your bank are distinguished in that manner, that is to say, you receive checks for deposits on other banks which you immediately credit to the depositor's account and then send them through for collection? A. Collection and credit.

Q. Your theory being when you credit the depositor with them that they are good? A. Yes, sir.

Q. And then you have another class of checks which are merely put in for collection, and for that alone, and not to be put to anyone's account until they are collected; is that it? A. Yes, sir.

Q. And you distinguish between those two classes of checks, as checks for collection only—distinguish the checks—of checks put in not to be credited, and the general class of checks not to be deposited to somebody's account and to be sent through for collection to the original depositor's account? A. Yes, sir.

By Mr. English: Q. You say that none of the checks which go through for collection only are in letters of this character? A. No, sir.

Q. You say they come back? A. They come back with a letter usually.

Q. These lists simply contain items, like numbers? A. Yes, sir.

Q. Just the amount only, is that right? A. Yes, sir.

Q. You have no data as to the maker or endorser or where the check is drawn or anything about it? A. Not from these lists, no, sir.

Q. Just the amounts themselves? A. Yes, sir.

Q. From this you can't check up anything at all? A. Yes, you can.

Q. You can't tell the maker or endorser of it, or anything of that character? A. No, sir; not by looking at the list alone.

Q. You have got to take it in conjunction with something else? A. Yes, sir.

Mr. English: I object to this on the ground that it is not rebuttal.

The Court: The witness has said he can check up items which correspond with that. I take it there are figures there that correspond with other figures, and I will admit them as part of the records of the bank.

Marked Exhibit S-85.

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)

Mr. English: I don't know either about the date.

The Court: If there are any in there that are after the date of the indictment they will be taken out.

Mr. Guild: I understand the last date that appears here is January 1911.

HOWARD K. BADGER, sworn in behalf of State in rebuttal:

Direct-examination by Mr. Guild:

Q. Mr. Badger, you reside in Newark? A. No, sir; East Orange.

Q. You are connected with the Union National Bank? A. Yes, sir.

Q. For how long? A. Why I have been there very nearly twenty-five years.

Q. In what capacity? A. Well, a good many different ones.

Q. Well, in 1910? A. General bookkeeper.

Q. In that capacity did you have to do with return checks, return items that came back? A. I only see the amount.

Q. Where do you get the amount from? A. From my credit sheets.

Q. Is that the information the credit sheets contain? A. That is all, just the amounts credited up to the different banks.

Q. And the name of the bank from which— A. It is received, yes.

Q. And also the date? A. Yes.

Q. You were asked to produce here the records of the Union Bank beginning with November, 1910, containing each item. Have you done so? A. Yes, sir.

Q. Will you produce them? A. Yes, sir.

By the Court: Q. What books do you need to

answer the question? A. The ledger and credit sheet.

By Mr. Guild: Q. What is it you produce? A. The credits are entered on this sheet, but different—

Q. I only ask you what you produce? A. Credit sheets and ledger.

Q. What do the credit sheets and the ledger show? A. The credit sheets show the amounts that are credited to the different banks on different dates and they are posted from there into the ledger in bulk, into the ledger, not separate amounts.

Q. The credit sheets show the items? A. The credit sheets show the items.

Q. In November, 1910, did you keep these records? A. I kept the ledger, but not the credit sheet.

Q. Who did keep the credit sheet? A. My assistant.

Q. Under your direction? A. Yes, sir.

Q. And that is part of your system of bookkeeping? A. Yes, sir.

By the Court: Q. Do these credit sheets show lists of banks? I see some printed matter on them. A. These are banks that we received those items from.

Q. Those are the banks you do business with there? A. Yes, sir.

Q. Is the Roseville Trust Company there? A. That does not appear here, no, sir.

Q. Not on that sheet? A. Not on that sheet.

The Court: You will have to connect this with the case somehow, to meet the objection.

Mr. Guild: I rather anticipated the evidence itself or hoped the evidence would connect the sheets up with the case, and it has appeared so often that the Union National Bank is the clearing house for the Roseville Trust Company it seemed to me—

By the Court: Q. Do these sheets show any transactions with the Roseville Trust Company? A. These sheets do not, no, sir.

Q. Have you anything that does? A. I have not not on that date.

Q. Was your bank clearing for the Roseville Trust Company on that date? A. It was, but the account was not on my ledger at that time.

Mr. Guild: This is a link in the chain of the evidence tracing these different checks that started from the Roseville Trust Company, drawn on Metuchen, which were sent to the Union Bank, from the Union Bank to New Bruswick, from New Brunswick to Metuchen, and then when they were not paid they came back through the same channel. We have traced a certain number of checks which we think are necessary to bring into this case from the notary and other officer of the Metuchen Bank and also of the New Brunswick Bank and he has testified that he sent certain checks to the Union Bank in Newark. I want to prove, if I can, by this witness that he or his bank account, received those identical checks. That is the purpose of this testimony.

The Court: I think perhaps if your question contained a reference to those checks

and you asked him if the records of the bank showed that they received them, it would meet the situation.

By Mr. Guild: Q. Did you receive from the National Bank of New Jersey, located at New Brunswick, on or about November 23, 1910, a check for $1,000, protest fees $1.68? A. We received that on November 23d from New Brunswick.

Q. Did you receive another one of the same amount on that date? A. The same amount on the same date.

Q. Did you on the 1st day of December, 1910, receive a check of $1,000, protest fees, $1.58, from the same institution? A. Yes.

Q. On the same day did you receive another from the same source for the same amount? A. One thousand and one dollars and fifty-eight cents on the same date.

Q. On the 7th day of the same month did you receive a check from the same bank of $1,000? A. One thousand dollars, yes, sir.

Q. Did you receive on the same day another check of the same amuont? A. Another of the same amount.

Q. On the 29th day of the same month did you receive a check of $800 protest fees of $1.58? A. Eight hundred one dollars and fifty-eight cents on December 29th.

Q. On the 4th of January, 1911 did you receive a check from the same bank? A. Yes, sir, $2,001.-68.

Q. On January 10th did you receive a check for like amount? A. Yes, sir; January 10th.

Q. On January 11th did you receive an item of $2,001.68 from the same bank? A. Yes, sir.

Q. On the 16th did you receive an item of $2,801.68? A. Two thousand, eight hundred one dollars and sixty-eight cents, January 16th.

Q. On the 17th of the same month did you receive an item of $2,001.68 from the same bank? A. Yes sir.

Q. On the 18th of the same month did you receive an item from the same bank of $2,001.68? A. Yes, sir.

Q. On the 23d of January, 1911, did you receive from the same bank an item of $2,001.70? A. Yes, sir.

Q. And on the same day did you receive an item of $701.68? A. Yes, sir.

Q. I am assuming that these are all from the same bank, the New Brunswick National? A. Yes, sir.

Q. On the 24th did you receive an item of $2,001.68? A. Yes, sir.

Mr. Guild: I offer these sheets to which he has referred in evidence.

The Court: They will be admitted. The items he has mentioned are all on the record.

Q. I show you a package of papers and ask you what they are. A. They are exchange slips that were sent to the Roseville Trust Company on these different dates.

Mr. Guild: I offer them in evidence.

Witness: They are not all to the Roseville Trust Company, I see, they are not all our slips.

Mr. English: Pick out your own.

By Mr. English: Q. You cannot identify those? A. Yes, sir.

Q. I show you this one. How about the one

with the stamp on? A. I can identify the stamp, certainly.

Q. I show you another with the Union National stamp on the back. A. Yes, sir; those are more.

Q. I show you another one. A. These I can identify.

Q. What do you say those slips are? A. They are exchange slips containing a list of checks sent to the Roseville Trust Company. This one says Roseville Trust Company (indicating). The others have not our name on, but I can identify our stamp on the back.

By Mr. Guild: Q. That is fairly good evidence that it came from your bank? A. Yes, sir.

Q. The last of these slips is dated January 25th, and contains the figures 5209.32, does it not? A. Yes, sir.

Q. I ask you whether that figure is not the total of the items on the slip which bears date January 25, 1911, I think it is? A. Yes sir; I should say that it was the total of this slip.

Q. On the slip marked January 25th are figures $2,700 and $2,000, are there? A. Two thousand seven hundred and $2,000.

Q. Does that no indicate that you returned on that date with that slip the check of the Roseville Trust Company for that amount? A. I can't identify it from this slip. If it is on that slip I returned them. The total of that slip is on here, and this is the rest of the items we sent to the Roseville Trust Company.

Q. And the last on the slip dated January 25th contains an item of $2700 and $2000? A. Yes, sir.

Q. It shows that you returned to the Roseville Trust Company on that date checks of that amount? A. Yes, sir.

Mr. Guild: I offer these slips in evidence.

Q. You call them return item slips or what do you call them? A. No, exchange slips.

CROSS-EXAMINATION by Mr. English:

Q. The papers that are referred to are little pieces of paper, on one of which is printed the words "Roseville Trust Company"? A. Yes, sir.

Q. I understand that is the only one you can identify? A. I can identify those that have our stamps on the back.

Q. You can identify them as being produced from the Union National Bank? A. Yes, sir.

Q. But you can not identify those as relating necessarily to the Roseville Trust Company? A. So far as they are listed on that slip, that have the Roseville Trust Company on it, the figures correspond on that slip.

Q. It may be a fact and it may be a coincidence? A. No, I think it is a fact.

Q. It may be a coincidence? A. No, I think not.

Q. From the similarity of the figures you think they all refer to the same matter? A. Yes, sir.

Mr. Guild: I offer in evidence the slips.

Mr. English: I object to them and reserve my motion to strike out if not connected, and pray an exception to their admission 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. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-86.

Q. A few moments ago you gave a list of figures representing checks that you said came back from New Brunswick on the various dates. What did you read from when you gave that list? A. The credit sheet.

Q. Is that the book you kept or your assistant? A. My assistant.

Q. Did you have occasion to look that over from day to day or not? A. Simply when I post from that into the ledger.

By the Court: Q. Then you did have occasion to look at it? A. To that extent, yes, sir.

Q. He asked you if you looked at it? A. Yes, sir.

By Mr. English: Q. Those checks represent checks returned to your bank by the New Brunswick Bank for what reason? A. Protested.

Q. Were you acting as a clearing house when they came back? A. For the National Bank of New Jersey, New Brunswick.

Q. You acted as a clearing house for that bank? A. Yes, sir.

Q. And those checks, along with scores of other checks, came to you in that way as a clearing house? A. Yes, sir.

Q. Did the items that you refer to give the names of the maker or endorser of the checks or anything of that kind? A. I don't know; I didn't see the items; only the amounts I have there.

Q. So you don't know whether as a matter of fact what bank they referred to? A. No, sir.

Q. Or what banks they are drawn on? A. No, sir.

Q. Or what bank started it off on its journey? A. Yes, sir.

Q. All that you know is that checks for that amount which you named were protested and came back from the National Bank of New Jersey? A. No, sir.

Q. No other knowledge whatever? A. That is all.

Mr. English: I move to strike out the witness's testimony because it is immaterial and because it is not rebuttal.

The Court: The application is denied.

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

H. V. OSBORNE,
Judge.

(Seal)

By Mr. English: Q. You don't know whether those checks were sent through for deposit or collection, do you—there is nothing there to indicate it, is there? A. They are indicated the way they are handled; they are sent through as cash items.

Mr. Guild: There was one item in the examination from the gentleman of New Brunswick Bank that he was doubtful about this morning; I think it was the $2800 item, and he wanted an opportunity to investigate, and I understand he has done so, and I would like to recall him on just that one point.

EDWIN V. KENT re-called in behalf of State in rebuttal.

Direct-examination by Mr. Guild:

Q. Mr. Kent, this morning I asked you whether under date of January 14, 1911, you had credited the Metuchen Bank with $2801.50 and charged the Union National Bank with the same amount, with your usual ten per cent added, and you said no, it was $2001.58. I would like to know whether in the meantime you have looked into the matter any further? A. The date that you mention now, I though you said January 4th or 14th.

Q. Fourteenth? A. May I have my ledger so I can verify that? (Witness is handed book.) Yes, sir.

Q. Under date of January 14th what do you find? A. I find a credit to Metuchen of $2001.58 and a charge to Union Bank, Newark, of $2001.68. That is what I told you before. You want to know—

Q. I want to know whether that is correct? A. No, it is not.

Q. What should it be? A. On January 20th, in our journal, I find a charge to Union National Bank, Newark, for $800 and a credit to Metuchen, for same amount, and it is described "Middlesex Hat Company check, $2800, returned January 14th, credited and charged in error for $2000," so that corrects that, I guess.

Q. In other words, it should have been $2801.58 instead of $1101.58 as you told us this morning? A. Yes, sir.

CROSS-EXAMINATION by Mr. English:

Q. Whose writing is that in that you just read from? A. Mr. Barcalow's, I think.

Q. It wasn't made by you? A. No, sir.

Q. Did you know it was made at the time it was made? A. I am reasonably sure of that.

Q. You had occasion to check it up? A. Yes, I posted it in the ledger.

Q. So what you say ought to be the fact, that the Metuchen National Bank was credited and the Union National Bank charged on January 14, 1911, with $1001.58? A. Yes, sir.

AUGUSTUS R. JENNINGS re-called in behalf of State in rebuttal.

Direct-examination by Mr. Guild:

Q. I show you a book. What is it? A. The paying teller's proof book, Roseville Trust Company, from November 29, 1909, to December 3, 1910.

Q. What is the later date? A. December 3, 1910.

Q. What was the use of that book? A. That is a proof of the paying teller's desk.

Q. What does that mean, what entries did you make in that book? A. Well, it has a list of all checks cashed.

Q. By the Roseville Trust Company? A. By the paying teller.

Q. As distinguished from checks that were deposited? A. Yes, sir.

Q. Or left at the bank for collection? A. Yes, sir.

Q. On November 16, 1910, did you keep the book? A. Yes, sir; I did.

Mr. Guild: I offer in evidence the book.

Mr. English: I object. I do not see any connection between that book and the case.

The Court: State the connection.

Mr. Guild: The purpose of this is to

show that the two checks that went to Metuchen on November 16, 1910, of $1000 each, which Mr. Scarlett testified were left at the bank for deposit, were cashed there and not deposited, and he had them entered in his check book as deposits, and we claim that he got the cash.

The Court: It will be admitted.

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)

Book referred to is marked Exhibit S-87.

Q. Under date of November 16, 1910, I ask you whether you find two items, cash items, of $1000 each? A. Yes, sir.

Q. You do find such items under that date? A. Yes, sir.

Q. Does that record show anything more than the amount and the date? A. It shows that they were checks drawn on some point in New Jersey and cashed.

Q. You mean some point in New Jersey other than Newark? A. Yes, sir.

By the Court: Q. What is this first column? A. Those are checks on our own bank.

Q. What is that (indicating)? A. That is a $10 check; that is the amount.

Q. Just read this heading and we can tell. A. (Reading:) "Paying teller's proof, the date, checks paid Roseville Trust Company, checks paid all others." That is subdivided into four differ-

ent columns, marked as follows, "foreign, investment department, drafts, general," and "receiving teller's debits."

By Mr. Guild: Q. Under what column do you find the two items referred to? A. In the column headed "Foreign."

Q. What do you find the entry concerning those two checks to be? A. They are marked New Jersey.

Q. What does that mean? A. That means they were checks drawn on some point in New Jersey other than Newark.

Q. I show you Exhibit S-44 and ask you whether you are able to say that the items referred to in that exhibit are the same two items of $1000 each which you say were cashed at the Roseville Trust Company on November 16, 1910? A. I can't say positively from looking at that list.

By the Court: Q. Is there anything you can look at which will enable you to do it? A. The checks themselves, yes.

Q. Do you find on Exhibit S-44 any items which correspond in any way with the entries in this book? A. Yes, sir, they correspond as to amount and place of payment.

Q. Anything else there, how about the date? A. The date.

By Mr. Guild: Q. The dates are the same? A. The dates are the same, yes, sir.

CROSS-EXAMINATION by Mr. English:

Q. Is there anything from which you can say that the place of payment corresponds between S-87, the paying teller's proof, and the slip S-44? Before you answer that, just let me remind you,

you said this S-87, teller's proof, shows it was drawn on a place in New Jersey outside of Newark; it doesn't tell what bank? A. No, sir, just a New Jersey item.

Q. It may be anywhere from Sussex to Cape May? A. Yes, sir.

Q. That is more of a conclusion on your part, that it is the same place? A. It is marked Metuchen on there and the teller's proof book is marked New Jersey and Metuchen is in New Jersey.

Q. This might refer to some other place in New Jersey? A. I didn't say that these were the same checks that appear here.

Q. That is what I want to find out. A. I didn't give that testimony.

Q. You don't say that S-44 and the teller's proof book refer necessarily to the same checks at all? A. No, I don't say that they absolutely do.

Q. And the only thing that corresponds now is the date and the amount and the fact that they are both drawn on banks somewhere in New Jersey? A. Yes, sir.

Q. That is as near as you come to it? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. Mr. Jennings, is there any way by which you can satisfy yourself that the items in the paying teller's proof to which your attention has been called are the same items referred to in S-44?

The Court: He said there was. He said an inspection of the checks would enable him to say with certainty.

Q. Is there any other way? A. No, sir.

Q. Did you see all the outgoing letters of that date? A. No, sir; I didn't personally see them.

Q. You haven't anything to do with them? A. More or less, some of them.

Q. If you saw the other outgoing letters would that enable you to give us the information that we ask for? A. Yes, sir; I think I could state positively then.

Q. I show you other letters under the same date and ask you whether these are outgoing letters of the Roseville Trust Company on the same date, November 16, 1910? A. Yes, sir; they are all outgoing letters of November 16, 1910.

Q. Will you look through them and see if you can find any other items of $1000 each sent out to a bank in New Jersey outside of Newark?

Mr. English: He is refreshing his memory from a paper which he did not make or did not have anything to do with. I don't think he ought to be allowed to do that.

The Court: He is now attempting to testify by reference to other records, by process of elimination. He is shown these letters as being letters of that date. It seems to me that in order to testify in that manner, to make the process of elimination admissable, that he should have all the letters of that day. Otherwise, how can he say that it is this item because he doesn't find it in any other letter?

Mr. Guild: I think he can tell by comparing the letters with this paying teller's proof or the general cash book.

The Court: The objection stated by counsel that these papers that he is handling

are not in evidence or marked in any way; they are simply papers which the examiner states are letters of the same date. I understood the witness to state that.

Q. These papers I show you, consisting of five papers, what are they? A. Letters of the Roseville Trust Company sent to different correspondents of the date November 16, 1910.

Q. By whom were they made up? A. The stenographer.

By the Court: Q. You would not need all these letters, you would only need the letters under foreign— A. That would be all the out of town correspondents.

By Mr. Guild: Q. What letters do you need? A. Just the Union National Bank. I have looked through those, Mr. Guild.

Mr. Guild: I offer two letters of November 16, 1910, addressed to the Union National Bank, in evidence.

By Mr. English: Q. These are made up by the young lady in the same way as the others were? A. Yes.

Mr. English: Then I suppose they can go in subject to the same objection, except that I don't see anything on them referring to the defendant. They are meaningless. There is nothing here that relates to the defendant.

The Court: That is just what makes them competent and makes them have some meaning, because he says it will be by reason of the fact that he found no other similar item on those letters, that he is able to say that the particular item to which his

attention is drawn is the item referred to in Exhibit S-44, which is a carbon copy, an original of a letter of similar character. They will be admitted.

Mr. English: Subject to the same objection and motion to strike out.

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.

H. V. OSBORNE,
Judge.

(Seal)

Q. Having those letters before you, are you able to say that the items referred to in S-87 are the same items referred to in S-84? A. Yes, sir, they are.

The papers referred to are marked Exhibit S-89.

Q. Will you look under date of December 27, 1910? A. It is not in this book.

(Book handed witness.)

By the Court: Q. That is the same character of book? A. Yes, sir; it is a continuation of the other book.

Mr. Guild: I offer it in evidence.

Mr. English: Same objection and same motion to strike out.

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.

H. V. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-90.

Q. Do you find a $2000 check under that date? A. Yes, sir.

Q. Can you indicate the location of the bank it was drawn on ? A. No, sir; there is nothing to indicate where it was drawn.

Q. The bank where it was drawn? A. Well, the bank upon which it was drawn.

Q. The same memorandum isn't there? A. No; it is simply marked "F," meaning foreign.

Q. How many items of $2000 do you find under the column "Foreign"? A. One.

Q. "Foreign" in this instance means the same as the other? A. Yes, sir.

Q. That is, it means within New Jersey, but out of Newark or anywhere? A. It means anywhere outside of our own institution.

Q. Because it has not been qualified by the initial? A. I don't know that.

Q. The other you said had "F" before it? A. Yes.

Q. This one, not having been so marked, is outside of your institution? A. I would say outside of Newark when it is marked foreign.

Q. I show you Exhibit S-54, which is a letter from the Roseville Trust Company to the Union National Bank and ask you what it is? A. That is our copy of our regular letter of December 27, 1910 sent to the Union Bank.

Q. With what? A. Containing a list of checks on that day.

Q. Checks that were sent to the Union Bank through which you clear? A. Yes, sir.

Q. I am taking the date December 27, 1910, your cash item of $2000, and referring to this letter to the Union National Bank of December 27, 1910, do you find a corresponding item there? A. I do.

Q. What does it show? A. Metuchen $2000.

Q. Do you find anything else there? A. Yes, sir.

Q. What else do you find? A. The name of the depositor.

Mr. English: I object. It speaks for itself. There is nothing in this book to connect it with that.

The Court: You have read from this Exhibit S-54, Metuchen, $2000, as corresponding with the other item. Is there anything else there as a part of that entry or connected with the entry of $2000 which you have not read? I am referring now to this exhibit which you read, Metuchen, $2000, and then stop. I am asking you if there is anything else on this exhibit whch you have not read?

Witness: Yes, sir; there is.

The Court: What is it?

Witness: The name of the endorser.

Q. Just read what is there. A. "Depositor, John B. Scarlett," and in the column marked "Maker" is "Nat."

Q. Do you know what that signifies there? A. I presume it is meant for National.

By the Court: Q. Why do you say it is connected with the other item; it is not on the same sheet. A. It is part of the same letter.

Q. Fast to it? A. Yes, sir; attached to it.

Q. I show you a package of papers under date of December 27, 1910, and ask you what they are? A. Roseville Trust Company letters sent to different correspondents.

Q. You mean by that it is the same character of letter as S-54 that you already testified from? A. Yes, sir.

Q. Which was sent out with checks? A. Yes, sir.

Q. And under what date? A. December 27, 1910.

Q. Have you looked at them to see if they are the same date? A. Yes, sir; they are.

Q. You say that they are letters sent out by the Roseville Trust Company, or those are carbons of the letters sent out? A. Well, there appear to be some originals and carbons of them here.

Q. I ask you whether by referring to those letters and by referring to your paying teller's proof book you can say as to whether there was another $2000 check sent out December 27, 1910? A. Yes, sir; I can.

By Mr. English: Q. Does it appear that these are all the letters sent out that day? A. I was just going to add that. I think these are all the letters of that date.

Mr. English: That does not appear yet.

By the Court: Q. How can you tell whether they are the letters or not? A. By referring to the general cash book.

By Mr. Guild: Q. Mr. Jennings, I understood you this was a cashed check and not a deposit? A. (After examining book.) Yes, sir. Those appear to be all the letters of that date.

Q. Do you find any other $2000 item other than the one appearing in the letter sent to the Union National Bank marked Exhibit S-54? A. No, sir.

Mr. Guild: I would like to offer in evidence the remaining letters of December 27th.

Mr. English: I object. They are not proved by anybody.

The Court: They will be admitted.

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-91.

Q. Having made this investigation, will you say whose check of $2000 you cashed on December 27th? A. Can I say whose check it is?

Q. Yes.

Mr. English: If you can't do so say so.

Witness: I want to look at S-54.

Q. Do you want to look at S-54? A. Yes, sir.

Q. Did you have anything to do with the making of it? A. No, sir.

Mr. English: I don't think he ought to have his recollection refreshed by that.

Witness: I can't say whose check it is. I can say where it is drawn on.

Q. You can say? A. I can say where it is drawn on; I can't say whose check it was.

Q. Where was it drawn? A. Metuchen.

Q. Can you say who the endorser was? A. Yes, sir; John B. Scarlett.

Q. Can you say who got the money? A. No, sir.

Q. Have you any recollection about cashing that check? A. No, sir; I have no personal recollection of it.

Q. Will you look under date of January 3, 1911? A. I have it.

Q. Do you find a cash item of $2000? A. Yes, sir.

Q. So the record shows that on that day you cashed a check for $2000? A. Yes, sir.

Q. Does it show for whom you cashed it? A. No, sir.

Q. Does it show the bank upon which it was drawn? A. No, sir.

Q. Does it show where the bank was located when it was drawn? A. No, sir.

Q. Whether it was a Newark bank or out of town bank? A. Out of town.

Q. It was not in Newark? A. No, sir.

Q. Does it say "New Jersey"? A. No, sir.

Q. What is there there? A. The letter F.

By the Court: Q. Under a certain date, the letter F and the amount? A. Yes, sir.

Q. Two thousand dollars? A. Two thousand dollars.

By Mr. Guild: Q. I show you Exhibit S-57 and ask you what that is? A. That is our regular letter dated December 3, 1911, to the Union National Bank.

Q. Have you got the month right? A. I should say January 3, 1911, to the Union National Bank.

Q. I ask you whether it contains a $2000 item? A. Yes, sir

Q Will you read it? A. Do you want the whole thing?

Q. In reference to the $2000 item. A. (Reading) "Depositor, John B. Scarlett," and in the column marked "Maker," is "Nat." "Where payable, Metuchen," and "Amount, $2000."

Q. Are you able to say whether that is the same $2000 check that you cashed, the same check that you cashed on the same date? A. I am willing to say that is the same check, yes, sir.

Q. You said, in reading this last letter, "Depositor, J. B. Scarlett." A. Yes, sir.

Q. Does that necessarily mean that that check was deposited? A. No, sir.

Q. You didn't intend it to be so understood? A. No, sir; I read it as under the head marked "Depositor."

Q. In this case it means what, his name appearing in that column; he wasn't a depositor, you say?

Mr. English: If you know.

A. No, sir.

Q. The check was not deposited? A. No, sir; the check was not deposited.

Q. Why does it appear that way? A. Because Mr. Scarlett was a depositor of the bank.

Q. Was it cashed for him? A. I can't say whether it was cashed personally for him or not.

Q. Was it cashed with him as endorser? A. Yes, sir.

Q. Will you please turn to your book under date of January 9, 1911. Do you find a cash item under that date, of $2800? A. Yes, sir.

Q. When I say cash item, I mean a check cashed, as distinguished from a check deposited. A. Yes.

The Court: They call these deposit checks cash items. If you spoke of a cash item ordinarily it would mean an item that had been deposited and credited to the depositor's account. It is undertsood now that all this testimony which this witness has been giving regarding these checks is based upon items in the book as having been cashed.

Q. Is that true? A. Yes, sir.

Q. I show you Exhibit S-59 and ask you what that is? A. It is a regular letter of the Roseville

Trust Company, a letter to the Union National Bank.

Q. And it contains a number of items? A. Yes, sir.

Q. And those items represent checks that were sent out by the Roseville Trust Company to the Union National Bank for collection? A. Or credit.

Q. Or credit. Do you find there an item of $2800? A. Yes, sir.

Q. In connection with it, if there is anything else? A. Endorsed by J. B. Scarlett, the word "Nat.", and payable at Metuchen.

Q. Can you say from the evidence you have before you whether the $2800 item in the letter to the Union National Bank is the check of $2800 that you cashed on January 9, 1911? A. Yes, sir. it is.

Q. Will you go back to November 21, 1910, in your paying teller's book?

The Court: This one is marked S-87. These books are not being marked as a book; they are marked according to pages.

Q. Does your record show whether or not on that date, November 21, 1910, you cashed a check for $2000 on the Roseville Trust Company? A. Yes, sir; it does.

The Court: Before you get too far in this line of examination I want to call your attention to the fact that you failed to have this page, containing the time of January 3d, marked with an exhibit number.

Q. Look at December 27, 1910, and see whether we have that marked as an exhibit? A. Yes, sir.

Q. Look at January 3, 1911. A. No, sir.

The paying teller's proof under date of January 3d is marked Exhibit S-92.

The paying teller's proof book under date of January 9, 1911, is marked Exhibit S-93.

Mr. Guild: I withdraw that question and ask to have the answer stricken out.

RE-CROSS-EXAMINATION by Mr. English:

Q. Tell me under what circumstances and how these teller's proof books are made up? A. What do you mean by circumstances?

Q. You know what circumstances mean? A. Yes, I know what circumstances mean.

Q. What do you have before you when you are making entries in this book? A. The checks.

Q. Where do you get the checks from? A. The paying teller's department.

Q. You were the paying teller? A. Yes, sir.

Q. And after banking hours you took the checks and wrote them in this book? A. Not necessarily after hours. Sometimes during the day.

Q. And that is supposed to show under any given date all the checks that you paid out at the paying teller's window? A. With the exception possibly of a Saturday morning.

Q. Why is there an exception on a Saturday morning? A. Well, I think that would show it also. Saturday morning the checks are left usually until after the bank is closed and the list is run up on the machine, and that is entered on the book as one total, and that list is usually pinned to the sheet.

Q. It would be there in either one form or the other? A. It should be.

Q. The fact that there was no list pinned there indicates that it was not a Saturday, any of these dates you were speaking of? A. Yes, sir.

Q. Turn to November 16th, the book that pertains to that, this check is listed in the column headed "Foreign"? A. Yes, sir.

Q. Then to the left of that is another list of checks. Are they checks drawn on the Roseville Trust Company? A. Yes, sir.

Q. Then there is "Draft," and what does "General" mean? A. General items that are entered in the general cash book.

Q. What is the receiving teller's debit, what is that supposed to show? A. That is a total of either items or cash turned over to the Roseville by the paying teller.

Q. You are the paying teller? A. Yes, sir.

Q. This shows the amount of cash you turned over at the close of business every day to the receiving teller? A. Yes, sir.

Q. There seem to be two figures. A. No, they are added together.

Q. Why are there two sets of figures? A. The first is the total of the foreign checks; the other is cash.

Q. Why don't you include in that checks drawn on the Roseville Trust Company? A. They are listed separately by the cashier.

Q. In another item? A. Yes, sir.

By the Court: Q. Do you treat the checks cashed and the cash in the drawer at the end of the day as one item? A. That is, they are checks turned over to the receiving teller and whatever cash is turned over, and treat them as one item in making up the proof.

By Mr. English: Q. This book is supposed to indicate that the foreign checks that are listed in this cash, S-87, were presented at your window and cashed by you? A. Not necessarily by me, no, sir.

Q. Cashed by the man who stood in your place? A. Yes, sir.

Q. The man who stood behind the paying teller's window? A. Yes, sir.

Q. Have you any recollection of having personally cashed any of these checks? A. No, sir.

Q. That is true of all the checks you have testified about? A. Yes, sir.

Q. And the deductions you make over arrived at by the various exhibits shown you? A. Yes, sir.

Q. You are not testifying from any personal recollection? A. No, sir.

Q. And you simply conclude and testify from the paper shown you? A. Yes, sir.

Q. When a check is paid in the manner as you describe by the paying teller, the check is put in the drawer? A. Foreign check?

Q. Yes. A. Well, practically in the drawer.

Q. You mean that an entry is made? A. No other entry outside of this paying teller's proof book.

Q. No other entry except that? A. Not by the paying teller. A. You put the check in the drawer and from that you make the entry in this paying teller's proof. A. Yes, sir.

Q. The check is taken from the drawer by whom? A. Usually by the paying teller.

Q. And to whom? A. The receiving teller.

Q. What is next done with it? A. It goes through his department in the course of business.

Q. In the same way it is charged up to the depositor? A. We are speaking of foreign checks?

Q. Yes. A. No, sir; it is sent out of the bank for collection and credit wherever it may be drawn.

Q. So when you cash a foreign check you send it out for collection and credit? A. Yes, sir.

Q. Then what entry is made about it when it comes back? A. By whom?

Q. Anybody. I am trying to trace the thing. A. are you speaking of a check that comes back for insufficient funds or something like that? If the check is paid it doesn't come back.

Q. Suppose it is not paid and does come back, what is done with it? A. It is charged up to the depositor or the one who had it cashed.

Q. How do you know who that is—by the endorsement? A. By the endorsement on the back of the check.

Q. In other words, before you pay a foreign check to a depositor you make him put his name on the check? A. His name should appear on the back.

Q. That is the practice? A. I don't say I would make him.

Q. Well, you acted contrary to the practice in that respect, as far as you were concerned? A. Well, it may be contrary to the general practice.

Q. So you yourself cashed checks without having the depositors endorsing them? A. I have.

Q. Whose instructions? A. Sometimes it is an officer.

Q. Mr. Smith? A. Yes, sir.

Mr. Guild: Is this cross-examination? It only goes to the accuracy of these records.

The Court: He is only testifying to what the records show.

Mr. English: But if the records are wrong the conclusions are wrong. That is the point of this examination, to find that fact out.

The Court: I do not think whether he cashed checks without having somebody's name on the back of it can indicate whether his record is right or wrong.

Mr. English: I think so. If the name is not on the back it may be charged to our account or anybody else's account.

The Court: It does not appear that anything has been charged to your account that has not been connected with it. The only time that the defendant's name has been mentioned in the testimony has been when it has been read from the record of the bank in connection with a letter which the testimony shows is made up from the checks themselves.

Mr. Guild: So that the matter may be fairly brought before the Court I object to the question.

The Court: 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. OSBORNE,
Judge.

(Seal)

Q. Turn to S-90, which is the date of December 27, 1910. Is there anything in that to indicate where the $2000 check which you testified to was drawn? A. No, sir.

Q. Is it limited to even the State? A. No, sir.

Q. It may mean any check in the world, outside of Newark? A. Yes, sir.

Q. Drawn on any bank in the world outside of Newark? A. Yes, sir.

Q. You don't undertake to swear that a $2000 item referred to in one of these letters, Exhibit S-54, is the same check that is drawn on the bank outside of Newark? A. Yes, sir.

Q. And you have no personal recollection of it? A. No, sir.

Q. Why? A. Because I cashed only one $2000 check.

Q. You think because that was the only one? A. I don't think so; I am sure.

Q. You are relying on these records? A. Yes, sir.

Q. Are they always accurate? A. I don't pretend to state.

Q. You know, as a matter of fact, they are not always accurate? A. Are you referring to these records here?

Q. Yes, to the records to the bank generally about this date they were not all accurate? A. I believe not.

Q. You know not? A. I do now.

Q. And it may be true of these books before or now, may it not? A. No, sir; not as far as this book is concerned. The days I kept them the records are absolutely all right.

Q. You think the records in your handwriting in the teller's proof book are accurate? A. Yes, sir.

Q. And you have no similar knowledge about these bank letters? A. Yes, I will say that they are accurate.

Q. I know you will say that? A. No, sir.

Q. You were not there when they were made up? A. No, sir.

Q. You were not in that part of the building where they were made up? A. Yes.

Q. Was it in the general banking room? A. Yes, sir.

Q. But not in your receiving teller's cage? A. No, sir.

Q. You cannot undertake to swear that they are absolutely accurate? A. When you say absolutely accurate, there may be a clerical error.

Q. All you can swear to is as to your belief? A. Yes, sir.

Q. Because they were made up in the course of business? A. Yes, sir.

Q. These other books that were supposed to be accurate were made up in the ordinary course of business? A. Yes, sir.

Q. If your belief is shaken in one why is it not shaken in the other? A. Because—

Q. Wait a minute.

The Court: Give the witness a chance to answer.

Q. Are you talking about the letters or the teller's proof-book? A. I am talking about both the letters and the teller's proof book.

Q. State your reason—you started to say something why your belief was shaken with reference to some of the books and it was not shaken as to any of these letters? A. I don't know as I testified that my belief was shaken.

Q. Yes, you did. You can't undertake to say whether you personally cashed any of the checks which are set up in your teller's proof book? A. No, sir.

Q. And you have no recollection of them? A. No, sir.

Q. And it may be that somebody else cashed them aside from you? A. Yes, sir.

Q. When a check is sent to the bank for either collection or deposit, what becomes of it ordinarily—put in the receiving teller's drawer?

The Court: Have we not been over all this? State when a check is sent to the bank for deposit or collection, what becomes of it ordinarily, whom does it go to?

Mr. Guild: Which bank?

The Court: The receiving bank.

Witness: By a depositor?

Q. Yes. A. If it is a depositor it is deposited and it is sent out in a letter to the correspondent's bank.

Q. Suppose it is sent in for collection? A. It is enclosed in a separate letter, or if it is a cashed check, not totaled up—

Q. Who receives it? A. For collection?

Q. Yes. A. Well, it might come to the receiving teller or paying teller; it might be handed to Mr. Smith.

Q. It already appears in this case that Mr. Smith would go to the teller's drawer and substitute cash or checks for what was there. Was it not possible during this time, in 1910 and 1911, for Mr. Smith to have gone to your drawer with the check which had been sent in for collection and take the money out of the drawer and leave the check in your drawer?

Mr. Guild: I object to this as not cross-examination in any possible way.

The Court: (After discussion.) I will

permit that question, and I will permit you to renew a question along the same lines which was asked a little while ago and which was ruled out by me under objection.

Mr. Guild: I submit that they should be limited to the items that we have gone into ourselves.

The Court: All he can say is that he finds certain entries on the books from which it appears certain things took place. That is general, but sufficiently specific to be admissible, because either, apparently, was done in the regular course of business. If they can show that the regular course of business was so loose as not to be dependable, they have a right to show that by cross-examination.

Adjourned until tomorrow, Thursday, March 25, 1915, at ten o'clock, a. m.

NINTH DAY

ESSEX OYER AND TERMINER

Thursday, March 25, 1915.

Continued pursuant to adjournment.
Present, counsel as before stated.

AUGUSTUS R. JENNINGS, resumes the stand:

Cross-examination (continued) by Mr. English:

Q. (Question read as follows: "It already ap-

pears in this case that Mr. Smith would go to the teller's drawer and substitute cash or checks for what was there. Was it not possible during this time, in 1910 and 1911, for Mr. Smith to have gone to your drawer with the check which had been sent in for collection and take the money out of the drawer and leave the check in your drawer?") A. Yes, it was possible.

Q. What is that? A. It was possible.

Q. Was it possible for Mr. Smith, in your absence, to go to your receiving teller's drawer, take out money which was in there, and put in the place of it a check which had been sent to him for collection or deposit? A. The paying teller's drawer? You said the receiving teller.

Q. You were the paying teller? A. Yes, sir.

Q. So was it possible for him to do that with the paying teller's drawer which you had charge of? A. Yes, sir.

Q. You would know if it had been done in your absence, would you? A. Yes, sir.

Q. All you would know, you would find a check in your drawer? A. Yes, sir.

Q. When you would find checks at the close of the banking hours in your drawer you would write them up in the paying teller's proof book? A. Yes, sir.

Q. Those were the checks which were found in your drawer during the day? A. Those are the checks that went through the paying teller's department during the day.

Q. But whether they represented checks which had been paid over the counter, so to speak, or whether they represented checks which had been put in in substitution for cash by Mr. Smith, if it was done in your absence, you don't know, do you?

Mr. Guild: Are you speaking generally or about any particular check?

The Court: Speaking about the practice, if he would know from the practice. I think the question comes within the ruling that I have already made.

A. I do not.

Q. Now, take a case where a check had gone through the paying teller's department, drawn on another bank, and the check was sent off at the close of business, or whenever it was sent through the bank for collection, and came back "No good," would entries be made of it after it came back? A. When you say for collection, do you mean for collection or cashed check?

Q. I am talking about a check which is found in your paying teller's drawer and which is supposedly to have been paid, either one you paid or one you had reason to suppose was paid because you found it in your drawer there, that is drawn on some other bank, what does the trust company do with that check at the close of the banking day?

Mr. Guild: Do you mean paid or cashed by him?

Mr. English: I don't care.

The Court: You mean a cashed check? You have already gone into how it can get there as a cashed check.

Mr. English: On the theory that it is a a cashed check.

A. You want to know what becomes of the check?

Q. Yes? A. Sent out for collection and credit.

Q. If the check is paid on the bank on which it is drawn, then you don't make any entries at all—

I mean your trust company? A. Not after the original entries.

Q. If it is not paid then it comes back to your bank with a protest? A. If it is a protestable item.

Q. What is done with it? A. It is charged to the depositor's account if the account is good for it.

Q. If it is sent out for collection then only the protest fees would be charged? A. That is all.

Q. Suppose the account is not good for it, does the bank hold fast to the check until it can collect it or does it give it up anyway? A. The usual procedure is to hold the check until it is good.

Q. That is your evidence of indebtedness, isn't it? A. Yes, sir.

Q. If it is protested and is paid then what is done in the bank—is the check stamped paid, or is the notice of protest stamped "Paid" or what? A. If it is charged back to the depositor?

Q. Yes. A. Our method was to put through a charge slip to the depositor and mail the item to him.

Q. Did you make out those charge slips as teller? A. As receiving teller I did, yes.

Q. So the method was to put through a charge slip which charged the depositor's account? A. Yes, sir.

Q. And then you would send the item, namely, the check, back to the depositor? A. Yes, sir.

Q. Would you, at the same time, return to him the notice of protest? A. Yes, sir—not the notice of protest. The protest.

Q. Whatever you call it and you would stamp that "Paid," too, I suppose? A. No, sir.

Q. Was the protest ever stamped paid? A. No, sir.

Q. What was done with the protest? A. Simply returned to the depositor with a letter.

Q. Suppose, as a matter of fact, it had been stamped paid, would that indicate that it had been paid? A. I presume it would.

Q. What is that? A. I presume it was paid if it was stamped paid.

Q. Can you recollect that they did, as a matter of fact, not only put through a charge slip, but stamped the protest paid and sent it back? A. No, sir; not to my recollection.

Q. Not to your recollection? A. No, sir.

Q. You remained with the bank after it was closed, didn't you? A. No, sir.

Q. Not at all? A. No, sir.

Q. When did you leave? A. I think about the middle of July, 1913.

Q. Did you ever help the bank examiners in working on the books of the bank? A. No, sir.

Q. Who was the fellow that makes out those charge slips you speak of—the receiving teller? A. Which charge do you refer to? On those return items?

Q. Yes. A. Receiving teller, as a rule.

Q. You sometimes acted as receiving teller? A. To Mr. Thompson.

Q. And those charge items, if a check was deposited for deposit and credited to the account and came back no good, they would charge the account and the amount of the protest? A. Yes, sir.

Q. And if it was simply put through for collection there would be only the protest fee charged? A. Yes, sir.

Mr. Guild: I don't understand that this is general cross-examination. We are not through with this witness. My recollection is that it was only cross-examination of the items that were put in the paying teller's book.

The Court: My recollection is that it happens in this particular instance that Mr. English asked you if it was cross-examination generally, and you said yes. However, Mr. English will confine himself to cross-examination on this particular matter as to the accuracy of that record.

Mr. English: I am simply cross-examining on the accuracy of these records.

Q. You testified about a check dated November 16, 1910, two checks for a thousand dollars each, which you said had been cashed. Do you remember that? A. Yes, sir.

Q. What does that date in your book, November 16th, show? Do you claim it was cashed by you on that date? A. I have reason to believe it was cashed on that date.

The Court: In view of the suggestion of the prosecutor that there has been a misunderstanding as to the scope of this cross-examination, it occurs to me, that being the case, that all of this should be part of your general examination, as I supposed it was. It now appearing that it is not, I think it would be well to suspend your examination until the prosecutor has concluded. It could not have been on the admissibility of these items because they were admitted in evidence and all marked.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. I show you a leather covered book bearing the name of Roseville Trust Company and ask you what it is? A. It is a return item book.

Mr. Guild: In order to save time, we have a number of these which embraced all the items he will testify about. If there is going to be any objection to them I would like to have it disposed of as a whole.

The Court: Are they a series of books covering different dates?

Mr. Guild: Yes.

The Court: Why not show them all to him and ask him if they are the return books covering a certain period?

Q. I hand you five books with the name of the Roseville Trust Company on them and ask you what they are? A. Return item books from December 16, 1910, to February 21, 1911, inclusive.

Q. And what do they show? A. Items returned to the different banks in Newark, and also return items that would come back to us from the Union National Bank.

Q. What would be the character of the items returned, where would they be returned? A. The items that we would return to the—

Q. That would be returned as shown by any of these books? A. Any one of many reasons, insufficient funds, indorsement, signature, date, or, as I stated, items that would come back to us from the Union National Bank that we had protested, forwarded to out of town banks for some reason or another.

Q. You mean by that items that you had sent out through the Union for collection that had not

been collected and therefore returned to you? A. Yes, sir.

The Court: Are there two kinds of return item books?

Mr. Guild: Properly those are called return letter books.

Q. What do you call the books represented by S-70 and S-71? A. They usually do call them return item books, but they really are the return letter books.

Q. Do they have the same matters entered in them that you have in these books before you? A. Some of these items are covered in those books.

Q. But these books contain the letters that are sent out by the bank? A. Yes, sir.

Q. And these items that I have just called your attention to are items that came to you? A. Yes, sir, came to us in the exchanges.

Q. In one case they are items going out of your bank and items coming into your bank? A. These items are also sent out.

Q. I know, but not as shown on your return item book; they may have been sent out before, but these books, I understand, show when they came back? A. The items stated in this book are checks taken out of the exchanges and paid for various reasons and sent to the bank that returns them to us.

By the Court: Q. And a carbon copy of the letter which accompanies the check? A. No, sir.

Q. Supposing, then, that you distinguish, if you can, or as near as you can, between Exhibit S-70 and 71, which were referred to as return item books which apparently contains carbon copies of

letters and distinguish between the books handed to you by the prosecutor? A. S-70 is items charged to the depositors account and sent back for any one of various reasons and mailed to them. An original is made; the carbon is retained and the original is mailed to the depositor with the items. These return item books show a list of checks not paid by the bank coming from other banks and not paid for various reasons, and returned to the bank, and the money collected on them. They also contain items of the Union National Bank, our clearing house, and protested, having gone through their bank for collection as not paid, and returned to us; those, I believe, are returned to the depositor.

By Mr. Guild: Q. Is it not a fact that the items contained in these small leather covered books are items that come to your bank from the Union or other banks? A. Yes, sir.

Q. Returned to your bank? A. They are sent to our bank.

Q. And came there? A. Yes, sir.

Q. And that is what these books show? A. They are items that are sent to us from the other banks in the exchanges and have not been paid by the bank.

Q. And these entries are not entries of checks sent out by your bank; they may have been sent out, but the items, as they appear here are items that have not been sent out? A. Some of those items have been sent out—

Q. That is not what I am talking about; they may have been sent out three or four times; the entries here show the items that are returned to you? A. Yes, sir; that come up in the exchanges in every instance.

Q. But they don't show records of outgoing items? A. No, sir.

Mr. Guild: I propose to offer all of these books to which I will call the witness's attention to particular items.

By Mr. English: Q. Did you keep the books, did you make the entries? A. When I was in the receiving teller's desk.

Q. They are made by the receiving teller? A. Yes, sir.

Q. How does the receiving teller get the information which he enters in the book? A. He gets the items from the bookkeeper or the checks.

Q. When you say items, you mean checks? A. I mean checks or protests or anything that is not charged on the individual ledger.

Q. He gets the physical paper, whatever it may be, and he has those before him when he writes them up? A. Yes.

Q. And they are exchanges that come in through the medium of the Union National Bank? A. Yes, sir.

Mr. English: The only objection I have is that it must be connected with this case, I presume.

The Court: Yes.

The books referred to are marked Exhibits S-94 to 98 inclusive.

Q. Do they contain the names of the depositors of the bank on which they are drawn or anything of that kind, or simply amounts? A. Yes, they contain the name of the depositor.

Q. They contain the name of the depositor who turned in the check; is that what they are supposed to show? A. Where the check is drawn on

our bank and returned for any reason it shows the name of the maker of the check.

Q. Suppose it is drawn on some other bank, what name does it show, if any? A. It is marked returned item, "Retd."

Q. No name appears? A. No.

Q. When a check is drawn on your bank the name of the maker or your depositor is shown? A. Yes, sir, the maker of the check.

Q. Who would be your depositor? A. Yes, sir.

Q. If it is drawn on any other bank you simply make the entry "Rtd." and no name? A. Yes. sir.

Q. And the amount? A. Yes, sir.

Q. And you have got to go to something else to find out if that refers to a check given by any given depositor? A. We usually take it from the check.

Q. I mean, the book standing by itself, only shows the word "Rtd." or protest, and the amount, and you have got to go to something else other than that book? A. Yes, sir.

By Mr. Guild: Q. Will you look under date of December 7, 1910, and see whether you find two items of $1,000 returned? A. Yes, sir; I do.

Q. Look under date of January 4, 1911, and see if you find a return item of $2,001.68? A. Yes, sir.

Q. Will you look under the date of January 10, 1911, and see if you can find another of the same amount? A. Yes, sir.

Q. Will you look under date of January 11, 1911, and see if you find an item of $2,001.68? A. Yes, sir.

Q. Look under date of January 16th and see if you find an item of $2,801.68? A. Yes, sir.

Q. And the 17th, do you find an item of $2,001.68? A. Yes, sir.

Q. The 18th? A. Yes, sir.

Q. Do you find $2,001.68 returned? A. Yes, sir; on the 18th.

Q. Look under the 23d? A. $2,001.70.

Q. Under the same date, see if you find an item of $701.68? A. That was the 23d?

Q. Yes. A. $2,001.68.

Q. Do you find it? A. Yes, sir.

Q. On the 24th, $2,001.68? A. Yes, sir.

Q. And the 26th, $2,000? A. Yes, sir.

Q. On the 26th an item of $2,700? A. Yes, sir.

Q. The 14th of February, $2,002.60? A. Yes, sir.

Q. I would like you to go back to December 29, 1910, $801.58—it may be on the 30th or the 28? A. On the 29th.

Further CROSS-EXAMINATION by Mr. English:

Q. Now, then, the items that you have just testified to in the return item book do not show the name of any maker or endorser, do they? A. No, sir.

Q. Simply that those entries, standing by themselves, simply mean that in the course of business there came back to the Union Bank checks to the amounts which you have named and received on the date set up in those books; is that right? A. Yes, sir.

Q. There is nothing in that book to show where they came from, is there? A. Only that they came from the Union Bank.

Q. Through the Union Bank? A. Yes, sir.

Q. But whether they were sent to the Union Bank by banks out of New Jersey does not appear? A. No, sir.

Q. Those entries are in connection with other entries of that kind that were sent back to the Union and were deposited and turned out no good? Look at your teller's proof book. You testified about the entries of checks which your record shows were cashed on November 16, 1910, of $2,000 each; is that right? A. Yes, sir.

Q. Then you figured out in your testimony that this bank letter to Union National Bank, S-44, referred to the same item? A. Yes, sir.

Q. Now, that means that those checks, if your guess is right, came back afterwards to the Roseville Trust Company through some bank, doesn't it? A. That they came back to us.

Q. That they were returned? A. That entry there means that?

Q. Yes. A. No, sir.

Q. If this entry don't mean it—

The Court: He said he didn't guess that.

Mr. English: Well, he judged it then.

The Court: He says now that he didn't. (To the witness.) If counsel, in examining, misstates what you have said, you may correct it. The witness is not obliged to take counsel's questions as being an accurate statement of the witness's testimony.

Mr. English: It was my characterization of his testimony. He looked at several papers and he said in effect "In my judgment one referred to the other." I will dignify it by the term "judgment."

Q. Your judgment is that the checks which apparently were cashed on November 16th, as shown by your teller's proof book, were sent off in a letter to the Roseville Trust Company, which is

marked S-44? A. Sent off in a letter of the Roseville Trust Company to the Union Bank.

Q. Your judgment is that the checks which appear to have been physically cashed were sent with this letter S-44? A. Yes, sir.

Q. And then the Union Bank, after it got it, sent it off for collection on the bank on which it was drawn? A. Yes, sir.

Q. And if it was not paid in due course of business it came back, didn't it? A. Yes.

Q. And after it came back, as you have already testified, if it was not paid it would have been charged to the depositor's account? A. If the account was good for it.

Q. And a charge slip entered up? A. Yes, sir.

Q. And if it had been sent through for collection they would simply charge up the protest fee? A. Yes, sir.

Q. I show you a charge slip dated November 23, 1910, having on two protest items of $1.58, or a total of $3.16, and ask you if that is one of the charge slips of your trust company? A. Yes, sir.

Q. And that is stamped paid? A. Yes, sir.

Q. And that is the regular "Paid" stamp of the bank? A. It is.

Q. And that standing by itself would seem to indicate that two checks or two other negotiable instruments which had been sent through the bank for collection had come back not paid and the bank had charged the depositor with the amount of the protest fees, would it not?

Mr. Mott: He is testifying to the contents of an instrument that is not in evidence. There is no objection to offering it in evidence right now.

Mr. English: I offer in evidence the paper which the counsel says he has no objection if I offer it in evidence now.

Marked Exhibit D-60.

Q. D-60 is a charge slip dated 11/23/10, showing a charge against John B. Scarlett for two items of $1.58 each, total, $3.16. (Question read.) A. Yes, sir.

Q. Now, just get out those individual ledgers; just find Mr. Scarlett's account in there; just turn to the entry of November 23, 1910, and read what it says on the debtor side? A. Charge, $3.16.

Q. The same amount as on this D-60 is it not? A. Yes, sir.

Q. You testified out of one of these return item books that you found a charge or an entry there under date of December 29, 1910, of $801.58 returned; do you remember that? A. $801.58.

Q. If that represented a check which had gone through, put in by the depositor in the proper course, which ought to have been charged to the depositor's account, if it was put in as a deposit? A. Yes, sir; if the account was good for it.

Q. And that would have been put on the individual ledger? A. Yes, sir.

By the Court: Q. It would appear there if the account was good for it? A. Yes, sir.

By Mr. English: Q. And the charge slip would be put through as making up a charge in the ledger? A. Yes, sir.

Q. I show you a slip, Roseville Trust Company, dated December 31, 1910, John B. Scarlett, for $801.58, and ask you if you recognize that as one of the charge slips of the Roseville Trust Company? A. Yes, sir.

Q. And that is stamped paid? A. Yes, sir.

Q. Now, just look at the individual ledger under date of December 31st and see if you find an entry on the debit side, and how much? (Not answered.)

The charge slip referred to is marked Exhibit D-61.

Q. I call your attention to the individual ledger and ask you if, under date of December 31, 1910, you find a charge on the debtor side of John B. Scarlett, $801.50? A. Yes, sir.

Q. And that compares with this slip? A. Yes, sir.

Q. The same amount, and so forth, as the charge slip? A. Yes, sir.

Q. And it is stamped paid? A. Yes, sir.

Q. When you referred to your teller's proof book, S-90 in evidence, you talk about an entry of December 27, 1910, for $2,000; in connection with that entry you look at Exhibit S-54, which is the bank letter from the Roseville Trust Company to the Union National Bank, and you said that your judgment was that the entry on the letter referred to the entry on the book; is that right? A. Yes, sir.

Q. And if that is true then the check referred to in the letter S-64 was sent by the Union Bank around through the collection bank, and if it was no good it came back to your bank? A. Yes, sir.

Q. Or the protest came back? A. Yes, sir.

Q. If the check was in fact paid by cash some evidence of the payment would be made by your bank, wouldn't it? A. If the check was paid?

Q. Yes. A. No, sir; no further evidence—

Q. You are right about that. Suppose it came

back bad and afterwards was paid, then there would be something to indicate that fact, wouldn't there? A. Yes.

Q. I show you a paper here which is endorsed on the back "Protest for the Metuchen National Bank" with the name of Alexander C. Litterst printed on it and the stamp of the Roseville Trust Company "Paid January 4, 1911," and ask you if that is the stamp of the Roseville Trust Company? A. Yes, sir.

Q. Used in connection with things that have been paid? A. Yes.

Mr. Guild: Counsel is again examining as to the contents of a paper not in evidence.

Mr. English: I offer in evidence a protest signed by Alexander C. Litterst, dated December 30, 1910, referring to a check dated 12/27/10, for $2,000, made by the Middlesex Hat Company.

Marked Exhibit D-62.

Q. This protest refers to a check of $2,000 dated December 27, 1910, does it not? A. Yes, sir.

Q. As appears from the stamp this was paid on January 4, 1911? A. When you say this was paid—

Q. It is stamped paid January 4, 1911? A. Yes, that protest was, the protest was stamped paid.

By Mr. Mott: Q. What do you mean by the protest? A. I mean simply the protest itself.

Q. The protest fees?

The Court: No, he says that paper has a certain stamp on it dated January 4, 1911.

Witness: He calls this paper a protest, and he says in answer to my question that the protest is stamped January 4, 1911.

By Mr. English: Q. You call this paper the protest? A. Yes, sir.

Q. What you say is this protest is stamped paid January 4, 1911? A. Yes, sir; that is what I testified to.

Q. I call your attention to the ledger account, individual ledger account, and ask you to look under date of January 4, 1911, and see what charge on the debit side, if any, is there? A. $1.58.

Q. What is the amount of the protest fee on this S-62? A. $1.68.

Q. What was the original protest fee? A. $1.58.

Q. And then the ten cents added by the National Bank at New Brunswick? A. Yes, sir.

By the Court: Q. Then the ledger account indicates that the protest fees in connection with that protest were charged to the account of Mr. Scarlett? A. The protest fees only.

By Mr. English: Q. That entry, standing by itself, would indicate that that check had gone for collection, from what you have already said? A. No, sir.

Q. In the ordinary case or the extraordinary case which was worked out in this bank? A. The ordinary case.

By the Court: Q. What would it indicate in this case? A. If I can explain it.

Mr. English: If he has any personal recollection.

The Court: You have asked him about the ordinary case and the extraordinary case. Now, we are examining about the account of John B. Scarlett, certain items re-

ferred to. I want to find out what it indicates in this case. (To the witness.) You may answer.

Witness: In certain instances, where protests are returned to us, the check is forwarded again, sent through again to the bank that it is drawn on. In that case the fees only would be charged to the account.

By Mr. English: Q. So that might indicate that this same check started off on a second journey? A. Yes, sir.

Q. And that it was paid? A. We might have been assured that it would be paid.

Q. And that might have been done several times? A. Yes, sir.

Q. I show you a paper which is apparently one of these charge slips dated January 4, 1910, for $1.58 and stamped paid by the Roseville Trust Company. Do you recognize that as the trust company's stamp? A. Yes, sir.

Q. Stamped paid on what date? A. January 4, 1911.

The Court: I do not suppose you desire to put the $1.68 in twice.

Mr. English: If it connects up with the same thing—

Mr. Guild: I would like to examine on it before it goes in.

By Mr. Guild: Q. I should like to know whether this slip containing the date January 4, 1911, and the figures $1.58 are not the same figures referred to in Exhibit D-62, which is the protest? A. I should say that they were.

Mr. Guild: But if that is so I don't see why the record should be burdened with

this as indicating another transaction, when it appears now that it probably refers to the same thing.

The Court: I do not know that it does necessarily indicate another transaction; it may be a piece of the same transaction. The question to the witness was whether the $1.58 did not appear on both papers. He said they do.

By the Court: Q. Do both refer to the same transaction? A. Yes, sir.

Mr. Guild: That was my question and he said yes.

The Court: Make it clear that they both appear as part of the same transaction. I do not see any objection.

Marked Exhibit D-63.

By Mr. English: Q. You have already said that you find a charge in the ledger account of $1.58 under that date? A. Yes, sir.

Q. Now, the object of the protest is to hold the endorser; is that right? A. Yes, sir.

Q. And, of course, if the bank got its money or certified that the item was paid that would release the endorser?

Mr. Mott: Isn't that a question of law? I submit it is, as to what releases an endorser, whether certification or payment, is a question of law.

The Court: Objection overruled.

(Question read.)

The Court: So far as the bank was concerned, do you mean?

Mr. English: Yes.

A. If the item is paid?

By the Court: Q. If the item is paid you wouldn't hold any one for it? A. No, sir.

By Mr. English: Q. Would the bank be apt to stamp the protest paid if it had not been paid? A. That is, the fees.

Q. Answer my question? A. I can't answer it yes or no.

Q. Answer it in your own way. A. That represents the fee, the wrapper and the charge.

Q. Why do you say that? A. Because the check itself is not attached to the wrapper.

Q. You think that is the reason? A. Well, I know that is the reason.

Q. Suppose the check was pinned to the wrapper, what would that indicate? A. It would be charged, the whole amount.

Q. That would indicate it had been paid? A. Yes, sir.

Q. In other words, the bank would not give up the check unless it was paid, is that it, and issue a stamp like that? A. No.

Q. Why hasn't your bank got the check if it has not been paid? A. I can't answer that.

Q. They ought to have the check, according to your theory; is that right? A. It should be in their possession if it was not paid.

Q. If the bank stamped a protest paid and if the stamp only indicated that the protest fees had been stamped paid, the bank ought to have the check? A. It ought to be in their possession, yes, sir.

Q. If the bank had given up the check when they stamped this protest it would indicate that the whole business had been paid? A. If the check had been returned to the depositor and the proper

charge made it would indicate when it had been paid.

Q. In other words, the bank don't put a stamp on like this or give up the check until it gets its money? A. Yes, sir; necessarily.

Q. That is what the practice would infer? A. Yes, sir.

By the Court: Q. Are you referring to a check which the bank cashed or merely a check that had been sent for collection? (Not answered.)

By Mr. English: Q. Would that be true of either a check put in for deposit or actually cashed at the window? A. Yes, sir.

Q. True in either case? A. Yes, sir.

Q. So you say D-62 represents only protest fees paid and in showing that you assume that the bank retained the check? A. Yes, sir.

By the Court: Q. How could that be true of a check put in for collection? A. He is not speaking about checks for collection.

Mr. English: I said either cashed or deposited.

Q. The bank has become responsible by crediting his account with it or giving him the money?

Mr. English: Yes.

The Court: But that wouldn't be the case if the check was deposited for collection?

Witness: No, sir; just the fees would be charged and the item returned.

By Mr. English: Q. You don't assume any responsibility of the collection charge? A. No, sir.

Q. Assuming that the check itself had been paid, had not been given up by the bank, then some other credit would cover the whole business, wouldn't it? A. Well, the check itself should be stamped.

Q. Not necessarily so? A. You mean on a check returned to the depositor?

Q. Yes. A. I testified before that we did not stamp those, as a rule.

Q. Simply the protest stamp? A. I can explain that stamp on there.

Q. I am asking about a practice here, if the check had gone back to the depositor, then as I understand you, this paid stamp indicates that the check had been paid?

The Court: In this case, do you mean?

(Question read.)

Mr. English: Stamped paid on the protest wrapper.

Witness: No, sir.

Q. What does that mean? A. In this particular instance?

Q. How can you testify about this particular instance? Have you got any personal recollection about it? A. I haven't any personal recollection about it.

Q. Then you have to testify from the general custom and practice of the bank? A. Yes, sir.

Q. In the general custom in the bank what does that mean? A. That wrapper was pinned to the charge slip.

Q. D-63? A. When the checks are stamped paid they are stamped paid in the book, the whole day's work; naturally, when they stamp it paid they stamp both the wrapper and the charge itself, in view of the fact that it was pinned to the charge slip.

Q. You think because the charge is $1.58 that therefore the stamp on the protest simply shows that it was paid? A. Yes, sir; that is all that was paid on that date.

Q. That means either one of two things, either that the check went through for collection or that the bank retained the check for the purpose of trying to get the money on it; is that correct? A. That check did not go through for collection.

Q. Just answer that question first. When you get your $150 charged like you have here that means either that the check did go through for collection or that the bank retained the check for the purpose of collecting it at some later date? A. Yes, sir.

Q. One of the things? A. Yes, sir.

Q. And then if eventually the bank did give up the check it indicates that it was paid, does it? A. Yes, sir; in the ordinary course of business it would.

Q. And this slip would satisfy the situation, is that right? A. If the check was pinned to the wrapper.

Q. I show you a check dated December 27, 1910, for $2000 made by the Middlesex Hat Company to the order of John B. Scarlett and I ask you to look at the protest D-52 and tell me whether that is the check referred to in the protest?

Mr. Guild: That goes in evidence if you examine on it.

A. I can't say that that is the same check.

Q. But the date is the same? A. The dates are the same.

Q. The amounts are the same? A. The amounts are the same.

Q. And apparently it went through the bank a number of times judging from the number of stamps and crosses on the back of it? A. Yes, sir.

Q. And isn't the slip of the Roseville Trust Company—

Mr. Mott: I object to that. I decide to suggest to the Court an objection that he is examining the witness as to the contents of a paper that is not in evidence.

Mr. English: I offer in evidence a check dated December 27, 1910, for $2000.

Marked Exhibit D-64.

Q. Now, I direct your attention to the back of D-64 and ask you if, in the many bank stamps on the back, there is not one of the Roseville Trust Company dated December 27, 1910? A. Yes, sir.

Q. And that is the same date as the check referred to in this protest D-62? A. Yes, sir.

By the Court: Q. You say that is the same date, the same amount and the same maker? A. Yes, sir.

Mr. English: Everything is the same as to the data of the check.

Q. The protest refers to endorsements. Are the endorsements the same? A. Yes, sir; the endorsement is the same.

By Mr. English: Q. So apparently it is the same, isn't it? A. Yes, sir.

Q. Now turn to your proof book of January 3, 1911. You talked about a thousand dollar check of that date; is that right? A. $2000, January 3d.

Q. You looked at that record and you looked at S-57 and you figured out that they referred to the same checks; is that right? A. Yes, sir.

Q. And that referred to a check of January 3, 1911, for $2000? A. Yes, sir.

Q. Now, ordinarily when you cash a check at the

window what did you do with it, what is the very first physical thing that is done with it, what is done with it, is it stuck in a drawer or put on one of those spikes? A. Our items are spindled and the foreign items are put in a pigeon hole.

Q. Now, I show you a paper which I take it is a protest, with Mr. Litterst's name printed on, and dated January 6, 1911, referring to a check of $2000 dated January 3, 1911, and I ask you if you identify that as a protest? A. Yes, sir.

Q. It bears the stamp of the Roseville Trust Company on the back? A. It does.

Q. Paid? A. Paid.

Q. Under what date? A. January 10, 1911.

The paper referred to is offered in evidence and marked Exhibit D-65.

Q. I call your attention to this protest Exhibit D-65 stamped paid on what date ? A. January 10, 1911.

Q. What is the total amount of the protest, with the other man's ten cents added? A. $1.68.

Q. Now, look in the ledger account of Mr. Scarlett for January 10, 1911, and see if you see a debit of $1.68 there? A. I do.

Q. I show you a check dated January 3, 1911, for $2000 made by the Middlesex Hat Company and I ask you to look at it and look at the protest D-65 and tell me whether the date, the amount, the endorsements, and the maker all appear to correspond? A. Yes, sir, they are the same. They correspond.

Mr. English: I will offer it in evidence.

Q. You testified about an entry in the return item book under date of January 16th where you found the figures $2801.68. Do you remember that? A. Yes, sir.

Q. Now, look at the individual ledger of Mr. Scarlett and see if you find an entry there under date of January 16th, and if so, for how much? A. $2801.58, January 16th.

Q. Evidently referring to the same thing? A. Evidently, yes, sir.

Q. And that would seem to indicate that that check was put in for deposit, would it not? A. Or cashed.

Q. And was probably charged to the account? A. Yes, sir.

Q. And the other places simply were the protest fees appear standing by itself, might indicate that the check went through for collection, might it not? A. Where just the fees appear?

Q. Yes. A. Not necessarily.

Q. I said it might indicate that. A. It might, yes, sir.

Q. Mr. Jennings, you are aware of the practice that Mr. Smith would go to the teller's drawer and take out cash and substitute some kind of a paper indicating a charge, are you not? A. Yes, sir.

Q. And he would sometimes substitute a check or sometimes a charge slip? A. Yes, sir.

Q. And of course, if it was done in your absence, for example, all you would know that there was a check indicating—on its face indicating—a check that had been cashed at the window? A. Yes, sir.

Q. Don't you know further not only did Mr. Smith do that, but he would put the check through as an item that had been cashed after it got that far, he would send it on its ordinary way? A. You say this check?

Q. I mean a check that had been substituted for cash by him? A. If it was a check it would go out in the ordinary course of business.

Q. And if, as a matter of face, Mr. Smith had misappropriated the money, then the person against whose account it went out would have to foot the bill, wouldn't he?

Mr. Guild: You are asking this witness to speculate on an imaginary case. If you have any concrete case, submit it.

Mr. English: That is a part of the general practice.

The Court: I do not apprehend that this witness knows who would have to foot the bill. Ask him about the practice of the bank.

Objection sustained.

Q. After a check had gone out for collection, had been taken out of the teller's drawer, if it was not paid, it would come back and be charged to some depositor's account, wouldn't it, in the ordinary course? A. In the ordinary course of buisness it would, yes.

Mr. Guild: You the speaking of a check of the Roseville Trust Company?

Mr. English: No, sir, any check of any bank. I am speaking of a situation where a check is taken from the teller's cash and it goes out.

Q. Do you understand that? A. Yes, sir.

Q. If this check is paid in the ordinary course then it is charged to the account of the man whose name appears on the back? A. Yes, sir.

Q. That is to reimburse the bank for the money that is supposed to be out on account of that check? A. Yes, sir.

Q. And if Mr. Smith had taken the money, or the amount of money named in the check and put it in his pocket, then the depositor is required to pay for the money which Smith took; is that right? A. I don't feel qualified to answer question.

Q. Do you know how much Mr. Smith appropriated in that way, or misappropriated in that way? A. No.

Objected to.

Objection sustained.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q I show you Exhibit D-64, which is a check dated December 27, 1910, $2000, Middlesex Hat Company, drawn to the order of John B. Scarlett. (Shows to witness.)

Mr. Guild: I presume you admit that that is his endorsement on the back of the check?

Mr. English: Yes, that is Mr. Scarlett's signature.

Q. I ask you whether you are able to say from anything that appears on that check whether it was cashed? A. Yes, sir.

Q. What enables you to say? A. It bears the stamp marked "First teller."

Q. What does that mean? A. That is the paying teller's stamp that is put on foreign checks after they are cashed.

Q. After they are cashed? A. After they are cashed, indicating that the check has been cashed.

Q. Was that check cashed at the Roseville Trust Company? A. Yes, sir.

Q. I show you Exhibit D-66, check dated Jan-

uary 3, 1911, of the Middlesex Hat Company, for $2000, pay to the order of John B. Scarlett—

Mr. Guild: You admit Mr. Scarlett's endorsement?

Mr. English: Yes, sir.

Q. —and ask you whether from an examination of that check you are able to say whether it was a check cashed at the Roseville Trust Company? A. Yes, sir.

Q. When I say cashed, I mean as distinguished from deposit or a check left for collection? A. I can say that it was cashed.

Mr. Guild: I ask the defense to produce a charge slip that goes with this protest of January 17, 1911, being Exhibit D-65.

Mr. English: We have charge slip of that date for $1.68. It has on some red pencil marks. I don't know who put them on. I understand they are not part of the original charge slip.

Q. Look in the individual ledger account of Mr. Scarlett dated January 17, 1911. Do you find a charge? A. A charge of $1.68.

Q. Will you look under date of January 24th and see if you find any charge? A. A charge of $1.68.

Q. Is that all you find under that last date? A. Yes, sir.

Q. I show you a charge slip of the Roseville Trust Company of January 17, 1911, and ask you if that is the charge slip entered under that date for $1.68? A. Apparently, yes, sir.

The paper referred to is offered in evidence and marked Exhibit S-99.

Q. I show you a charge slip under date of January 24, 1911, for $1.68 and ask you whether that is apparently the charge entered in Scarlett's ledger account? A. Yes, sir.

Q. Is it marked paid? A. Marked paid.

Q. The other one wasn't marked paid? A. No, sir.

The paper referred to is offered in evidence and marked Exhibit S-100.

Mr. English: I understand the lead pencil marks are not part of the exhibit.

By Mr. English: Q. Were any of these lead pencil marks on this original as far as you know? A. No, sir.

Q. They are not part of the original exhibit? A. No, sir.

Mr. English: Then I suppose they are to be ignored.

The Court: Yes.

Mr. Guild: I demand the production of checks of Middlesex Hat Company for $2800 dated on or about January 9, 1911.

Mr. English: (Handing counsel paper.) We have a check here for $2800.

Q. I show you a check dated January 7, 1911, of the Middlesex Hat Company for $2800, payable to the order of John B. Scarlett.

Mr. Guild: Do you admit that this is Mr. Scarlett's signature on the back?

Mr. English: Yes, sir.

Q. Has that check been through the Roseville Trust Company? A. Yes, sir.

The paper referred to is offered in evidence and marked Exhibit S-101.

Q. Are you able to say whether this check for

$2800, from anything that appears on the face, was a check that was cashed, as distinguished from a collection or deposit check? A. Yes, sir.

Q. What is there about it that indicates it was a cashed check? A. Rubber stamp marked "First teller."

Q. Do you say that it was cashed at the Roseville Trust Company? A. I do.

Mr. Guild: I demand the production of the check dated on or about January 17, 1911, of $2000.

Mr. English: We have two of that date.

Mr. Guild: Let me have them both.

(Papers handed counsel.)

Mr. Guild: I request the production of a check of the Middlesex Hat Company dated on or about January 16, 1911, for $2000.

Mr. English: We haven't got it.

Mr. Guild: One for $700 on or about that date.

Mr. English: We haven't got it.

Mr. Guild: I request the production of any checks you may have for $700.

Mr. English: We haven't any such checks.

Q. I show you check of the Middlesex Hat Company dated January 17, 1911, payable to the order of John B. Scarlett for $2000, and ask you whether that check went through the Roseville Trust Company? A. Yes, sir.

Mr. Guild: Do you admit Mr. Scarlett's endorsement on that check?

Mr. English: Yes, sir.

The paper referred to is offered in evidence and marked Exhibit S-102.

Q. Will you see whether or not from the books of the bank that check was credited to Mr. Scarlett's account? A. I can't tell from the entry in this ledger. There is a deposit on that date.

Q. For how much? A. $4000.

Q. We will just let that drop a minute. I show you another check of the Middlesex Hat Company dated January 17, 1911, for $2000 payable to the order of John B. Scarlett.

Mr. Guild: Do you admit the endorsement of that check?

Mr. English: Yes.

Q. Has this check been through the Roseville Trust Company? A. Yes, sir.

The paper referred to is offered in evidence and marked Exhibit S-103.

Q. Now, I ask you whether you find a credit to Mr. Scarlett's account on January 17, 1911, of $4000? A. No, on January 18th, $4000.

Mr. Guild: I request the defendant to produce two protests that accompanied these checks and charge slips.

Mr. English: We can't produce the protests, because there were none, and we have no charge slips covering those dates.

Mr. Guild: I ask for a charge slip dated January 3d.

Mr. English: We haven't any such thing.

Mr. Guild: Can you give me a charge slip of January 11th?

Mr. English: Yes, for $1.68, and another one of January 11th for $1.68.

Mr. Guild: Have you one of January 16th?

Mr. English: Yes, for $2801.68.

Mr. Guild: Have you one of the 18th?

Mr. English: No, sir.

Mr. Guild: Have you one of the 23d?

Mr. English: Yes (producing paper).

Mr. Guild: Have you one of the 24th?

Mr. English: No, that is all. I have exhausted the list.

Q. I show you charge slip of the Roseville Trust Company dated January 11, 1911, a charge against John B. Scarlett. Will you say whether that is entered in this ledger account? A. Yes, sir.

The paper referred to is offered in evidence and marked Exhibit S-104.

Q. I show you another charge slip dated January 4, 1911, charging the account of John B. Scarlett $1.68 and ask you whether that appears in his ledger account? A. No, sir.

Q. Only the one charge? A. Only the one under date of January 11th.

Q. I have made a mistake about the dates. While the date in ink is January 11th, in the one which you are now looking at the stamp marked "Paid" is January 10th, is it not? A. Yes, sir.

Q. See if you find that? A. Yes, sir; there is a charge on January 10th, $1.68.

By Mr. English: Q. Which is right, the handwriting or the slip? A. The slip.

The paper referred to is offered in evidence and marked Exhibit S-105.

By Mr. Guild: Q. I show you a charge slip dated January 16, 1911, charging the account of J. B. Scarlett, $2801.68, and ask you if you find that charge on his ledger account? A. Yes, sir.

Mr. English: Is that stamped paid?

Mr. Guild: Those are all marked paid.

Q. I show you S-106, slip of the Roseville Trust Company, January 23, 1911, charging the account of John B. Scarlett with $3.38, and see if you find that charge on his account? A. Yes, sir.

The paper referred to is marked Exhibit S-106.

Mr. Guild: I call for the production of charge slip—

Mr. English: We have no more charge slips. We have produced all we have.

Mr. Guild: When Mr. Scarlett was on the stand I asked him if he had his Fall River check book. I designated it by that name because I don't remember the name of the banker. He said he would look for it.

Mr. English: He did look for it and could not find it.

Mr. Guild: I ask for the production of a check of the Bras d'Or Land Company of March 6, 1911, or thereabouts, $700.

Mr. English: We haven't got it.

Q. Calling your attention to check of $2000, check of the Middlesex Hat Company, dated December 27, 1910, was it charged to Mr. Scarlett's account as shown by the ledger? A. No, sir.

Q. It was not charged to him? A. No, sir.

Q. Why not?

Mr. English: I object unless he knows. Has he any recollection of it?

Witness: I haven't any recollection, but I know.

Mr. English: He knows by something that he found out afterwards.

The Court: Upon what is your knowledge based?

Witness: Records of the bank.

Mr. English: It would be only the witness's guess.

By the Court: Q. Can you answer the question why it was not charged? A. Yes, sir.

Mr. Guild: I would like to enlarge that question a little bit.

By Mr. Guild: Q. Did that check come back protested? A. Yes, sir.

Q. Was it charged against Mr. Scarlett's account? A. No, sir.

Q. Why not?

Mr. English: I make the same objection.

The Court: He may answer it if he can.

Objection overruled.

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

H. V. OSBORNE,

(Seal) Judge.

A. Insufficient funds.

Q. Was the check sent out again? A. Yes, sir.

By the Court: Q. You are testifying now from the record before you and not from any personal recollection? A. Yes, sir.

By Mr. Guild: Q. I show you Exhibit D-66, being the check of the Middlesex Hat Company, $2000, dated, January 3, 1911, to the order of John B. Scarlett, and admittedly endorsed by him, and ask you whether that check was paid when it was sent out the first time? A. No, sir.

Q. Came back protested? A. Yes, sir.

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

Q. Why not? A. For the same reason, insufficient funds.

Q. Was the check sent out the second time? A. Yes, sir.

Q. That was after it was protested? A. Yes, sir.

Q. And that answer applies to the former check that I asked you about? A. It does.

Q. I call your attention to Exhibits 102 and 103 dated January 17, 1911, and which were credited as a lump item of $4000. Are you able to say whether both of those checks were paid at the bank upon which they were drawn?

Mr. English: I object, because he was not connected with the bank on which they are drawn.

Obviously he would have to guess at that answer.

By the Court: Q. Is there anything on the paper which would indicate that? A. Yes, sir.

Q. Then can you say from an inspection of the instrument? A. I can.

Mr. English: I object because it speaks for itself and anybody can tell as much about it as this witness.

The Court: Objection overruled.

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

H. V. OSBORNE,
Judge.

(Seal)

By Mr. Guild: Q. Were they paid or either of them by the bank upon which they were drawn?

Mr. English: I object to that for the reasons stated.

Objection overruled.

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. No, sir.

Q. Can you say whether either of those checks is charged against Mr. Scarlett on the ledger? A. There is a charge up here of $2001.68.

Q. Under what date? A. January 18th.

Q. What is the date of the check? A. The date of the check is January 17th.

Q. Well, now, at a later date is there anything indicating that those checks, or either of them were charged against Mr. Scarlett's account? A. There is also another charge on the 31st of January.

Q. How much? A. $2001.62.

Q. And the $1.68 would represent what? A. Protest fees.

Q. These checks you will observe, S-102 and 103, are dated the 18th of January, and are drawn on that day, and were deposited on what day, according to your records? A. The checks are dated January 17th and credited January 18th.

Q. Will you examine these checks and say how soon it was possible after the date of their deposit for them to have been returned to your bank? A. That would be merely a guess.

Q. I don't ask you to guess; I ask you to look at the back of those checks and tell me if they could have been returned on the 18th? A. No, sir; they couldn't have been returned on the 18th of January.

Q. So the charge on the 18th of January could not have been either one of those checks? A. No, sir.

Q. Why do you say that? A. Because the checks could not have reached their destination in that time.

Q. Is there anything indicated on the back of those checks showing how long they were out, to what date they were out? A. Yes, sir.

Q. What is it? A. I think, as near as I can read the last endorsement on here, about the 23d.

Q. Of January? A. Of January.

Q. So that charge on the 18th of January could not have been either one of those checks? A. No, sir.

By the Court: Q. Is there anything on those checks to show where they went? A. Yes, sir.

By Mr. Guild: Q. What endorsement was that, what bank? A. First National Bank of Perth Amboy.

Q. Where then did they go? A. Why, evidently from our bank to the Fourth Street National Bank of Philadelphia; I can't tell whether they went to the National State Bank of Elizabeth or to the Fourth Ward, but they passed through both of those banks and sent to the First National Bank of Perth Amboy and sent from Perth Amboy to the Metuchen Bank.

Q. You see the last date is January 23d? A. Yes, sir.

Q. If it took until the 23d of January to get to the bank, would it take as long as to get back here, if it took five days to get back to your bank? A. In the natural course of business it would.

By Mr. English: Q. When a check goes in for

deposit it is ordinarily accompanied by deposit slip, isn't it? A. Not in all cases.

Q. I said ordinarily? A. Ordinarily, yes.

Q. That is the proper banking practice, isn't it? A. Yes.

Q. When you said in all cases you were referring to departure from what was the general practice, were you not? A. Yes, sir.

Q. Now, I show you these two checks, S-102 and S-103; look at the back and tell me if they were not in the possession of the Roseville Trust Company on January 18, 1911, as appears by the stamp on the back? A. Yes, sir.

Q. Are those the two checks you just had? A. Yes, sir.

Q. I show you one of the deposit slips which is in evidence here as D-1 and call your attention to a deposit slip of January 18, 1911, of two $2000 checks. A. Yes, sir.

Q. They refer to the same checks, don't they, very apparently? A. Apparently, yes, sir.

Mr. Guild: There was not any question of their having been deposited on that date, Mr. English.

By the Court: Q. Do you find them in the individual ledger as of that date? A. Yes, sir.

Q. Those are the same checks, as I understand you to say, that came back to your bank uncollected? A. Those are the same items.

Q. Not good? A. Not good.

Mr. English: I don't understand him to say that.

Mr. Guild: He said they came back protested.

By Mr. English: Q. How are you able to say that? A. Records of the bank.

Q. Just point out to me a record which indicates that the check last referred to came back protested. A. Return item book, the individual ledger, and the charge ticket.

By the Court: Q. Does the return item book contain a letter sending it back to you? A. I am speaking about these return item books, in other words, the proofs of exchanges.

By Mr. Guild: Q. I would like to call your attention to the fact that you have stated that those checks went to Philadelphia?

Mr. English: What difference does that make?

Mr. Guild: It makes a great deal of difference, because the checks that went to Philadelphia would be entered in one book and the checks that went to the Union National Bank were entered in another book.

Witness: I can tell from this record.

Mr. English: He refers to the individual ledger.

The Court: Read from the individual ledger. ?

Witness: January 17, 1911.

Mr. English: Protested on what date?

The Court: That is for him to say.

Mr. English: I want him to look at that ledger to give me the information that checks marked 102 and 103 respectively were protested.

By Mr. English: Q. What do you refer to under January 23d? A. Protest charge of $3.38.

Q. That is all that appears there? A. Yes, sir.

Q. And you swear positively that that $3.38 refers to those two checks, looking at that record? A. Yes, sir.

Q. How can you do that? A. There is two $2000 checks protested.

Q. One protested when? A. I don't know the date they were protested; they are charged here the 23d.

Q. Then how do you know that there were two $2000 checks protested? A. When I testified I think I had the checks before me and also some charge tickets.

Q. I am asking you this question: How are you able to swear, from an entry of $3.38 on check 23, that you can swear that that refers to those two checks? A. I can't swear from this alone.

By Mr. Mott: Q. Are there any other books or papers that you need to answer the question? A. I say, if I may see the checks and the charge tickets.

Mr. Mott: They haven't produced the charge tickets of this date at all.

The Court: Have you any other charge tickets?

Mr. English: No.

Q. Don't the bank send a letter with them? A. If they went to the depositor.

Q. No, from the bank sending them to you.

Mr. Guild: Yes, there is.

By the Court: Q. You are now shown Exhibit S-75; is there any other record that you care to refer to. (The general cash book is handed to the witness.) Would that help you? A. Yes, it would. Credit to Philadelphia on the 31st—

Q. Do you need anything else, are you sure? A. No, that is all I need.

Q. From what you have before you can you answer the question? A. A credit of Philadelphia $2001.62 and another credit of $2001.62.

By Mr. English: Q. Under what date? A. The 31st of January.

Q. And you pointed to a charge on the ledger of January 23d? A. Let me see that a moment. (Paper handed witness.) No.

Q. You just pointed to an item in the ledger; that is the ledger entry you pointed to (indicating)? A. Yes, sir.

Q. You are referring to the other date now, dated January 31, 1911, eight days afterwards; is that right or is it not? A. Yes, sir.

Q. And this letter, this S-75, this bank letter to Philadelphia, is dated January 30, 1911, isn't it? A. Yes, sir.

Q. If the bank was able to make a protest entry on January 23, 1911, it shows it had the data on that date? A. Yes, sir.

By the Court: Q. Now, is that from the papers which you just referred to, these checks S-75, which is the Philadelphia letter, S-6, which is the personal ledger, and the general cash book, S-76, that you are able to say that these checks were returned to the Roseville Trust Company, paid; is it from a reference to those exhibits that I have just mentioned that you give that testimony? A. No; I think I was mixed up on that, as far as the general cash book and the letters are concerned.

By Mr. Guild: Q. Which were you mixed on? A. As referring to these two items.

Q. As under what date? A. And the charge in the individual ledger January 23d.

Q. What you were mixed up in was giving the wrong date? A. When I testified that these items were protested I referred to the records in the individual ledger under date of January 23d, $3.38

fees; that would be the protest fees on these two checks that were returned.

Q. Were you right or were you wrong? If you were wrong, straighten it out. A. I think I was right. I was asked if these were the two checks.

Q. The question that you were asked some time ago was whether the checks were paid and you said they were not? A. Yes, sir.

Q. And then you were asked on what you base that statement and you said by referring to certain items in the books you could say so. A. The indorsement on the checks have all been cancelled.

By Mr. English: Q. What is that? A. The various endorsements on the checks have all been cancelled, which proves that they were not paid by any of these banks.

Q. You change your testimony? A. I think I was mistaken.

Q. When you referred to cancellation— A. Cancellations of endorsement.

Q. These pencil scratches? A. That is what we consider cancellation of endorsement.

Q. Is there anything to indicate when it was not paid, when it was finally determined it was not paid? A. No.

By the Court: Q. Was it charged up, when it came back, to anybody? How was it treated when it came back to your bank, was it treated as a paid or unpaid item, paid or unpaid check? A. There is one charge on January 31st of $2001.62 which would evidently show that one of the items was paid.

Q. What is this reference on January 31st that you spoke of? A. This $1000 credit to Philadelphia.

Q. What would that indicate? A. That we received those items from Philadelphia and gave them credit for it.

Q. Would it indicate anything in conection with whether they had been paid? A. Yes, sir.

Q. Would it or would it not? A. It would indicate that they had not been paid. It is marked on the back.

Q. Is there anything except the marks on the back of the check which would indicate that it had not been paid, from your record? A. Yes, sir, this letter and the entry in the cash book.

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

After recess.

AUGUSTUS R. JENNINGS resumes the stand:

Cross-examination continued by Mr. English:

Q. Now, Mr. Jennings, I call your attention to Exhibit D-64, which is the $2000 check dated December 27, 1910, also Exhibit D-66, which is the $2000 check dated January 3, 1911, and also Exhibit S-101, which is the $2800 check dated January 7, 1911, and as I understand your testimony, you say you are able to say that those checks were cashed because they have stamped on each of the checks the word "First teller;" is that correct? A. Yes, sir.

Q. And that is the record that you point to to

base your testimony on that the check was paid? A. That is the paying teller's stamp.

Q. I understand that, but I ask you if that is the record that you point to to justify your testimony that those checks were paid? A. It is not exactly a record.

Q. Well, call it anything you want to. A. It is the indication that they passed through the paying teller's department.

Q. No matter what you call it, that is the thing you point to, "First paying teller" that enables you to say that the checks were paid, that is what you tie up to? A. Yes, sir.

Q. I understand you to say you have no personal recollection about it? A. No, sir.

Q. And I understand you to say in the ordinary course of business, when a check was put in at the window, you put your stamp "First Teller" on it? A. Yes, sir.

Q. So if it was done in the course of business it would have been put on by you or somebody else who was occupying the paying teller's place at the time? A. Yes, sir.

Q. Isn't it also possible that this check, or any of these three checks, may have come to the possession of Mr. Smith, who stamped on the word "First Teller" and took out the money and put the checks in the teller's drawer? A. Do you want me to answer that yes or no?

Q. I ask you if it was possible? A. It was possible.

Q. And it is true that he did it in some cases? A. I don't know of any case in which he did that.

Q. I don't suppose he did it in your presence, but don't you know that he did such a thing? A. No, sir.

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

Q. But that was a practice which was possible under the circumstances in the bank, was it not?

Mr. Mott: I object to "that was a practice that was possible."

The Court: I suppose it could be done by anybody who had access to the paying teller's department in his absence. I think the objection is well taken as to the use of the word "practice." The witness's testimony clearly indicates, as far as his knowledge was concerned, that it was not the practice.

Q. Now, that think was a possible thing which could happen in the bank, was it not? A. It was possible.

Q. And Mr. Smith had access to the paying teller's cage? A. Yes, sir.

Q. And he had access to this stamp? A. Yes, sir.

Q. I call your attention now to the check S-101, which is the $2800 check dated January 7, 1911; that check was charged to Mr. Scarlett's account on January 16, 1911, together with the protest fee of $1.68, was it not? A. Yes, sir.

Q. And there had been deposited on the previous day by Mr. Scarlett, or to his account, $2900? A. The same day.

Q. And that appears in the individual ledger? A. Yes, sir.

Q. You have said that the checks D-64 and D-66, being checks originally for $2000, dated December 27th and January 3d, were not charged because of insufficient funds; you stated that from the individual ledger as appears before you; is that it? A. Yes, sir.

Q. Therefore if the ledger was accurate then you think there wasn't sufficient funds? A. I testified what appears here.

Q. Assuming that it was accurate? A. Yes, sir.

Q. If as a matter of fact Mr. Scarlett had deposited other moneys which had not been credited to his account I suppose you would change your testimony on that and say that "ought to have been"?

Objected to.

The Court: I suppose he can change his testimony.

(Question read.)

A. No, sir.

Q. Because you are testifying from the record? A. Yes, sir.

Q. I show you D-19 in evidence, which is a check of Kanouth, Nachod & Kuhne, dated November 21, 1910; as already appears in evidence, the money was received by the Roseville Trust Company and endorsed for deposit by John B. Scarlett. Do you find any entry of that credit on the individual ledger under date of November 22d, which is the date the Roseville Trust Company put it through? A. Yes, sir.

Q. You find a credit of $2000? A. Yes, sir; I find a credit of $2000 on that date.

Q. Whether it is that or not you don't know? A. No, sir.

Q. Look at two checks in evidence as D-21 and D-20 of November 19, 1910, each, and which are stamped on the back by the Roseville Trust Company showing they got the money on November 22, 1910. Just see whether they appear on the ledger? A. I don't see any credit on the ledger.

Q. So that the ledger is shy $2000 which ought to have gone to the credit of Mr. Scarlett; isn't that correct? A. I don't know.

Q. There are not $4000 entered there anywhere in accordance with the stamp on the exhibit I showed you? A. No, sir.

Q. Now, look at the ledger entry of January 8, 1911, about which you were interrogated, $2001.68. You said that under the practice of sending checks around that could not have referred to the $4000 deposit which was made on the day before; that is right? A. Yes, sir.

Q. Isn't it quite possible that it could have referred to a check of January 3, 1911, D-66 for $2000, which came back protested, together with the letter, and the ten cents that the New Brunswick Bank gets, to the amount of $1.68? A. Did you ask me if it was possible?

Q. Yes. A. Yes, it is possible.

Q. If that possibility was the fact then that would take care of that check? A. If that possibility was the fact.

Q. If that possibility was the fact, and if it is also the fact that Mr. Scarlett also deposited that in November which he got no credit for, that credit which was earned, but not given, would take care of the other check of $2000, would it not? A. If he had made a deposit that was not credited to his account it would have taken care of that check.

By Mr. Mott: Q. You were shown certain checks that had on them the paying teller's stamp and were asked what evidence you found that the checks had been actually cashed, and you named first, the stamp of the paying teller. Would you

find other evidence that those checks were actually cashed in the other exhibits here? A. In the paying teller's proof book.

By Mr. English: Q. One follows from the other —I mean the entries in the paying teller's proof book because you find the check in the drawer with the stamp on it; is that right? A. The check is in the drawer; they are not necessarily stamped at that tim.e

Q. They can be stamped any time? A. They are usually stamped after they are entered in the book.

Q. So that after you write these up you send the ones that are in the drawer, is that it? A. Yes, sir; they were stamped before they were turned over to the receiving teller.

Q. You stamped and entered them because they were in the drawer? A. Yes, sir.

FRED L. COBB re-called in behalf of the State in rebuttal:

Direct-examination by Mr. Guild:

Q. You were connected with the Essex County National Bank? A. Yes, sir.

Q. And were on the 16th of November, 1910? A. Yes, sir.

Q. The slip which I show you is commonly known as a deposit slip, Essex County National Bank deposit slip? A. Yes, sir.

Q. Did you produce that at the request of the prosecutor's office? A. Yes, sir.

Mr. Guild: I am going to offer it in evidence.

Mr. English: I am going to object to it because it is a slip of the Essex County National Bank, which is an outside bank, which is an outside company, and that in itself would make it immaterial.

The Court: An examination of the slip discloses enough to indicate that it may well be connected with this case, and upon the statement of the prosecutor that it will be connected, I will admit it.

Mr. English: I object on the ground that it is immaterial.

The Court: I cannot determine that now.

Mr. English: I also reserve the right to move to strike it out as not being connected with this case.

The Court: I will admit it and you may reserve that right.

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-108.

Q. What does this deposit slip show? A. It shows that there was credited to the Greylock Land Company on November 16, 1910, $2000 in currency, deposited at the ladies' teller—I think at the ladies' teller's window.

Q. The original name or the depositor in the slip is what? A. John B. Scarlett is scratched off.

Q. The original name in the slip in ink was what? A. John B. Scarlett.

Q. Is that struck out? A. Yes, sir.

Q. And what other name is substituted? A. Greylock Land Company.

Q. In lead pencil? A. Yas.

Q. Do you know in whose handwriting that is? A. In the handwriting of Howard W. Myers, the ladies' teller in the bank. I think this deposit was made up—

Mr English: Never mind that.

Q. Can you say whether that deposit was credited to the Greylock Land Company? A. It was.

Q. Under that date? A. Yes, sir.

Q. Do you know who made the deposit? A. No.

Q You started to say you thought you knew? A. I don't know positively except at the window he probably changed the ticket; it was probably brought in with the Greylock Land Company pass book and I think—it is taken by the teller, by the ladies' teller's window, and I think probably Mr. Scarlett's—

Objected to.

The Court: Strike that out.

By the Court: Q. You merely infer that it was brought in by a lady because it was admitted at the ladies' teller's window? A. Yes, sir.

By Mr. Guild: Q. By that you mean it was made at the window where women go to make deposits in the bank? A. Yes, sir.

Q. How can you tell that from this paper? A. I know the handwriting of the receiving teller that made that lead pencil change there.

Q. And he is the ladies, man, so to speak? A. Yes, sir.

Q. All that this means to you is that somebody, presumably a woman, appeared at yaur bank on

the date of this slip and deposited $2000 to the the credit of the Greylock Land Company? A. Yes, sir.

Q. And that is all it does mean? A. Yes, sir.

RAYMOND E. SMITH, re-called in behalf of State in rebuttal:

Direct-examination by Mr. Guild:

Q. I show you Exhibit S108, being an Essex County National Bank deposit slip and ask you if you have seen that before? A. Yes, sir; I have.

Q. When did you see it? A. November 16, 1910.

Q. Is that the date on the slip? A. Yes, sir.

Q Did you make it out? A. I did.

Q. That is, you made out what is in ink? A Yes, sir.

Q. In whose name is the deposit slip? A. John B. Scarlett.

Q. As made out by you? A. Origially, yes, sir.

Q. And the amount? A. $2000.

Q What else, if anything, did you have to do with the deposit? A. What else?

Q. Yes, besides making out the slip what did you have to do with that deposit? A. Why, I sent the money down there with the ticket.

Q. With the ticket you have before you? A. Yes, sir.

Q. Two thousand dollars? A. Yes, sir.

Q. At whose request? A. Mr. Scarlett's.

Q. On what date? A. Sixteenth of November, 1910.

Q. Where did the money come from? A. Roseville Trust Company.

Q. From what source? What I mean is, was it a check or discounted note or what? A. It was cash.

Objected to.

(After discussion objection wiardrawn.)

Q. By whom did you send that money to the Essex County National Bank? A. By a messenger from Mr. Scarlett's office.

Q. Do you remember whether it was a man or woman? A. I think it was Mr. Scarlett's stenographer, but I couldn't say positively.

Q. Now, the question is, from what did you get the money or through what source did you get the money that you deposited or had deposited according to that slip? A. The money came from the paying teller's department of the Roseville Trust Company and was cash that was represented by two checks on Metuchen, $1000 each.

By Mr. English: Q. What is that? A. It was cash that was represented by two checks on Metuchen of $1000 each.

By Mr. Guild: Q. I show you Exhibit S44 and ask you whether the checks that you refer to are the checks mentioned in the letter, which is an outgoing letter? A. Yes, sir, these are the checks.

Q. What checks were they—who was the maker? A. Checks of the Middlesex Hat Company drawn on the Metuchen National Bank.

Q. To whose order? A. Stevenson, Rye & Company, I think.

Q And endorsed by Stevenson, Rye & Company? A. Yes, sir; I think so.

Q. Do you remember those checks being brought to the Roseville Trust Company? A. Yes, sir.

Q. Who brought them? A. I think it was Mr. Scarlett's stenographer.

Q. Accompanied by any request? A. Yes, sir.

Q. What? A. The request that I send down $2000 in cash to the Essex County National Bank.

Q. Did you cash the checks? A. Yes, sir.

Q. That is, the Roseville Trust Company cashed them? A. Yes, sir.

Q. And they were not deposited? A. The checks were not deposited; they were cashed.

Q. And they were not taken for collection? A. No, sir.

Q. Can you tell the Court and jury, either from recollection or by reference to records of the bank, whether those checks were paid, that is, the two checks that you cashed? A. The checks were not paid.

By the Court: Q. Do you recall whether there were any other papers offered in this mass of testimony concerning this particular transaction during the course of this trial—deposit slip or protest? A. Protest book, yes, sir.

Q. The protest book? A. The protest book will show those two checks.

Q. On the Middlesex Bank? A. Yes, sir.

By Mr. Guild: Q. Mr. Smith, if you can, will you trace the history of those two checks from the time that they went into the Roseville Trust Company down to the time that you last knew of them and tell us, if you can, what became of them? A. The checks left the Roseville Trust Company on the 16th of November, 1910; were sent to the Union National Bank for collection and credit.

Q. The evidence of their having been sent to the Union National Bank is the outgoing letter that you have before you? A. Yes, sir. The Union National Bank sent them to their correspondents

in New Brunswick and New Brunswick sent them to Metuchen.

Q. Did they come back? A. The checks were returned to us on the 23d of November, 1910.

By the Court: Q. Any record in your bank book of that? A. Yes, sir; there is a record there.

By Mr. Guild: Q. In what book? A. The return item book—that is, the exchange return item book.

Q. What further have you to say about those two checks? A. Those two checks were returned to us on the 23d and protested—they were returned under protest to us on the 23d; the protest wrapper was taken off of them and charged to Mr. Scarlett's account.

Q. The protest fees were charged to his account? A. Yes, sir, the fees only, just the wrapper.

Q. Will you refer to his ledger account and see whether the protest fees appear there?

The Court: Do I understand, Mr. English, that you claim that you should have been creditel with this item? You have produced some protests and deposit slips claiming that you should have been credited.

Mr. English: We deny that those checks were cashed.

Q. You specified checks on the 16th of November? A. They were used on the 16th of November. You asked me to turn to Mr. Scarlett's account.

Q. Yes. A. On the 23d of November, 1910, there is a charge of $3.16 against Mr. Scarlett's account.

Q. That indicates the protest of how many checks? A. Two.

Q. I show you Exhibits D32 and D33, being protests. You said that the checks came back on a certain date protested. I ask you whether those are the protests? A. Those are the protested wrappers or manifests, we call them, that are attached to the checks when they are returned.

Q. You started to tell us what happened to the checks after they came back protested? A. After the fees were charged to Mr. Scarlett's account the checks were put through again in the same way as they were on the 16th of November, that is, they were sent to the Union National Bank for correction and credit.

Q. I show you Exhibit S47, which is one of your letters to the Union National Bank, and ask you whether you find any records of those checks accompanying this letter? A. Yes, sir, there are two checks marked Metuchen, Stevenson, Rye & Company are the endorsers, for $1000 each.

Q. You say that is the second time they were sent out? A. Yes, sir.

Q. Well, can you say what happened after that? A. The checks came back the second time under protest on December 1st, I beleive.

Q. Is there anything by which you can fix the date or approximately the date? A. The return item book, that is, showing the outs and exchanges of that date which would prompt my memory.

Q. Are there any protest fees charged up about that date? A. I think so.

Q. Do you find them? A. No, sir, not on Mr. Scarlett's account

Q. Would they be charged anywhere else? A. Yes, sir; I think I can find it in the general cash-book. (After examining book.) Those figures are

charged here on the general cash-book to expense account on that date, December 1st.

Q. Why were they not charged to Mr. Scarlett? A. Because the checks should have gone through "No protest" the last time; they went through and were not so marked and therefore I charged the fees to expense.

Q. Do you know what further, if anything, happened to those two checks, whether they were sent out again? A. They were sent out again on December 1st.

Q. I show you Exhibit S48, being Roseville Trust Company letter, to Union National Bank, and ask you if you find any indication there of the checks having accompanied that letter? A. Yes, sir; there is a memorandum here, "Stevenson, Rye, Metuchen, $1000," twice.

Q. Were the checks paid? A. No, they were returned again.

Q. What evidence have you of that? A. On the return item book of that date.

Q. I show you Exhibit S94. See if you can find evidence of what you say there. A. On December 7th there are two return items of $1000.

Q. How do you connect that up with these two Metuchen checks? A. It is a matter of proving the exchanges that day, the same way as proving it for the certified check that was held out on that day—at a later date, I should say.

By the Court: Q. Have you any personal recollection of this transaction? A. I have, yes, sir.

By Mr. Guild: Q. Are you able to say from your present recollection that those checks came back the third time? A. I remember they were returned the third time.

By the Court: Q. How many times did they go through, according to your recollection and the books? A. Three times.

Q. Were they finally paid? A. They were paid, yes, sir.

Q. How and by whom? A. They were paid at the Roseville Trust Company on the 8th day of December, 1910—I think, 7th or 8th.

Q. That ended their history? A. Yes, sir.

Q. Who paid them? A. I paid them.

Q With whose funds? A. Paid them with the funds that had been collected on two previous checks of the Middlesex Hat Company.

Q. Who furnished the checks the proceeds of which paid these checks that we have been talking about, that had this history? A. Mr. Scarlett.

Q. And you say they were checks of the Middlesex Hat Company? A. Yes, sir.

By Mr. Guild: Q. I show you two checks of the Middlesex Hat Company of $1000 each, dated November 19, 1910, marked Exhibits D20 and D21 and ask you whether those are the checks which you say paid the other two checks that we were talking about? A. Yes, sir; they are.

Q. Those checks are payable to the order of whom? A. Stevenson, Rye & Company.

Q. Endorsed by Stevenson, Rye & Company? A. Yes, sir.

Q. And endorsed by whom else? A. They are endorsed as a restrictive endorsement with Mr. Scarlett's name on it.

Q. What do you mean by restrictive endorsement? A. "Pay to the order of Roseville Trust Company, J. B. Scarlett."

Q. Will you explain what that means? A. That was put there by the teller to show from whom he got the checks.

By the Court: Q. Does that mean that Mr. Scarlett endorsed that check over to the Roseville Trust Company? A. No, sir, the teller did it for him.

Q. Does it indicate that that check was endorsed over to the Roseville Trust Company? A. Yes, sir.

By Mr. Guild: Q. Read the endorsement. A. "Pay Roseville Trust Company, of Newark, N. J., or order, J. B. Scarlett."

Q. So that the proceeds of the check then became the property of the Roseville Trust Company? A Yes, sir.

Q. And you say were used to take up the other two checks? A. Yes, sir.

Q. To pay the money that was used by the trust company in connection with the other two checks? A. Yes, sir.

Q. Mr. Smith, these two last checks of $1000 each, were they deposited to the credit of Mr. Scarlett? A. No, sir.

Mr. English: Does Mr. Smith undertake to testify from his own recollection or from the books or what? I think it is important to know. The thing is five years old and he has testified that he had no personal recollection of anything.

The Court: He has testified that he has a personal recollection of these transactions.

By the Court: Q. Can you say, Mr. Smith, that you are telling us that these checks were not de-

posited to his credit from your recollection or the records or both? A. Your Honor, it is both.

Q. Look at his account and see whether it has been credited to him. A. I find by searching the records a great many things come to a person's mind in connection with figures and checks, and so forth, the history of the items quite often brought out in looking at the records, and I remember very distinctly this transaction.

By Mr. English: Q. Do you remember it since you looked at the record? A. Yes, sir.

Q. When did you look them up? A. Only recently.

Q. Since the trial? A. No, sir; before the trial. There is no deposit there on November 23, 1910, for that amount.

By Mr. Guild: Q. Is there anything about the checks themselves to indicate that they were to be deposited? Are the words "For Deposit" on the back of them? A. No, sir; they are not there.

Q. What became of the two original checks for $1000 each after you say they were paid by the proceeds of these two checks? A. They were returned to Mr. Scarlett.

Q. The two checks that you hold in your hand, the check of November 19th, were they paid at Metuchen? A. Yes, sir; according to the stamp here I believe they were.

Q. And in that way you were enabled to take up the other two checks? A. That is it, yes, sir, exactly. There is no indication here of what bank paid these checks, but they are cancelled by some bank and it is not our institution.

Q. They didn't come back to your bank? A. No, sir.

The Court: Was this one of the transactions that you claim credit for?

Mr. English: Yes, we say we deposited that money and the account should have been credited.

The Court: Was there a deposit slip produced in connection with those two checks?

Mr. English: They did not produce any deposit slip.

Q. I show you Exhibit D64, being check of the Middlesex Hat Company dated December 27, 1910, to the order of John B. Scarlett and admittedly endorsed by him. Have you ever seen that check before? A. Yes, sir.

Q. Presented to the Roseville Trust Company? A. Yes, sir.

Q. Can you say on what date? A. About December 27, 1910

Q. Can you say whether it was a deposit, a collection or a cashed check? A. The check was cashed.

Q. What leads you to say that? A. Well, there is several things.

Q. Let us have them all. A. I have initialed this check on the back with my own initials

Q. What is the initial? A. "S." That shows to me that—it means an authorization to the teller to cash it.

Q. What else is there about the checks indicating that it was a check cashed by the trust company? A. The fact that it went through the first teller's cage would show that it was cashed.

Q. What did your bank do with it? A. We cashed it and sent it to the Union National Bank, I think, for collection and credit.

Q. Can you say for whom you cashed it? A. It is cashed for Mr. Scarlett.

Q. And it is a check drawn on the Metuchen National Bank? A. Yes, sir.

Q. Was it paid? A. No, sir.

Q. It came back to your bank? A. It came back to us, yes, sir.

Q. Protested? A. Yes, sir.

Q Were the protest fees charged to Mr. Scarlett? A. Can I look into the ledger?

Q. Certainly. A. (After examining book.) Yes, sir, on January 4, 1910, $1.58.

Q That was 1911 instead of 1910? A. Yes, that should be 1911.

Q. There is a charge slip of the protest fees in with that package of papers? A. There is a charge ticket here, yes, sir.

Q. Was the check sent out the second time? A. Yes, sir.

Q. To the Metuchen National Bank? A. Through the Union National Bank.

Q. Was it then piad? A. No, sir.

Q. Was it sent out again? A. Yes, sir.

Q. How many times was it sent out? A. Three times, I think.

Q. Was it protested after the first time? A. Can I refresh my memory on that?

Q. Yes. What book are you referring to? A. Protest book.

Q. You man Mr. Litterst's book? A Yes, sir.

Mr. English: How can he refresh his memory from somebody else's book. He poses here as a witness testifying from memory.

The Court: I do not see that he has

posed at anything. He has been answering the questions. He has said he is not testifying from memory alone; he has testified that he is testifying from memory and records both.

(The witness refers to the protest book of the Middlesex Bank.)

Mr. Guild: We prefer to have him refer to the return item book.

Witness: There is a return item here on the 18th day of December—January, I guess it is—there is a return item of $2001.68, and also on the 11th of January—

Q. I ask you to refer to the notary's book and ask you if you find anything confirming your dates and figures regarding the protest? A. There is an item of $2000 here, check Middlesex Hat Company, endorsed by Roseville Trust Company, John B. Scarlett, Union National Bank, National Bank of New Jersey, protested on the—that is too far ahead, that is the wrong date; it is the first day of December; there are two items here of $2000.

Q. The date? A. One is dated December 27th, protested on the 14th day of January, $2000.

Q. What was protested? A. The check of $2000 of the Middlesex Hat Company.

Q. That check came back to you? A. Yes, sir.

Q. Are you able to say when? A. On the 4th of January.

Q. Did it go out again or did you retain it? A. It was sent out again.

Q. I ask you was the protest wrapper taken off before it was sent out the second time? A. Yes, sir.

Q. When did it go out the second time? A. January 5th, I think.

Q. It came back about on the 4th? A. January 11th was the next date.

Q. I show you the Roseville Trust Company letter dated January 11th, being Exhibit S61, and see if that will assist you in fixing the date when you sent the check out the second time? A. Yes, the dates correspond with this second date on the check.

Q. And that is what that is dated? A. January 11, 1911.

Q. What do you refer to which you say is this item? A. It is a check on Metuchen dated December 27, 1910, $2000.

Q. And does it show any names in connection with it? A. John B. Scarlett as endorser of the check.

Q. You say that letter refers to that check being sent out the second time. What happened then? A. It went to the Union National Bank for collection credit.

Q. Was it paid? A. No, sir.

Q. Did it come back to you? A. Yes, sir.

Q Can you say when? A. I can't say when without looking up exactly.

Q. What do you need to refer to it? A. The return item book, the exchanges. (After examining book.) On the 17th of January, 1910, a check came back to us from the Union National Bank.

Q. Are you sure of that date? A. Yes, sir; the 17th of January I said, I think.

Q. Will you see if one didn't come back on the 18th? A. Yes, sir; there is.

Q. Isn't that the one you are looking for? A. Yes, sir

Q. That hadn't been paid, of course, or it wouldn't have come back to you? A. No, sir.

Q. Was it charged to Mr. Scarlett's account? A. Yes, sir; it was.

Q. What made his account good on that date? Under what date is the charge? A. The 18th of January.

Q. 1911? A. Yes, sir.

Q. What made his account good? A. There was a deposit of $4000 on the same date.

Q. I show you two checks of $1000, both dated January, 17, 1911, and marked Exhibits 102 and 103, payable to the order of John B. Scarlett, and admittedly endorsed by him, and ask you whether these are the two checks that you credited him with under the date of the 18th which you say appears as a $4000 credit? A. Yes, sir.

Q. You sent those checks out, Exhibits 102 and 103, for collection through the regular course? A. We sent them out for collection and credit, yes, sir.

Q. And I show you a letter of the Roseville Trust Company, Exhibit S64, addressed to the Fourth National Bank, and ask you if those are the checks that accompanied that letter and are referred to in that letter? A. Those are the checks referred to in the letter, yes, sir.

Q. Were those checks paid? A. No, sir.

Q. You say that those checks were not paid? A. No, sir; they returned later.

Q. I show you a letter, S75, being a letter of the Fourth National Bank, of Philadelphia, addressed to Roseville Trust Company? A. Yes, sir.

Q. And I ask you whether that is the letter in which you received those two checks? A. That is.

Q. That is, they were returned protested? A. Yes, sir.

Q. And came back accompanied by that letter? A. Yes, sir.

Q. Now, the reason why, as I understand you, that you were able to charge up against Scarlett's account on the 18th the protested check of the hat company of $2000 was because you credited him with those two checks of $2000 each, Exhibits 102 and 103? A. Yes, sir.

Q. Otherwise, you wouldn't have any balance? A. Well, not enough to—

Q. He wouldn't have had enough to meet that $2000 check? A. No, sir.

Q. What became of these two checks 102 and 103? A. Those checks were sent to Philadelphia National Bank—you mean, after they were returned?

Q. After they were returned. I think you have the return letter. A. One of these was charged to Mr. Scarlett's account, I believe, on the 31st of January. I could tell by referring to one of the return letter books. (After examining book.) One of those checks was charged to Mr. Scarlett's account.

Q. Was Mr. Scarlett's account good? A. His account appeared good on that day for $2000.

Q. The check that you charged to his account, what became of that eventually? A. It was sent to him.

Q. There is still one of those checks unaccounted for. What was next done with it, if anything? A. May I see both tellers' proof-book?

Q. Yes. A. (After examining book.) The check was carried in the cash.

By the Court: Q. I understand the practice was to charge a check only to the depositor's account when the account was good for it? A. Yes, sir.

Q. And when it wasn't good for it you would make some disposition of it. What disposition would you make of it? A. Carry it in the cash usually.

Q. Send him notice? A. Not in this case, no, sir.

Q. I say ordinarily? A. Yes, sir, sent him notice to make it good.

By Mr. Guild: Q. How long, if you can tell us, was that check carried in cash? A. A couple of days, I think, or more. (After examining book.) Over night, I think.

Q. Do you know what next became of the check? A. The check must have been taken up by myself at that time or else sent out again.

Q. I show you Exhibit S68, the Roseville Trust Company letter under date of February 7, 1911, and ask you to look at it and see if it refreshes your recollection in any way as to what next became of this check that we have been talking about, the one that is still unpaid or not charged up? A. Yes, sir.

Q. Tell us. A. This was a new check on Hartford, Connecticut, given by Mr Scarlett to take up this check.

By the Court: Q. The new check is for how much? A. $2000.

By Mr. Guild: Q. You have said that one of these checks was paid. It doesn't make much difference which one; they are both exactly alike? A. Yes, sir.

Q. We will say that one of these checks, S102

was paid by being charged up, as far as the Roseville Trust Company is concerned? A. Yes, sir.

Q. Was being paid by being charged to the account of Mr. Scarlett? A. It was.

Q. You say that the remaining check of $2000 of the hat company was taken up by Mr. Scarlett by a check of the same amount on what institution? A. On Hartford, Connecticut. I can't tell which bank it was on. I have forgotten what bank it was. Some bank in Hartford, Connecticut.

Q. Do you remember the name of any concern with which Mr. Scarlett was connected that did business at Hartford? A. Bras d'Or Land Company.

Q. Are you able now to say whether it was a check of that concern? A. I think it was.

Q. Was the check on Hartford paid? A. No, sir.

Q. Now, I show you check of the Middlesex Hat Company dated January 3, 1911, for $2000, to order of John B. Scarlett and admittedly endorsed by him, being Exhibit D66, and ask you whether that check went through the Roseville Trust Company? A. Yes, sir; it did.

Q. Was it a check deposited to the credit of Mr. Scarlett lying there for collection or was it a cashed check—by that I mean the cash given at the time the check was presented at your bank? A. The check was cashed.

Q. By the Roseville Trust Company? A. Yes, sir.

Q What is there about it to indicate that it was cashed by the Roseville Trust Company? A. It has the first teller's mark on it.

Q. Anything else? A. It appears on his proof that day, January 3d, I think—yes, sir, it does.

Q. And it is a check drawn on the Metuchen National Bank? A. Yes, sir.

Q. What did the Roseville Trust Company do with the check in the way of endeavoring to collect it? A. The check went to the Union National Bank.

Q. I show you Roseville Trust Company letter, collection and credit letter marked S57 and ask you whether you find the check there? A. Yes, sir, on January 3, 1911.

Q. Was the check paid on presentation by the Metuchen National Bank? A. No, sir, returned protested.

Q. Returned to the Roseville Trust Company protested? A. Yes, sir.

Q. Was the check sent out again by you bank for collection? A. I think it was.

Q. Could you tell by looking at it? A. Yes, sir.

Q. Will you please do so? What is the date of protest? A. The 6th of January it is protested in Metuchen.

Q. In the course of business when would it come through again? A. About the 9th or 10th.

Q. See if you can't tell us whether the check was sent out again in an effort to collect it? A. On the 11th, it looks like.

Q. Isn't it the 10th? A. Tenth or eleventh—yes, sir, it is the 10th of January, 1911, it went out again.

Q. I show you your outgoing letter of January 19th marked Exhibit S60 and ask you whether you find the check referred to in that letter? A. Yes, sir, check on Metuchen for $2000 endorsed by John B. Scarlett.

Q. Was it paid when you sent it out the second time? A. No, sir.

Q. About when did it come back, if you can tell us? A. I think about the 17th.

Q. Have you anything there to show? A. On the 17th of January.

Q. Was it sent out again? A. I think it was.

Q. I show you on your outgoing letters dated January 17th—this is dated 1811, of course, it means 1911—Exhibit 63, will that assist you in telling when it went out again? A. January 17, 1911.

Q. Was the check paid? A. No, sir.

Q. When was it received back? A. I think on the 24th—23d.

Q. Won't you look again, please, and be sure about that? A. Twenty-fourth.

Q. Was it sent out again after that?

The Court: This is the fourth time?

Mr. Guild: Yes.

A. I think not.

Q. What became of the check? A. The check was put in the cash.

Q. What? A. It was carried as a cash item, I believe.

Q. For how long? To refresh your memory I will show you Exhibit S66, being one of your outgoing letters. A. Can I refer to the return item book for a minute?

Q. Yes. A. (After examining book) Yes, sir; this letter shows that either this check as a substituted check went out for it on that day, the day it was returned.

Q. Don't the endorsements on that check, being the one that has gone out three times already, in-

dicate that it didn't go out again? A. Yes, sir., they do. There is no stamp on it for the 24th of January.

Q. So something else must have been substituted for it? A. A new check was substituted for it, no doubt.

Mr. Guild: It is a fact that the check itself has no endorsement dates on the back after January 23d, I believe.

By the Court: Q. Was it paid by anybody? A. No, sir.

Q. Has never been paid? A. No, sir.

By Mr. Guild: Q. Now, the substitute check, can you say what check it was and the amount? A. A check on Metuchen, $2000, Middlesex Hat Company.

Q. The Roseville Trust Company letter which I showed you, S66, is addressed to the Union National Bank and you say was the substitute $2000 check? A. Yes.

Q. Now, did the Union National Bank put it through, did they accept it? A. They returned it to us on the following day, I believe.

Q. In order to possibly refresh your recollection, did you have any conversation with the Union National Bank about this item or other items with that same maker on? A. Yes, sir.

Q. What?

Objected to.

Objection sustained.

Q. In any event, Mr. Smith, they refused to put it through their own bank? A. Yes, they did.

Q. And it came back to you? A Yes, sir

Q. When I say "you" I mean the Roseville Trust Company A. It came back to the Roseville Trust Company.

Q. What became of it then? A. I think it was sent to New York State National Bank. I am not sure, though, that that is the one without looking it up.

Q. I understood you to say that that check was returned to you by the Union National Bank on the 26th of January? A. I think I said on the following day or so.

Q. Can you fix about the date when it came back? A. On the 26th, I think; there is a return item here of $2000 on the 26th of January.

Q. Do you recall whether it was accompanied by any other check? A. There was also one of $2700 on that day.

Q. What became of the $2000 Middlesex Hat Company's check that the Union National Bank declined to take?

Mr. English: Are you speaking of this substitute check?

Mr. Guild: Yes.

A. This $2000 that went to the Union National Bank was returned to us; on the same date there was a $2700 check returned to us from the Union National Bank. The $2000 check was the check that we had sent to Union National Bank the day before in exchanging and they called me up and told me—

Objected to.

Witness: They refused to take it as cash and therefore returned it in the exchanges.

Q. What do you mean, refused to take it as cash? A. Simply because there were so many checks of that description being returned in the exchanges it was a nuisance, and so they wouldn't handle the checks.

By the Court: Q. Ordinarily they credit you with the checks you send them. A. Yes, sir. There was one check of $2700 that was sent by way of Albany instead of the Union—

Q. Whose check was that? A. Middlesex Hat Company check also.

Q. Had it been sent out by you? A. Yes, sir.

Q That is, by the Roseville Trust Company? A. Yes, sir. And in the course of collection that check was sent to Newark to the Union National Bank by the New York State National Bank of Albany, the Union National Bank being their correspondent for New Jersey, I believe, and the Union Bank seeing this check and knowing the transactions—

By Mr. English: Q. You don't know what the Union Bank knew, did you—you were not there? A. I know they returned it.

By the Court: Q. Just tell us what you know, because you do not know what they did unless you were there? A. The Union National Bank returned it to us instead of sending it to Metuchen for collection.

Q. That was the same check they turned down once before? A. It was a smaller check.

By Mr. Guild: Q. A check on the Middlesex Hat Company? A. Yes, sir.

Q. In the ordinary course it would go to Metuchen for collection? A. Yes, sir.

Q. When they got it they intercepted it and sent it to you? A. Yes, sir.

Q. Now, you have the $2000 check which you called the substitute check and the $2700 check that had been sent by the Roseville Trust Company to the Albany Bank and which got back into your hands? A. Yes, sir; that was returned the

same day as the $2000 check and those checks were received as cash items and returned in the exchanges.

Q. Where did the $2700 check start originally—I understand from your bank, from the Roseville Trust Company? A. Yes, sir.

Q. From whom did you get it? A. Mr. Scarlett.

Q. What date? A. I think it was two days previous to the 26th—on the 24th I think it is.

By the Court: Q. Under what circumstances? A. Under the same circumstances as the other one.

Q. Cashed, was it? A. Yes, sir, I think so. I can soon tell that.

Adjourned until tomorrow, Friday, March 26, 1915, at 10 o'clock a. m.

TENTH DAY

ESSEX OYER AND TERMINER

Friday, March 26, 1915.

Continued pursuant to adjournment.
Present, counsel as before stated.

RAYMOND E. SMITH, resumes the stand:

Direct-examination (continued) by Mr. Guild:

(Last question and answer read.)

The Court: You were about to look up records when we adjourned. The witness

may answer the question. The question was whether it was cashed or not.

Witness: I will have to see the return item book for that day. May I see Mr. Scarlett's deposit ticket of that date, January 16th?

Mr. Guild: If the Court please, may I interject an explanation? This $2,700 check is not the original check at all; it represents another check of $2,800 which should have been brought to the attention of the witness before we ask anything about the $2,700 check at all. I think if he is permitted to see it now he will be better able to answer it.

Q. I show you check dated January 7, 1911, check of the Middlesex Hat Company for $2,800, being S101; the check is payable to the order of John B. Scarlett and bears his endorsement, and it has been admitted, and I ask you whether you have seen that check before? A. Yes, sir.

Q. Did it go through the Roseville Trust Company? A. Yes, sir.

Q. Was it deposited or a cashed check? A. Our records show that it was cashed on the 9th of January, 1911.

Q. Was it sent through the regular course for collection? A. Sent through the Union National Bank for collection and credit.

Q. And presented in due course to the Metuchen National Bank on which it was drawn? A. Yes, sir.

Q. Was it paid by the Metuchen National Bank? A. No, sir, it was not.

Q. Afterwards returned to the bank in due course? A. Yes, sir.

Q. Who got the cash for that? A. Mr. Scarlett's representative, messenger.

Q. What is the subsequent history of that check as to its being taken care of in any way? A. The check was returned to us on the 16th of January, 1911. Our records show that the check of $2800 was returned on the 16th of January, 1911.

Q. For what reason? A. It was protested for nonpayment and it was charged against Mr. Scarlett's account on that day, on the 16th of January, with the fees, $2,801.68.

Q. He had already had the cash, you say? A. Yes, sir.

Q. And when it came back you charged the $2,800 check and the protest fees to his account? A. Yes, sir.

Q. Was his account good for it, and if so, how was it made good?

Mr. English: Let us have one question at a time. I object to the form of the question as a double question.

By the Court: Q. Can you answer the question? A. Yes, sir.

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.

Judge.

A. The account was good that day; it was made good by a $2,900 deposit on the same date.

Q. Of what did the $2,900 deposit consist? A. May I see Mr. Scarlett's ticket for that day? (Paper handed witness.) There was a deposit made

on the 16th of January, 1911, made up of three items, $2,000, $700 and $200.

Q. Are you able to say what the item represented?

Mr. English: Yes or no, whether you are able to say.

Mr. Guild: I don't think Mr. English ought to dictate to the witness as to how he should answer my question.

The Court: I think the question is proper.

(Question read.)

A. I can say what two of them represented.

Q. Do you need any documents to assist you? A. I would like to have the outgoing list for that day.

Q. I show you Exhibit S62, which is a Roseville Trust Company letter of January 16, 1911, addressed to the Union National Bank. A. There are two checks that went to the Union National Bank on the 16th of January, 1911, drawn on Metuchen, for $2,000 ad $700.

Q. Having seen that letter are you able to say on what bank those checks were drawn? A. Metuchen National Bank.

Q. Is there anything about the letter to show who may have left it at your bank? A. The checks are endorsed by Mr. Scarlett.

Q. Does the letter show that? A. The letter shows S. B. Scarlett.

Q. Did you have an S. B. Scarlett as a depositor? A. I think we did, yes, sir. It is not the same account.

Q. Are you sure the S. B. means J. B.? A. I think it is meant for J. B. There is no question in my mind about it.

Q. How about the item of $200? A. That was another check; I can't tell what it was at the present time; it was evidently paid.

Q. Was the $200 item paid? A. Yes, sir.

Q. So that left to be accounted for how much money—$2,700? A. $2,700.

Q. What became of the $2,000 check and the $700 check—were they paid? A. No, sir; they were protested by the Metuchen National Bank.

Q. Were they returned to the Roseville Trust Company? A. Yes, sir; returned on the 23d of January.

Q. Were they charged to Mr. Scarlett's account? A. No, sir.

Q. Why not? A. The account was not good for the check.

Q. Were either of them? A. The account shows a balance of two thousand and odd dollars on the 23d of January.

Q. What did the balance consist of? A. I don't quite understand what you mean by that, Judge Guild.

Q. Was it collected funds or something that he had deposited and you credited him with that you had not heard from? A. It was uncollected funds.

Q. Does that explain why the $700 was not charged up in his account? A. Why, I think not. I think the checks were taken care of in another way, that there was a duplicate check, there was a duplicate check given for this.

Q. How were they taken care of? A. There was a duplicate check.

Q. What other check? A. $2,700.

Q. That is the $2,700 check we were talking about yesterday afternoon? A. Yes, sir.

Q. Where did you send the $2,700 check? A. New York State National Bank, Albany.

Q. Whose check, if you are able to say? A. A check of the Middlesex Hat Company drawn on Metuchen.

Q. Why was it sent to Albany instead of going through the Albany National Bank as the others have done? A. Well, we had sent so many of those checks to the Union National Bank that they objected to collecting them or trying to collect them.

Q. Is that the only reason? A. No, the principal reason, as I remember, was because to make a little more time in the collection of the check, keep it on the road a little longer.

Q. Give them more time to take care of it? A. Yes, sir.

Q. Was that check paid, the $2,700 check? A. No, sir.

Q. Was it protested? A. No, sir, the check was returned to us without protest.

The Court: Have you got that check?

Mr. Guild: We haven't that check, no, sir. I am not certain whether I asked Mr. English to produce it yesterday, but I ask him now to produce it.

Mr. English: We have not got it.

Q. I show you Exhibit S65, being Roseville Trust Company letter dated January 23d, and ask you whether that is the letter—it is addressed to the New York State Bank, is it not? A. Yes, sir.

Q. And ask you whether that is the letter you sent to the bank, with the check? A. That is a copy.

Q. A carbon copy? A. Yes, sir.

Q. How did the $2,700 check come back to you?

A. The check came back to us directly from the Union National Bank.

Q. Well, now, you have the $2,700 check back from the Union Bank. What became of it? A. The check came back to us on the 24th, I think. (After examining book.) The check came back to us on the 26th of January and was taken up on that date.

Q. I understand this is the check of the Middlesex Hat Company returned because it was not good; is that right? A. No, sir; the check had never been presented to Metuchen.

Q. Has never been presented? A. No, sir.

Q. But was returned to your bank, the Roseville Trust Company? A. Yes, sir.

By the Court: Q. It was drawn on Metuchen, was it not? A. Yes, sir.

By Mr. Guild: Q. With the return of that $2,700 check was any other check of the hat company returned at the same time? A. There was a $2,000 check on the same date.

Q. Is that a check that you have already spoken of in your testimony? A. I think so, yes, sir.

Q. Tell us a little more about the $2,000 check, as to what that was? A. It was a check sent out by us on the 23d, I think, to the Union National Bank, and the Union National Bank at the same time received a check from the New York State National Bank for $2,700.

Mr. English: How does he know what the Union National Bank received. I object to that.

By the Court: Q. Have you any personal knowledge of that, Mr. Smith? A. Yes, sir.

Q. How was that knowledge acquired? A. I had

a conversation with one of the representatives of the Union National Bank.

Mr. English: That is hearsay evidence.

Q. All you know personally of the transaction yourself is that it came to your bank from the Union Bank? A. Yes, sir, that is all.

The Court: Then your evidence will be confined to your own knowledge and not what you were told.

By Mr. Guild: Q. I show you Exhibit 86, which is a Roseville Trust Company memorandum of the Union National Bank under date of January 25, 1911, and ask you if there is anything about that paper and the attached papers that seem to be part of it that will refresh your recollection?

Mr. English: I don't see how he can refresh his recollection from the Union National Bank about it.

The Court: He cannot, unless it came from his bank and then became part of the transaction of the bank, and then he can use it to refresh his recollection.

By Mr. English: Q. Did these papers come to your bank? A. Yes, sir.

Q. This little machine list? A. Yes, sir.

Q. Did you see it when it came there? A. I think so.

Q. Why do you say that? Were you, as treasurer and secretary of this trust company, in the habit of looking over every little machine list that came in from every correspondent bank? A. No, sir.

Q. Why do you say you saw it when it came there? A. I saw the exchanges every day, as a rule.

Q. Did that involve all these machine lists and checking them up? A. Yes, sir.

Q. Do you want to swear positively that you saw this and looked it over January 25, 1911—that was four years ago—and have a personal recollection of it now? A. I am sure I saw it on that day.

Q. No; I say do you want to swear positively that you saw this and looked it over January 25, 1911, which was four years ago, and have a personal recollection of it now? A. I won't say I checked it up, no.

Q. And you say you have personal recollection of it now? A. Yes, sir.

The Court: I do not think it makes very much difference whether he testifies from his recollection or whether he testifies from a record of his bank, as this paper apparently is. Both are evidential; both are competent.

Mr. English: In different ways. One is evidential for what it shows on its face.

The Court: They are both competent evidence, and it is for the jury to say as to the extent to which they credit them. If it is a matter that came under his personal observation he can testify to it. If it is merely a record of the bank he can testify that it is a record of the bank and that a certain condition is evident by the record of the bank. Both are competent. It does not make much difference whether it goes in as part of the bank record or whether it goes in as part of his recollection refreshed by a paper. In effect, it is only the weight which

the jury may give to the class of testimony. They may consider that one class of testimony is worthy of greater weight than the other class.

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.

(Question read.)

A. There are two items here of $2,000 and $2,700 which show in our exchanges, and the exchange proof book or the return item book, as you call it.

Q. Are you able to say that those are the checks of $2,700 and $2,000 of the Midlesex Hat Company upon which Mr. Scarlett received the cash and were substitute checks and which were not good when presented upon the bank at which they were drawn in Metuchen? A. Yes, sir. As to the last part of your question, I cannot say yes to that, because the checks were never really presented to the Metuchen National Bank.

Q. Never were? A. No, sir.

Q. But they were checks drawn on that bank upon which the Roseville Trust Company advanced to Mr. Scarlett? A. Yes, sir.

Q. What became of those checks? A. The checks were taken up on the 26th of January.

By the Court: Q. What do you mean by that, that they were taken up? You used that expression before. It is not quite clear. A. They were taken out of the cash; they were paid by myself on the 26th of January.

By Mr. Guild: Q. How?

The Court: He says he took money out of the cash.

Witness: They were taken out of the cash.

Q. And you say paid? How were they paid? A. A day or two prior to January 26th we sent out for collection to the Irving National Bank, of New York, several saving bank drafts left by one of our depositors on the 26th of January. We received advices of credit to several of these, and on that date they were charged to the Irving National Bank.

Q. When you say they were charged, what do you mean?

By the Court: Q. The saving bank's drafts? A. Yes, sir, these drafts advised by the Irving National Bank were cashed and were not credited to the depositors who left them. The $4,700 was paid by charging the Irving Bank with some of these collections.

By Mr. Guild: Q. And you say you used these funds to make these checks good? A. I did.

Q. Make them good to whom? A. I used the funds to take them out of the cash.

Q. Why did you take them out of the cash that day? A. Because I didn't want them to show in the cash.

Q. Why not? A. The examiners were there.

Q. What examiners? A. The State examiners.

Q. Why didn't you want them to show? A. Why, because the banks are not supposed to carry along cash items, in the first place; in the second place, these items were endorsed by one of our directors, which would mean that he would be subject to severe criticism, as I would, too, and I

cleaned them up in this way so as to have a clean slate for the examiners.

Q. Was Scarlett's account good for those checks on that date? A. No, sir.

Mr. English: What date are you speaking of?

Mr. Guild: January 26th is the date.

Witness: The account appeared good for one of them on the 26th.

Q. Which one? A. There was an apparent balance of $3,950 on that date.

Q. What made the balance—wasn't that due to the credit that was entered on the 18th of January?

Objected to as leading.

The Court: It is leading, but I think the witness's attention can be directed to specific items. Objection overruled.

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

Judge.

A. There was a $4,000 credit on the 18th of January which had not been collected up to that time.

Q. And then checks were subsequently returned as not good, were they not? A. Yes, sir.

Q. Did you, on the 26th of January, do anything further with reference to Mr. Scarlett's account? A. I deposited a thousand dollars to Mr. Scarlett's account on that day.

Q. Of his funds? A. No, sir.

Q. Whose fund? A. Out of these same funds.

New Jersey State Library

Q. Out of that same transaction? A. Yes, sir.

Q. Why did you do that, Mr. Smith—not why did you take the money, but why did you give him the credit? A. I did it because I wanted to show Mr. Scarlett's account in good shape for the examiners at that time. It is customary for the examiners to look over different accounts that have loans in the banks.

Q. And did he have a loan at that time? A. Yes, sir.

Q. How much? A. There was one loan of $10,000.

Q. Go on with your answer? A. And I think there was another note of $2,000 that went through regularly—that is, the Stevenson, Rye note—and borrowers from the bank are supposed to keep at least twenty per cent of their loans in average balance or in balance.

Q. Did you continue to hold the $2,700 and the $2,000 check? A. I held them up, yes, sir.

Q. Where did you put them? A. As I remember it, I put them in Box 55.

Q. Up to this time had Mr. Scarlett taken care of those two checks amounting to $4,700? A. No, sir.

Q. And he had had the money on them? A. Yes, sir.

Q. And he was still indebted to the bank? A. Yes, sir.

Q. In that amount. Were they subsequently taken up? A. They were subsequently taken up, yes, sir.

Q. In what way? A. On February 8th—if I may see the deposit slip.

Q. I show you Exhibit D-17, which is a deposit

slip in the Roseville Trust Company credited to John B. Scarlett February 8th, $5,700. Go on with your answer, if that had anything to do with taking up these checks amounting to $4,700? A. On February 8th we received some checks from Mr. Scarlett, three checks, I believe one of $3,000, another of $1,700 and another of $1,000. The $3,000 check was a certified check on the National State Bank, of Newark.

Q. Whose check? A. His own, which I could use; the other two were checks drawn on outside banks by himself or his company, I believe, and I couldn't take them; I wouldn't accept them as cash.

Q. The deposit slip shows that they were received? A. I think they were returned to Mr. Scarlett the same day.

Q. Did the bank attempt to collect anything but the $3,000 check? A. No, sir.

Q. Now, what use did you make of the $3,000 check which you say was good? A. I applied it on the $4,700 worth of checks—I think so—

By the Court: Q. You say he owed $4,700 at that time? A. In checks returned.

Q. For which he got the money? A. Yes, sir.

By Mr. Guild: Q. You applied the $3,000 check, which was good, on account of the $4,700 Middlesex Hat Company check which you had been holding; do I understand that is so? A. Yes, sir.

Q. That only accounts for $3,000. What about the $1,700? A. I think on March 1st, Mr. Scarlett put in two checks of $1,000 and $1,700, which took up the $2,700 in checks that were being held out—or $1,700, rather—checks being held out, and also the $1,000 deposit went to his credit was charged off that day.

By Mr. English: Q. How much did he put in? A. Two checks of $1,700 and $1,000.

By the Court: Q. A total of $2,700? A. $2,700.

Q. He paid $1,700 of the indebtedness. What did you do with the other thousand—charge it off? A. Charged it off his account.

Q. What do you mean by that? A. There is a deposit here of $1,000.

Q. His account owed that? A. Yes, sir.

Q. You applied this balance of $1,000 to his account? A. No, sir; it didn't go to his credit that day.

Q. What do you mean by charging it off? A. There happened to be a balance on his ledger account and I charged off that $1,000 that same date that had gone to his credit previously on the 26th of January.

By Mr. Guild: Q. As I understand, you took care of the $4,700 Metuchen checks with the $3,000 good check of Scarlett's which he deposited on February 8th, and with two deposits which he subsequently made on March 1st on foreign banks, one check of a thousand and another of $1,700? A. Yes, sir.

Q. And the other two items in the deposit slip of February 8th were not put through your trust company at all, but were returned to him, you say? A. Yes, sir.

Q. What became of the $2,700 check and the $2,000 check on the Midldesex Hat Company which you had been carrying and which you say you put in Box 55?

The Court: Do you mean as a bookkeeping proposition or physical possession?

Q. Physical possession, what became of them?

A. They were returned to Mr. Scarlett.

Q. About the deposit of March 1st, of a check of $1,000 and another one of $1,700, it was on the strength of the deposit of those two checks and the $3,000 check that you credited Scarlett with the $4,700 by the hat company checks and the $1,000 deposited, which you had voluntarily made for him and credited to his account; is that right? A. Yes, sir.

Q. What became of the $1,000 and the $1,700 check deposited March 1st; were they good? A. I think they were returned.

Q. I show you two slips, one the Shawmet National Bank, Boston, Massachusetts, under date of March 4, 1911, addressed to Union Tr. Co., containing an item of the State Bank of Hartford of $1,000, and ask you what that is? A. It was a letter of the National Shawmet Bank, dated March 4, 1911.

Q. I ask you what it is? A. It is a letter of the Shawmet National Bank.

Q. And what is its use? A. It is a letter used for returning checks to various correspondents.

Q. What does it refer to?

Mr. English: I object. The letter speaks for itself.

Q. What item does it contain?

Objected to.

The Court: Is it in evidence?

Mr. Guild: I offer it in evidence.

Mr. English: I would like to cross-examine on it.

By Mr. English: Q. When did you first see this paper? A. I can't tell you that, Mr. English, now.

Q. Did you ever see it before it was hown you in connection with this trial or in preparation of this trial? A. I couldn't tell you that.

Q. No recollection of it at all? A. No, sir.

Q. There is nothing on here to indicate whose check it refers to? A. No; that has not the endorsement.

Q. All there is here is the name of a bank and an amount? A. Yes, sir.

Q. And that is all it does show? A. Yes, sir.

Q. And you have no recollection of having seen this until the preparation for the trial of this case? A. I can't say I have.

Q. And except as you have to exercise your judgment you cannot say positively what it refers to? A. Well, I think—

Q. I know you think. A. I think it will bring it to me again very clearly—

The Court: Let him finish the answer.

(Question read.)

Witness: Well, it refreshes my memory on certain lines.

Q. How can you refresh your memory from a paper you never saw until the time of this trial? A. Well, it refers to certain items.

Q. I know it does. You had no previous knowledge of those items. Now, you see a paper four years after the event.

The Court: He did not say anything about not having any previous knowledge. He said he had no previous knowledge of that paper. That is an inference of yourself when you say he had no previous knowledge of the transaction. I see considerable here on this paper that might refer

to a particular item, for instance, the name of the bank, a date, an amount, a heading on a paper, all of which may refer to some particular item.

Q. What particular item? That may refer to anyone of a thousand checks for $1,000 on that date? A. Not in our institution.

Q. Well, maybe not so many as a thousand; it may refer to any one of a number. A. There might be a couple, two or three.

Q. So that you cannot undertake to positively put your finger on any particular check from this paper, can you? A. I think I could at the time of receiving that letter very easily.

Q. At the time of receiving the letter, but you say now you have no recollection of having received the letter, you only find it among the papers of the bank now. A. I know, but I was so familiar with those items that I would know what it meant the minute I saw it.

Q. But you didn's see it? A. I probably saw it at the time it came in.

Q. Have you any recollection of it? A. No, I have no recollection.

Q. Could you by reference to the paper say that it referred to any particular item—yes or no? A. Yes, sir.

Q. And could you identify the item it refers to in your bank book? A. Yes, sir.

The Court: It has not been shown yet that it came into the possession of the Roseville Trust Company. I will not admit it until it is further connected with the institution in question.

By Mr. Guild: I ask you whether the paper we

have been discussing was received by the Roseville Trust Company? A. Yes, sir; it was.

Mr. Guild: I renew my offer.

Mr. English: I object to it because he has no personal recollection of it at all.

The Court: I do not see how he can say from the knowledge that he admittedly has not of this paper that it was received by the trust company. You may withdraw the witness at his time and perhaps produce somebody who found it.

(The witness is temporarily withdrawn.)

ALFRED J. HARGAN, re-called in behalf of the State in rebuttal.

Direct-examination by Mr. Guild:

Q. I show you a slip of paper bearing the name National Shawmet Bank, Boston, Massachusetts, March 4, 1911, and ask you whether you have seen that paper before? A. I have.

Q. Where did you see it first? A. I took it along with other papers from the files of the Roseville Trust Company.

Q. Where was the file? A. In the vaults, in the cellar of the bank.

Q. Can you say approximately what date you took it? A. About a year ago.

Q. Where has the paper been since then? A. Been in my possession ever since.

Q. I show you another slip of paper bearing the name of the Shawmet National Bank, Boston,

Massachusetts, dated March 6, 1911, and ask you whether you have seen that paper before? A. I have.

Q. Where? A. I got this from the same place as the other paper, the vaults of the Roseville Trust Company, the vault in the cellar of the trust company, about a year ago.

Mr. Guild: I ask to have those papers marked for identification.

CROSS-EXAMINATION by Mr. English:

Q. When did you get the second one, Mr. Hargan? A. The same time.

Mr. Guild: I renew my offer.

Mr. English: I don't think the situation has changed at all, from my point of view. My point is that this gentleman is asked to refresh his recollection about a paper which he knows nothing about, testifies about something which he simply guesses at.

The Court: Those papers will be admitted.

The objection goes to both.

The papers referred to are marked S109 and S110.

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.

RAYMOND E. SMITH, resumes the stand in behalf of the State in rebuttal:

Direct-examination (continued) by Mr. Guild:

Q. I show you Exhibit 109, which is the paper bearing the name of the National Shawmet Bank, bearing date March 4, 1911.

The Court: Is that the same paper?

Mr. Guild: Yes, that is the same paper.

Q. You have stated that the check for $1,000, which represents the check of $1,000 handed to you by Mr. Scarlett, and which you say came back, "Not good," I want to know whether that leter accompanied the check? A. Yes, sir.

Q. Can you say from the paper which you are now examining whether the check was protested or not? A. It was, yes, sir.

Q. What is there about the paper to indicate that the check was protested? A. The protest fees are added on to the amount.

Q. How much? A. $2.42.

Q. I show you Exhibit S110, and ask you whether that refers to the check of $1,700 which you say was handed to you by Mr. Scarlett? A. Yes, sir, it does.

Q. And did the check accompany that letter? A. Yes, sir.

Q. Does the letter indicate whether or not the check was protested? A. Yes, sir, the check was protested.

Q. What is there about the letter to indicate that? A. The fees are added on the face, $2.02.

By the Court: Q. I understand your testimony is in regard to these items mentioned in both of these letters concerning the $1,000 and the $1,700

checks, that you are merely testifying from the record and not your personal recollection, testifying from what the record shows? A. From the record only, yes, sir.

By Mr. Guild: I ask you what the total of those two returns, with the protest fees, amount to, how much? A. $2,704.44.

Q. I will ask you to turn to Mr. Scarlett's ledger account and see whether under date of March 13th he was charged with that amount in his account? A. Yes, sir; there is a charge of that amount there on the 13th of March, 1911.

Q. What became of those two checks charged, one of $1,700 and the other of $1,000? A. The checks were returned to Mr. Scarlett.

Mr. Guild: I call for the production of those two checks.

Mr. English: We haven't got them.

Q. What enabled you to charge that item of $2,704.00 to Mr. Scarlett's account? A. There was a deposit made on the same date for the same amount, $2,700.

Mr. Guild: I presume I will have to go through the same form. I propose to show the witness those papers in connection with this check of $2,700.

By Mr. English: Q. When did you first see this telegram, to your personal recollection or knowledge? A. I don't remember.

Q. When did you first see this paper headed, "New York State National Bank," dated March 17, 1911? A. On the following day, I think.

Q. Are you sure of it or do you just say that because it is dated March 17th and in the ordinary course of business, if it was received at the bank,

it was received the next day? A. I opened the mail.

Q. You think in the ordinary course you would have found it because you opened the mail, but you have no recollection now? A. Not now.

Q. When did you first see this paper dated March 13, 1911, with the Roseville Trust Company printed on the top of it? A. I have no recollection of seeing it.

Q. You have no recollection of that whatever? A. No, sir.

By the Court: Q. You were asked if you remembered when you saw this telegram, but you were not asked whether you have ever seen it before? A. Yes, sir, I have seen it before, your Honor.

By Mr. English: Q. Do you remember when you saw it? A. I can't tell you that.

Q. Do you remember having seen it? A. I remember having seen it.

Q. Do you remember having seen it in connection with the matter mentioned in it about the time the transaction took place? A. I can't say that. I have seen it within the last two or three weeks.

By the Court: Q. I understand you to say that these papers were a part of the record of the bank? A. Yes, sir.

Mr. English: I don't question their source. That is not the point of my objection.

The Court: Perhaps some of the difficulty in taking time unnecessarily in this matter is that if counsel would make the point of his objection clear we will not have to withdraw the witness from the stand. You admit this is a part of the record of the

bank and you say it is not connected in any way.

Mr. English: If Mr. Guild says so I don't dispute it at all.

The Court: Mr. Prosecutor, if you will connect the items, if possible, that will meet the objection of counsel; he does not contend that they are not records of the bank.

By Mr. Guild: Q. The check of $ 2,700 which Scarlett's account is credited which under date of March 13, 1911, was sent out for collection—by collection I merely mean was sent out in the usual course of business? A. Sent out for collection and credit.

Q. And to whom was it sent? A. I will have to call for the outgoing letter of that date.

Q. (Handing witness paper.) I show you an outgoing letter dated March 13th. What is that paper? A. It is a copy of the letter of the New York State National Bank, dated March 13, 1911.

Q. Sent out by the Roseville Trust Company? A. Yes, sir.

Q. And the amount of the check is what? A. $2,700.

Q. Is that the check which you gave credit to Scarlett's account for on March 13, 1911? A. Yes, sir.

Q. And enabled you to charge up the other check of $2,704.44, the other item? A. Yes, sir.

Mr. Guild: I offer it in evidence.

Mr. English: There is no doubt it is the record of the bank, but the trouble with it now is he has been refreshing his recollection from it and he has no knowledge about it. That is the point of my objection.

By the Court: Q. Do you say the items on this letter of the Roseville Trust Company correspond with the items you refer to concerning this matter? A. Yes, sir.

The Court: I will admit it in evidence.

Marked Exhibit S111.

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. To what bank was the letter sent? A. New York State National Bank.

Q. Are you able to say on what bank the check was drawn? A. Only on what city; I can't tell you on what bank.

Q. Where was the bank located? A. Syracuse, New York.

Mr. Guild: I ask the defense to produce a check which was deposited to Mr. Scarlett's credit on March 13, 1911, $2,700, drawn on the First National Bank of Syracuse, New York, or on any bank in Syracuse, New York.

Mr. English: We haven't any such check. We have produced all the checks we had.

Q. Was the check paid? A. I think not.

Q. I show you a telegram dated 3/15/ 11, Syracuse, New York, and ask you if you have any knowedge of that telegram and whether you are able to say that it refers to the item that we are discussing? A. I don't remember having received this telegram.

Q. Does it refer to the item we are discussing? A. It does.

Q. It does? A. I believe it does.

Mr. Guild: I offer it in evidence.

Mr. English: I object because he says he has no recollection of having received it, and he is simply giving his estimate or his judgment the same as anybody else could do on a similar paper.

The Court: It is admitted that it was part of the record of the bank, taken from the files of the bank, and it will be admitted.

The paper referred to is marked Exhibit S112.

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. Will you read the telegram? A. (Reading) The telegram is dated 3/15/11. "Syracuse, New York, Roseville Trust Company, check Scarlett, $2,700, in hands of notary. First National Bank, 3:23 p. m."

Q. I show you a paper bearing the name New York State National Bank, Albany, March 17, 1911, and ask you whether that is in connection with this item we are discussing? A. Yes, sir; I believe it is.

Mr. Guild: I offer it in evidence.

Mr. English: I make the same objection.

The Court: It will be admitted.

Marked Exhibit S113.

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. Was the $2,700 Syracuse check returned to the Roseville Trust Company? A. Yes, sir, it was.

Q. And the letter S113 accompanied the check? A. Yes, sir.

Q. Wasn't it protested? A. It was.

Q. Do the protest fees appear on this letter S-113? A. Yes, sir; $1.30.

Q. What was subsequently done with that check so far as Scarlett was concerned—was it charged against his account or not? Look under date of April 6th. A. I have a charge here on April 6th of $2701.30.

Q. What is the total amount of check and protest fees returned to you by the Albany bank? A. $2701.30.

Q. Relating to this item that we are discussing? A. Yes, sir.

Q. Was Scarlett's account good for it on that day? A. Yes, sir.

Q. And left him a balance after that item was charged of how much? A. $39.92.

Q. What became of the check? A. The check was returned to Scarlett, I believe.

Q. I show you deposit ticket under date of December 19, 1910, for $1200. It is one of the bundle marked Exhibit D-1. Was that deposit credited to Mr. Scarlett's account, and if so, under what date? A. Yes, sir it was.

Q. I show you S-51 being a Roseville Trust Company outgoing letter under date of December 19 1910, and ask you whether the item appears there? A. It does.

Q. To whom was it sent? A. Sent to the Irving National Exchange Bank, New York City.

Q. Was it paid? A. I think not.

Q. Will you look it up? A. (After examining book.) No, sir, it was not paid.

Q. Was the item returned to the Roseville Trust Company? A. Yes, sir.

Q. Was it charged to Scarlett's account, and if so, under what date? A. Charged to Mr. Scarlett's account on December 24, 1910, $1201.30.

Q. Are you able to say who the maker of the check was from anything before you? A. No, sir.

Mr. Guild: I call for the production of a check of Stevenson, Rye Company, for $1200 drawn on the Savoy Trust Company, dated about December 19, 1910.

Mr. English: We have not got it.

Q. Mr. Smith, Mr. Scarlett has testified that on the 16th day of November, 1910, he deposited in the Roseville Trust Company two checks of $1000 each, drawn by the Middlesex Hat Company, which he says should have been deposited to his credit and which were not deposited to his credit and which he has entered in his check book under that date as a deposit. Were those checks left for deposit? They are the same two checks referred to in the protest Exhibit D-32 and D-33. A. I can't answer that yes or no. It needs a little explanation, your Honor.

By the Court: Q. You may give any explanation necessary to give us in order to get an intelligent answer. A. These checks on Metuchen were sent up to me, as I remember it, together with another check on the Roseville Trust Company for $2000, and instead of crediting Mr. Scarlett's account with the $2000 drawn on Metuchen I simply cashed the two checks on Metuchen and returned his check.

Q. Then they were not credited to his account? A. No, sir.

By Mr. Guild: Q. Mr. Scarlett has testified that he was entitled to a balance on or about February, 1911, of from $4000 to $6000 in the Roseville Trust Company; is that true?

Mr. English: Objected to. That is a question that this jury is here to answer.

Mr. Giuld: As I understand, the jury are to decide that question after the evidence is in. If Mr. Scarlett may say that he had a balance on that date for $4000, the treasurer of the bank ought to be permitted, it seems to me, to say whether he had or had not.

Mr. English: The State has been a whole week trying to produce a negative answer to that fact that Mr. Scarlett testified to. As I understand, that has been the object of its rebuttal. That is one of the questions in the case. Of course, if we had a balance, we are not guilty, regardless of anything else.

The Court: It seems to me that the question as propounded calls for the opinion of the witness. I think he might be asked properly whether he can say, from an examination of the book and his own knowledge of the situation, whether Mr. Scarlett was entitled to a balance; then the jury may say, by reference to these books, whether he is right in his conclusion. I think the witness may state, he being in charge of the books, familiar with the books, familiar with any inaccuricies in this account and the reason for them, and his close personal relation with the depositor from his examination of the book and his knowledge of the situation,

Mr. Scarlett was or was not entitled to a balance on a certain date.

Mr. Guild: I will accept the Court's suggestion as my question.

Mr. English: I think we ought to have a question.

Q. In view of your official connection with the bank, the Roseville Trust Company, and your familiarity with Mr. Scarlett's account, and by referring to the books of the bank, will you tell us whether or not it is true, as claimed by Mr. Scarlett, that on or about February 4, 1911, he was entitled to a credit balance of from four to six thousand dollars?

Mr. English: I object to that.

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.

H. V. OSBORNE,
Judge.

(Seal)

A. No, sir.

By the Court: Q. By that you mean, he didn't have a balance? A. Yes, sir, he didn't have a balance of that amount.

Q. Didn't have such a balance? A. No, sir.

By Mr. Guild: Q. Did he ever on or about that date, or subsequent, claim to you that there was any error in his account with the Roseville Trust Company? A. I don't remember of any—that is up to what time?

Q. Well, he says that on or up to February 1, 1911, he went to you and told you that there was a mistake in his account because he was notified

that some items he had deposited had come back not good, and he was notified of that fact, and growing out of that he claimed he had a balance of from four to six thousand dollars on or about February, 1911; is that true or isn't it, that he had that conversation with you and made that claim? A. No, sir; I never heard it.

Q. Did he on or about that date claim to you that there was any mistake in his account? A. I don't remember of any claim at all, no, sir.

Q. Did he ever make any claim to you, to use his own language that there was a discrepancy in his account owing to his not having received credit that he was entitled to? A. No, sir.

Q. Mr. Scarlett has testified that in the spring of 1911 he had a conversation with you about the alleged mistake in the bank and you said to him that you were sure that he was mistaken and that the bank was right; did you have any such conversation with him? A. I don't remember any such conversation at all.

Q. And that growing out of that conversation, and as part of it, you said, "However if you find you run too short and need some assistance, come and see me and I will help you out." Did you ever say that to him? A. No, sir.

Q. He says that you told him you were making a great deal of money out of your automobile business, and that the sales of the Oakland car for that season had run to about three hundred machines. Did you say that to him? A. No, sir.

Q. And that you said that the average amount of profit on each car was approximately $300 after paying all expenses, subcommissions and rents and that you had made a profit of between $30,000

and $40,000 out of your Oakland garage? Did you say that to him? A. No, sir.

Q. Did you say anything to him about the Oakland garage business during that time? A. I don't think so. This was the spring of 1911.

Q. Did you have the agency of the Oakland car? A. At one time I did, yes, sir.

Q. Had you had it in the spring of 1911? A. No, sir.

Q. When did you get the agency for that? A. In the fall, I believe, of 1911, we made a contract with the Oakland Motor Company, New York City, to act as their agents in Essex County.

Q. And that was late in the fall of 1911? A. Yes; I don't know just how late in the fall; it was in the fall of 1911, I believe.

Q. When did you actually begin to do business? A. In the fall of 1911—that is, in the sales of that car.

Q. Cars of what year? A. I think the first model we handled was the 1912; they came out early in the fall.

Q. Mr. Scarlett has testified that you did make him loans out of your personal funds or that you made him personal loans?

Mr. English: Objected to. It is not rebuttal. He denied that on cross-examination, on the main case. There is no occasion to repeat it on the theory of rebuttal.

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.

H. V. OSBORNE,

(Seal) Judge.

Q. Is that true? A. That I loaned him money personally?

Q. Yes. A. No, sir.

Q. Mr. Scarlett has testified that on October 25, 1912, you made him a personal loan of $4200, and that it was on the strength of the so-called declaration of trust, a copy of which I show you, which is marked Exhibit D-32; is that true?

Mr. English: That is objected to because that was all gone into before. I had those very papers before hand that were identified by the witness and marked. He has denied exactly what he is asked to deny again. I realize rebuttal is in the discretion of the Court, but this whole thing was gone into by Smith and he denied every word of it.

The Court: I will permit 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. OSBORNE,
Judge.

(Seal)

(Question read.)

A. No, sir.

Q. On or about October, 1912, did Mr. Scarlett have any conversation with you about his desiring to raise money? A. I think he did.

Q. Did he apply to you for a loan from the bank about that date? A. October 25th he applied to me for a loan at the bank.

Q. Did the bank make him a loan? A. Yes, sir.

Q. I show you Exhibit D-26 being a check dated October 25, 1912, certified check; it seems to be

your personal check, drawn to his order and endorsed by him and by somebody else, and ask you whether he did receive that check from you? A. Yes, sir; he did.

Q. Will you tell the Court and jury the circumstances surrounding the giving of that check?

Objected to as not rebuttal.

The Court: You went into the matter fully with your witness. The State is meeting it by saying that the transactions are not what you say they were at all and is explaining it.

Objection overruled.

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.

The Court: What was the date of that agreement?

Mr. English: October 25, 1912.

Mr. Guild: There was no date at all on the copy except "October blank, 1912."

Witness: On October 25th Mr. Scarlett came up to my office in the afternoon and said he had to have some money, that there were some suits pending, one or two suits, I think he said—I am not sure of the name of the companies—that were suing him at that time; I think it was in connection with his hat business, and said to me that he had to have money or else it would be a very serious matter to him, probably force him into bankruptcy; I asked him how much he wanted; he said about $4000, and I told him that money was tight,

scare, and we were not making many loans, I didn't see how I was going to accommodate him in any way. He asked me at that time if I could help him out personally; I told him no, that I couldn't, I hadn't any money to speak of to spare, all my money was invested one way or another; I was a heavy stockholder in the institution and the stock had not all been paid for, I wasn't making personal loans, didn't have any money to loan. I saw that Mr. Scarlett was in a bad fix and I realized this, that—

Objected to.

The Court: Objection sustained. Just state the conversation. Confine yourself to what you said and what he said and did.

Witness: Mr. Scarlett said he needed the money so badly I finally agreed to let him have $4200 and I took as security for this loan—I drew up an agreement myself—I asked him what he would give me—give the institution for security, and I drew this up.

Q. You said you agreed to let him have $4200? A. Well, as treasurer of the institution, I mean.

Q. You mean the trust company's funds? A. Yes, sir. I asked him what he could give me as security, and he said he had some loans coming from a couple of building and loan associations which would be coming due very soon, that the loans would probably be made in a very few days; this loan was a matter of very few days, it was supposed to be, and I drew up this agreement that he had turned over to me $9700.

Q. The agreement marked what? A. It is dated October 25, 1912, and marked D-27.

Q. Written on the Roseville Trust Company's letterhead? A. Yes, sir.

Q. Will you read it? A. (Witness reads.)

Q. You say you wrote that? A. I filled it out, yes, sir, wrote it.

Q. What time of the day was it he came to see you? A. In the afternoon after banking hours.

Q How long after banking hours? A. I think it was around 4 o'clock, between four and five; perhaps it was after 4 o'clock, I think.

Q. The check which you gave him is your individual check, is it not? A. Yes, sir.

Q. Did you say why you gave him your individual check and not the check of the trust company? A. I can't say whether I said why or not. I think I mentioned the fact that I couldn't get hold of the treasurer's check book at that time.

Q. Why not? A. The treasurer's check book was locked up in the safe, the time lock was on; it was closed.

Q. Could the safe be opened that day? A. No, sir.

Q. Not until the next morning? A. No, sir.

Q. You say that is why you gave him your personal check? A. Yes, sir.

Q.Were the moneys mentioned in this paper which you drew as likely to be paid to him by these building and loan associations and some other concern, I think— A. Were they mentioned?

Q. I say were the moneys paid to you? A. These moneys from the building and loan association?

Q. Yes. A. No, sir.

Q. Was anything ever realized from either of these sources? A. No, sir.

Q. Did he return you the $4200? A. No, sir.

Q. As he said that he would, within a few days? A. He did not.

Q. After that, inasmuch as you didn't get the money back from the sources mentioned in that assignment, was anything else given in the way of security? A. The declaration of trust was given at a later date; I think perhaps it was ten days or two weeks after this agreement was drawn up.

By the Court: Q. Mr. Smith, where did the money come from that paid this check? A. Roseville Trust Company.

Q. Roseville Trust Company's funds made good your personal check for $4200 which you had given to Mr. Smith? A. Yes, sir.

By Mr. Guild: Q. The $4200 represented by this check, was that charged to your account in the Roseville Trust Company? A. No, sir; I think not.

Q. Can you find out? A. I am sure it wasn't.

Q. You have referred to the giving of the declaration of trust which you say was some ten or fifteen days after you gave this check of $4200? A. Yes, sir.

Q. How many copies of this declaration of trust were there? A. I had one copy; that is the only one I had.

Q. Here are Exhibit D-28 and D-29, which seem to bear your signature; look at them and see if you signed them? A. I think I signed the three in blank at that time.

Q. When you signed Exhibit D-28 and D-29 was there any date in them? A I don't think there was any date in any of them.

Q. Is there any date in the one you returned except October, 1912? A. There isn't even October in this one.

Q. What is there? A. On the blank day of blank, 1912.

Q. What was the name of the trust company not inserted in the declaration of trust if the trust company was the real lender of this money? A. Because I didn't want the matter to be advertised.

Q. Why not? A. When a property is put in anybody's name, as I understand it, it is recorded in the papers—it is not recorded only in the court house, but it is also recorded in the newspapers, advertisements.

Q. What objection did you have to that publicity?

Objected to.

Q. I will withdraw that question. Did you state your objection to Mr. Scarlett? A. I told him at the time, yes, sir.

Q. What did you tell him? A. That I didn't want it in the name of the institution.

Q. Did you tell him why? A. Yes, sir.

Q. What did you tell him? A. I told him I didn't want it known, I couldn't afford to let the directors know about it.

Q. The papers which you drew, the assignment of the building and loan stock, bears date October 25, 1912, and mentions the sum of ninety-seven hundred and odd dollars. Can you say how that was made up? A. This assignment was drawn to cover up this $4200, a note of Reynolds, W. H. Reynolds, I think it was $2500; another note of Mr. Sica's for $1247, and two notes made by Zaccarelli, $750 and $500, and there were two or three little checks, and I think one of $500 drawn to Mr. McGee, Mr. Scarlett's own check, I mean, that had been paid, and I think there were two or three little checks—

By the Court: Q Paid by the bank, you mean? A. Yes, and I couldn't get at all those items that night because they were locked up, because there were some return items I didn't know the exact amount of.

By Mr. Guild: Q. That is why you used that peculiar language, ninety-seven hundred and odd dollars? A. Yes, sir.

Q. Had any of the notes which you have mentioned been purchased by the trust company? A. Yes, sir.

Q. Which of them? A. Reynolds note for $2500—all of them had been purchased, in fact.

Q. By the bank? A. Yes, sir.

Q. Do you remember whether or not it included an item of $800 insurance premium? A. No, sir.

Q. It did not? A. No, sir.

By the Court: Q. Do I understand you to say that this trust agreement given in pursuance of this memoranda written on the 25th of October, D-27, was given to secure them existing obligations to the bank? A. Yes, sir.

Q. In the form of these notes that you have referred to? A. Reynolds, Sica, Zaccarelli and some other items? A. Yes, sir.

Q. Did the trust company pay any life insurance premium on Scarlett's account? A. Yes, sir.

Q. And that was a policy assigned by the trust company by him? A. Yes, sir, it was held as additional collateral for his loan.

Q. As a matter of fact, how much was the premium? A. The premium was, I think, over $1200.

Q. On the policy held as collateral for what loan? A. A loan of $10,000, additional security.

Q. Was that paid by the trust company's check? A. You mean the premium?

Q. Yes. A. Yes, sir.

Q. I show you Exhibit S-5, which is Scarlett's check for $350 which you testified under cross-examination you had certified, and which is the indictment check; I also show you Exhibit S-13, dated March 4, 1913, which is Scarlett's check for $500 which you have testified to you certified, and I also show you Exhibit S-15, which is check dated February 19, 1913, for $400, Scarlett's check, which you have testified that you certified; those checks were accompanied by letters which you have identified. Mr. Scarlett testified, in connection with receiving the money on the checks for $400, which is before you, that he told you he would send a messenger up, that he would like to use the money, and for you to certify the check, and that he thought probably it would be necessary for you to deposit the money to his account, as under no circumstances did he want the account to show an overdraft.

Mr. English: That is a very confusing question. He is shown three checks and referring to one specific transaction. I would like to know which one he is referring to.

Mr. Guild: The check for $400.

Q. Did he say that to you? A. No, sir; I don't think so.

Q. He also testified that you said, "I will attend to that, the account will not be overdrawn, I will fix the account all right, it will not be overdrawn." Did you say that to him? A. No, sir.

Q He says that that alleged conversation took place before he wrote you the letter S-16, dated

February 19, 1913, which he sent up with the check for $400. Did the conversation antedate the receipt of that letter? A. I don't remember any conversation of that kind at all.

Q. Either before or after the date of the letter? A. No, sir; not about overdraft.

Q. I show you Exhibit S-14, which is a letter dated March 4th, which you have stated you received from Scarlett, and which you have testified he sent you the check dated March 4, 1913, for $500, begin Exhibit S-13; Mr. Scarlett testified that before writing you that letter and sending up that check, he thinks this conversation was over the telephone, that he told you that he would like you to make a little further loan and he asked you to certify the check and see that the account was good. Did he say that to you? A. No, sir.

Q. And that you replied that you would attend to it and take care of it all right. Did you say that to him? A. No, sir.

Q. In connection with that same check he says that he told you that he did not want the account to show an overdraft, that he wanted you to loan the money and take care of his credit, and you said it would be all right, that he need not worry about the account, that you would see that the account was all right. Did he say that to you? A. I don't remember any such conversation.

Q. Did you say that to him? A. No, sir.

Q. I show you Exhibit S-12, being a letter addressed to you "Dear Mr. Smith," dated March 17, 1913, and signed John B. Scarlett, and which you say accompanied the check S-5 dated March 17, 1913, being Scarlett's check for $350, which was the check in the indictment. Mr. Scarlett has

testified that prior to the sending up of that letter he had a conversation with you, as he puts it "face to face," that he thinks he might have met you at the bank; is that true with reference to this particular check; did you have any conversation with him? A. With reference to this particular check?

Q. Yes. A. I don't think so.

Q. And he says at that time he had quite a little conversation with you relating to his finacial affairs and he told you he was going to cut loose from the hat shop and he went on at some length, telling you that he was going to retire from these outside enterprises that he was in and that you said to him, "All right, Scarlett, you are going to come out all right if you get rid of these miserable enterprises that are drawing the life blood out of your finances." Do you remember any conversation in which you said that to him? A. I can remember a conversation regarding these different matters he was interested in, and when he said that he hoped to get an offer for them, or had an offer for them; I cannot remember any conversation where this particular check was mentioned.

Q. That was not the question, but whether you said—he says this was shortly before he wrote the letter of March 17, 1913, in which he went over his general financial situation, and that he told you he was going to get out of these other concerns, and you said to him, "Well, all right, Scarlett, you are going to get rid of these miserable enterprises that are draining the life blood out of your finances," and you said to him, "You won't have to worry about your business after

you once dispose of these concerns," and you said to him, "I will help you out a little further"? A. I don't remember that.

Q. What part of that don't you remember? A. I don't remember the fact that I agreed to help him any further; there was no agreement that I remember at all.

Q. Well, do you remember the other conversation other than you have stated, that you said he hoped to have an offer for these outside concerns? A. I remember that was talked of several times.

Q. Not only on this one occasion, but other occasions? A. Other occasions, yes, sir.

Q. And that he said in the meantime—that is, before he disposed of his interest in these concerns—that he might want some assistance and that you said you would help him? A. I don't remember any such conversation at all.

Q. And your reply was that you were very glad that he was going to get out of these enterprises and pocket his loss, and you said, "Yes, it will be all right, Scarlett, you are going to come out all right if you get rid of both of these firms," and you said, "I will help you out a little further." A. I don't remember saying that at all.

Q. And he claims that this was about a week prior to March 17, 1913. Have you any recollection of the conversation taking place? A. Not like that, no, sir.

Q. Now, in connection with this $350 check, which I think is S-5, he says he again spoke to you about the account and he said, "I don't want it under any circumstances to show an overdraft." That is in connection with this check

Exhibit S-5. Did he say that to you? A. No, sir; not that I remember.

Q. And he states further, "I told Mr. Smith that I would wish to use the check as a certified check, and that under no circumstances did I want my account to show an overdraft or be overdrawn, and therefore it would be necessary, as before, for Mr. Smith to deposit his own funds to my account." Did he say that to you? A. No, sir.

Q. And that you said in reply, "Don't worry about the account, I will attend to the account all right, Mr. Scarlett." Did you say that to him? A. No, sir; not to my recollection.

Q. In connection with the declaration of trust Mr. Scarlett testified that you wanted the notes included in the trust agreement for the reason that he, Scarlett, had guaranteed the payment of the notes and therefore you wanted, to have security for the payment of the notes, because you were responsible for them yourself or had advanced the money on them yourself. Did you make any such suggestion when that declaration of trust was drawn? A. No, sir, not for that reason.

At 1 o'clock, p. m., the Court took a recess of one hour.

After recess.

RAYMOND E. SMITH, resumes the stand in behalf of the State in rebuttal.

Direct-examination (continued) by Mr. Guild:

Q. What reason did you give Scarlett for having those notes included in the declaration of trust? A. The note had been purchased by the bank, that was the reason, and I wanted to be protected, the names on the notes meant nothing at all, so far as security was concerned.

Q. Scarlett has testified that you agreed to make his account good for his check of $350 being the check in the indictment and in Exhibit S-5; is that true? A. No, sir.

Q. He has also testified that you agreed to make his account good for his check of $500 dated March 4, 1913, being Exhibit S-13. Did you agree to do that? A. I did not.

Q. He has also testified that you agreed to make his account good for the check of $400 dated February 19, 1913, being Exhibit S-15. Did you agree to do that? A. No, sir.

Q. You have already testified that the bank purchased a note for $2500 orignally, written originally for $2500, made by Reynolds, which was afterwards known as the Long note, Long taking the place of Reynolds in the renewal note? A. I don't think Mr. Long took the place of Mr. Reynolds; I think Mr. Sica took the place of Long on the note.

Q. Then you think Long was the endorser on the note? A. Yes, sir.

Q. It is in evidence that the trust company gave its treasurer's check for that, the check being Exhibit S-20, which I now show you, and that is the check representing the proceeds of that note? A. Yes, sir, that is the check.

Q. Was that one of the notes, the original notes, the payment of which Scarlett guaranteed? A. I think it was.

Q. He has testified that he did not receive the proceeds of that note directly or indirectly. I desire to know from you, if you can say, to whom the proceeds of the note were delivered? A. Yes, sir; the money was given to Mr. Long; John H. Long.

Q. On that there check S-20?

Mr. English: He testified to that before.

Q. Where was the money given to Long? A. In the Rosville Trust Company.

Q. Do you know how it was taken away, in what form in the bank, as to whether it was inclosed in any envelope or package? A. I think I put it in an envelope, yes, sir.

Q. Following Mr. Long's visit to the bank, and his taking the proceeds of that check S-20, did you receive any telephone message from Mr. Scarlett regarding the amount of money that was sent back as the proceeds of the check? A. I don't remember whether I received one in connection with it or not, but I do remember having a telephone conversation with Mr. Scarlett about some money which was sent to him, and I believe the amount was not correct, according to his figuring.

Q. Can you recall anything more about it than that? A. I think it has something to do with this item; I think it was the money that was sent down to Mr. Scarlett at that time; the amount was not correct; he said it was a hundred dollars short, and I called his attention to the fact that I had deducted the interest on the note, and instead of $2500 it was $2400 and odd dollars in cash was coming to him, and that accounted for the hundred dollars difference; he thought it was an even hundred dollars, but it was only $25.

Q. It was only $25 difference and not a hundred, as he evidently thought he had discovered? A. No.

By the Court: Q. In your testimony a short time ago you said the $9700 included a $4200 note? A. That was a check I gave for $4200; I gave to Mr. Scarlett a certified check for $4200; I thought I testified that way.

Q. I had it that way. Was the Reynolds $2500 note the successor of this note— in other words, did that transaction have its inception in that check, S-20, check of John H. Long? A. Yes, sir.

Q. For which a note of Long was given? A. Yes, sir.

Q. For which there was substituted a note of Reynolds for a like amount? A. The Reynolds note was the original note endorsed by Long, and then later on Mr. Sica took Mr. Reynolds place on the note.

Q. And originally it was a Reynolds note endorsed by Long? A. Yes, sir.

Q. And later on Sica took Reynolds place as maker? A. Yes, sir.

Q. Still continuing with Long as endorser? A. Yes, sir.

Q. And Long got the proceeds of the Reynolds note as indicated in this check S-5; is that right? A. Yes, sir.

Q. Which is represented in this check, the difference being represented by the discount? A. Yes, sir, the interest.

By Mr. Guild: Q. I show you S-3, which is the oath of John B. Scarlett as director of the Roseville Trust Company, under date of February 3,

1913, and ask you whether that oath was accompanied by a letter? A. Yes, sir; I believe it was.

Q. The oath was received by you? A. Yes, sir.

Q. Was it accompanied by a letter? A. I think it was.

Q. I show you a letter dated February 3, 1913, and ask you if that is the letter that accompanied the oath? A. Yes, sir, it is.

Q. What is the signature attached to the letter? A. John B. Scarlett.

Mr. Guild: I desire to offer that letter in evidence.

Mr. English: It is not Mr. Scarlett's signature, he says. I object to the letter until the signature is proved.

Mr. Guild: It is offered merely as the letter which accompanied the oath.

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. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-114.

Q. I will read the letter. "Newark, N. J. February 3, 1913. Mr. Raymond E. Smith, Roseville Trust Co., Roseville, New Jersey. Dear sir: Enclosed find oath as director. Your truly." Signed, "J. B. Scarlett." Is that the signature of Mr. Scarlett? A. I should call it Mr. Scarlett's signature, as I know his signature; it looks as if he might have used a poor pen, but it looks a great deal like his signature.

Q. In any event, the letter accompanied the oath? A. Yes, sir.

Mr. Guild: I should also read the following printed matter as part of this letter, which is on the letter. "Office of John B. Scarlett, Civil Engineer Real Estate, 764 Broad Street, Third Floor," which is printed.

Q. Mr. Scarlett has testified that he sent to the bank the oath of office which you have identified and that he sent with it a letter of resignation as director and submitted a carbon copy which he says is a copy of his resignation. Was there any such letter accompanying the oath of office? A. I never have seen the letter before—that is, I never have seen the original letter at all.

Q. Either accompanying the oath of office or at any other time? A. No, sir, never remember seeing it at all.

Q. Now, I show you a paper which is headed "Statement of John B. Scarlett," dated March 15, 1913, and is marked Exhibit S-27 for identication, and ask you whether you have seen that before?

Mr. English: I think that is the paper that we had some discussion about, because there was only a part of the report handed in.

Mr. Guild: Mr. Scarlett said it was the statement he sent up and he thought he sent up something with it which showed the value and dimension of lots out in the country.

The Court: As I recall it, your objection

to it was a statement concerning some of his companies that he was interested in, not lots, but companies that he was interested in.

(Question read.)

A. Yes, sir; I have.

Q. Was it received by you as representing the trust company? A. Yes, sir.

Q. Can you say when, about? A. Some time after March 15th, around that, I think.

Mr. Guild: I offer it in evidence.

Mr. English: I object to it because it has pinned to it, and is made a part of another paper that Mr. Scarlett testified about when he was examined, and it appears on its face that it was not complete. There are no deductions on here of these various values. Mr. Scarlett has stated that it is a fragment of a paper which has been pinned to something.

The Court: Ask the witness whether any other paper accompanied it.

Q. Did any other paper accompany this statement? A. I don't remember of nothing at all.

The Court: I think on its face it seems to be complete. The only reason of a paper accompanying the instrument such as described by Mr. Scarlett would be to amplify or give more detail to some of these items which apparently are details there representing his interest in other companies, from which it would not appear that these accompanying papers were at all essential to an understanding of this instrument. According to the witness's statement, he says

that to the best of his recollection it was not accompanied by any other instrument. 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. OSBORNE,
Judge.

(Seal)

Marked Exhibit S-27.

Q. The signature to the paper is the signature of John B. Scarlett? A. I think it is, yes, sir.

Q. Had you on behalf of the trust company asked him for a statement of his affairs? A. I had, yes, sir.

Q. On or about this time? A. Yes, prior to that time.

Q. In Scarlett's letter to you under date of March 17, 1913, being Exhibit S-12, he says, "Will send statement up this p m." Is that the statement referred to? A. I think it is, yes, sir.

Q. Is S-27 the statement that he refers to? A. Yes, sir.

CROSS-EXAMINATION by Mr. English:

Q. Now, Mr. Smith, you have been giving us yesterday and today a good deal of your personal recollection? A. Yes, sir.

Q. After a lapse now of four years? A. Yes, sir.

Q. And do you undertake to say that your recollection at this late day, after all the things that transpired in the meantime, is accurate? A. In some cases I think it is.

Q. In some cases you think not? A. Perhaps so.

Q. For example, I notice in a great many cases you used the expression "I think so," I don't remember," you think so, but you don't remember accurately, or words to that effect. In all those cases I take it you don't want to be understood as swearing positively to the statement, but that is the best of your recollection at this time? A. Yes, sir.

Q. When the prosecutor referred you to various conversations which Mr. Scarlett testified to, and you said you don't remember now, or have no recollection, or words to that effect, I don't understand you to say positively that such a conversation did not happen, but that you have no recollection of it at all.

Q. That is the extent of your testimony because you now have no recollection of it? A. Yes, sir.

Q. About what time of the day did you say it was that the conversation took place in the rooms of the bank when you gave this $4200 check? A. A little after 4 o'clock, I think, in the afternoon.

Q. What were the banking hours of your bank? A. Quarter to eight in the morning until 3 o'clock in the afternoon.

Q. What time were you ordniarily in the habit of leaving? A. Anywheres from four to six.

Q. And how long were the other clerks there? A. At various times; it was according to how busy we were.

Q. On an average, they all didn't get away 3 or 4 o'clock? A. Some of them did get away half-past three, quarter to four, most every day.

Q. Did all of them? A. Not all of them, no, sir.

Q. Who had charge of the time lock on this safe? A. The paying teller, Mr. Jennings.

Q. Where was that safe located? A. Located in the banking room.

Q. I appreciate that; I mean in your private office or some other part of the building? A. No, sir; it was right in the main banking room, back of the tellers.

Q. Was it a big vault built in the building or a large safe? A. A large safe with a time lock on it.

Q. Do you know what time of day it was accustomed to lock that up? A. The time he got through in the afternoon, usually around half-past three, quarter to four.

Q. And what was kept in that safe? A. All the cash, collateral loans, loans of the institution that they had purchased, notes, and so forth, books of various kinds.

Q. Was that the safe that had in it the famous box 55? A. The same safe.

Q. Were you in the habit of locking up the check book, a blank check book? A. No, sir.

Q. There wasn't any occasion to put under a time lock just the ordinary check book in which no checks were drawn? A. An ordinary check book, a blank check book?

Q. Yes. A. That had never been used.

Q. Either had never been used or partially used? A. Well, that depends. I did look at check books every day that had checks in them that never had been filled out, but there were stubs on these checks books that were worth a good deal to us; there were also return checks on those check books that were pasted in on the stubs that

were of value to the institution, and not only that, the check books of the bank, the draft books, I should say, or treasurer's check book, were always kept in the safe.

Q. You were in the habit of locking them up at night, were you? A. Not necessarily myself, no, sir. We kept them in the safe at all times, as a rule.

Q. And when those books were in use where were they kept—on your desk? A. Yes, until—

Q. Where? A. Kept on the desk near the safe usually.

Q. So every time you wanted to draw a treasurer's check you had to leave your place and find out where this check book was and draw a check? A. I didn't draw the checks as a rule; I signed them, but I didn't always draw them.

Q. You sometimes drew them? A. Once in a while, yes, sir.

Q. So when you did draw them you had to go through those motions? A. Yes, sir.

Q. In other cases, checks were brought to you to sign? A. Yes, sir.

Q. Didn't you have blank checks in your desk of various kinds?

Mr. Mott: I was going to suggest whether he means ordinary blank checks, personal checks or treasurer's checks.

The Court: He can answer that question.

A. You mean on various institutions?

Q. No, I mean on your own institution. A. I might have a couple of check books there that had not been filled out, blank checks.

Q. Is there anything about a treasurer's check

that seems to distinguish it from any other check except that the name "Treasurer" is signed after the name of the individual that signs it? A. Yes, sir, the word treasurer is on the check also.

Q. That is due to the printing. Is there anything especial to a treasurer's check that it should have? A. There is this about it, when it is used outside of the institution, a bank would recognize it at once when it was presented for payment.

Q. My question was, is there anything essential to the validity of a treasurer's check that did not have "Treasurer" printed on? A. No, sir.

Q. You could have given a treasurer's check without having the name treasurer printed on it, couldn't you? A. I didn't finish my answer. I said no, sir, but I think that will have to be qualified a little, your Honor.

Q. Go ahead. A. A man can sign a check as a treasurer and it may mean nothing at all so far as the institution is concerned; he may have been treasurer of several different things.

Q. Couldn't you have written on appropriate words that you were treasurer of the trust company? A. Could have done it, yes, sir, but I never have known it to be done.

Q. I am asking you about a check on the Roseville Trust Company, in order to make it a valid check, did you have to produce your check book which had on the word in print "Treasurer"?

The Court: The question, Mr. Smith, is whether you could write such a check that would be legal and would be legally in force and not whether you could personally draw a check—

Mr. English: That is the point of the

question. Could you have drawn a legal treasurer's check without resorting to the treasurer's check book of the institution?

Witness: I suppose it could have been done, but I have never done it and I have never known it to be done.

Q. (Question read.) A. No, I wouldn't have to.

Mr. Guild: There were other words printed on the check besides the word treasurer.

Q. Now, besides those check books which you kept in the safe, what other books of the bank did you keep in there? A. Stock book and stock certificate book, stock ledger, draft book on different institutions we drew against, on all of the institutions, in fact, I think such as the Irving and the Union and the New York State Bank and the Shawmut Bank, Boston, and the Fourth Street National, and so on.

Q. These books we have got before us now. Were they kept in the safe—some of them were valuable? A. Some of them were kept there. The minute book was kept there.

Q. And what else? A. I can't remember; there were several books kept there at all times.

Q. These return item books, for example, were they kept in the safe? A. No, sir.

Q. The teller's proof book? A. Not in that safe.

Q. In any safe? A. Perhaps they were. The paying teller's was, anyhow.

Q. The return letter books were kept there? A. No, sir.

Q. Certification check book, was that kept there? A. Kept in another safe; we called it a book safe.

Q. That also had a time lock? A. No.

Q. Now, who locked up all these other books that had been in the safe? A. As a rule, whoever was through last, who finished up the work, would close the safe, that is, the small safe. There were two of them.

Q. I want you to tell me again the items that made up the total of ninety-seven hundred and odd dollars. A. $4200.

Q. You mean your personal check for $4200? A. Yes, sir.

Q. What else? A. $2500, Reynolds note, two notes of Zaccareill, $750 and $500, and Spinoza note for $1247.76, I think it is; there was also a check of John B. Scarlett's which had been honored by the Roseville Trust Company.

Q. How much? A. Five hundred dollars, and there were several small checks which had been returned; I think there were several.

Q. How much do they aggregate? A. I think that is almost $9700.

Q. How much did those small checks aggregate? A. They aggregate several hundred dollars, but I didn't know the amount of them at all at the time.

Q. Two or three? A. There were at least two. I know one of $150; I think there was one of that amount.

Q. How much was the other one? A. I think there was one for $650.

Q. Any others? A. And one for $500, but I think the $650 took the place of the two checks later on.

Q. What I want to know is, what was included in this $9700 aggregate? A. Why, included the

$500 with the $9700, but I couldn't remember the other item at all.

Q. But there were other items besides those? A. There were one or two items, yes, sir.

Q. You don't remember how much they were worth? A. No, sir, the $150 wasn't included at that time, either; that was one of the checks I had in mind at that time.

Q. You haven't taken the trouble to total up those figures? A. I think I have.

Q. Do you think they come to $9700? A. $9600 and odd dollars.

Q. Don't they come to $9847? A. I didn't include the $150.

Q. I thought you did? A. I meant to say, that was one of the items I had in mind, but I didn't know the amount of it.

Q. Did you include the $650? A. No, sir.

Q. Did you include the $500? A. I included one $500.

Q. And what else? A. The notes that I spoke of.

Q. Come down to the $500 check. A. That is all.

Q. What other check besides the $500? A. That is all.

Q. You said twice several other checks besides the $500 notes. A. I didn't know the amount.

Q. Did you include them in the figure of $9700? A. $9700 and odd dollars; I couldn't get the amount of the checks that were locked in the safe and I didn't know what they did amount to.

Q. Did you intend to include them in the item of $9700? A. Intened to, yes, sir.

Q. And that would have made several hundred dollars more? A. Yes, sir.

Q. Which was intended to be covered by the outside figure of $9700? A. I am not sure of the amounts of those now.

Q. I mean, did you intend to include them in the outside figure of $9700? A. Yes, sir.

Q. I take it from what you said you regarded yourself the trustee of the bank for these moneys; is that right? A. You can call it trustee if you like.

Q. Well, that was in effct what you intended, wasn't it? A. Yes, sir.

Q. You wanted to have the bank secured for those moneys? A. Yes, sir.

Q. And you say you didn't want any declaration of trust in the name of the bank because the record of that fact might be disclosed at once and you thought that might be a matter of criticism? A. Yes, sir.

Q. And you thought if it ran in your name personally it would not be reported and that wouldn't be a matter of comment? A. I didn't want it. You are talking about the declaration of trust—somebody that wasn't interested in the institution.

Q. And that is why you thought a third person as trustee would be a good way of escape on that proposition? A. Yes, sir.

Q. Your intention was, as I understand your testimony, to secure the bank by having this declaration of trust go to some third person as trustee for the benefit of the bank? A. Exactly.

Q. Why did you sign it personally then instead of signing it on behalf of the bank? A. The declaration was drawn that way.

Q. Yes, I know it was, but the real party in interest was not yourself, but the bank. Why

did you sign it personally and not sign for the bank? A. The reason I signed it the way I did was because it required my personal signature the way it was drawn, sent up to me to be signed, all three of them.

Q. And so you were acting for the bank? A. I was.

Q. That letter which you wrote out in your handwriting was not to be a matter of record? A. Not to be recorded, no, sir.

Q. Why was it necessary to have that in your name, as far as appearances are concerned? A. No special reason for it.

Q. You were interested in having that declaration of trust so that the bank would be properly protected? A. Yes, sir.

Q. Why were you interested enough to have the date filled in and have it sent up for record if you were acting as trustee for the bank in preserving its interest? A. Why, I didn't take much notice of the date on it, only I noticed there was no date on it at that time, but I was trusting Mr. Scarlett absolutely in this matter.

Q. Were you trusting Mr. Scarlett to have recorded your declaration of trust? A. Yes, sir.

Q. Why did you take the pains to have a triplicate copy made for yourself and sign it personally? A. That was his idea.

Q. Were you not interested in that idea? A. Yes, sir; he drew them up.

Q. Although you were trustee of the bank and preserving its interest, you didn't have interest enough to send it up to be recorded, but you thought you would trust somebody else to do it? A. I felt that whatever was signed individually would be perfctly legitimate without going any

further with it; I thought Mr. Scarlett would look after that fully.

Q. Do you think that it was his interest or your interest to have it recorded? A. It should have been to our interest to have it recorded.

Q. That is the only explanation you can offer why you neglected that important little detail, isn't it? A. Yes, sir.

Q. Do you say that paper was drawn to be recorded? A. I understood it would be recorded, yes, sir, by Mr. Scarlett.

Q. You unerstood that? A. As far as I remember now.

Q. And it was your intention to have it recorded? A. I wasn't accustomed to have things recorded.

Q. It was your intention to have it recorded? A. Yes, sir.

Q. You have had occasion to put papers on record in the coure house in your experience? A. Yes, sir.

Q. Don't you know that they are usually signed before a proper officer and acknowledged before a proper officer? A. I didn't realize just why the declaration of trust had to be drawn up.

Q. That don't answer my question. My question is whether or not you didn't know that before a paper could be recorded in the court house it had to be acknowledged before a proper officer—any paper? A. I know that is true with mortgages and soforth, and deeds.

Q. You knew it was true of deeds? A. I didn't realize, didn't think of it at all.

Q. Didn't you know it was true of deeds? A. Yes, sir.

Q. This virtually passed the title from the owner to the trustee, didn't it?

Mr. Guild: Why, no, the title had already passed from the owner to the man who became the trustee.

The Court: The witness is merely asked his understanding. I think it is proper. He is not asking for the witness's legal conclusion.

(Question read.)

The Court: Do I understand you to ask the witness what his view of this was or what the fact was?

Mr. English: I am asking what he understood, just what the question said.

The Court: The question did not say that. That, standing alone, would call for a conclusion as a legal proposition, whether it did or did not. You say you want the witness's understanding of what he thought it would be. You can ask that question.

Q. Don't you know that that paper virtually passed the legal title to the trustee?

Mr. Guild: I object to that on the ground that the paper shows that it did not.

The Court: Objection sustained.

Q. You knew that Mr. Scarlett was married, did you not? A. Yes, sir.

Q. And you knew that in order to pass the title to a married man's property free and clear the wife has to join in the conveyance? A. No, sir.

Q. Did you take any steps in your interest in

the bank to see to it that Mr. Scarlett signed the paper? A. No, sir, I did not.

Q. How is that—you didn't protect the bank? A. I left the whole thing for Mr. Scarlett to protect the bank, yes, sir.

Q. Did you inform Mr. Sica that he was acting as trustee for the bank? A. I did not.

Q. How was he to know that then? A. He was one of the three named in the—he was already named in this declaration of trust.

Q. And on the face of the paper he was acting for you and Mr. Scarlett? A. Yes, sir.

Q. How was he to know that he was actng for you and Mr. Scarlett? A. The paper called for him to be a trustee.

Q. Now, I ask you how, on reading the declaration of trust, it simply says that he was to be the trustee for you and Mr. Scarlett, did he know that he was in fact acting not for you, but for the Roseville Trust Company? A. I don't know that he know unless Mr. Scarlett had told him probably.

Q. You didn't take the trouble to tell him? A. No, sir.

Q. Although you and your bank were the persons most vitally interested in that? A. Certainly the bank was.

Q. Did you own the Oakland Motor Company? A. No, sir.

Q. What was your interest in it? A. I didn't own any if it at all.

Q. What is that? A. I didn't own any interest in it whatever.

Q. What was this Oakland agency that you had and talked about? A. Oakland Motor Sales Company.

Q. Did you own that company? A. I believe so.

Q. Well, don't you know whether you did? A. I did, yes, sir.

Q. And that company whch you owned had the agency to sell the Oakland car? A. Yes, sir.

Q. When was it that the company organized? A. The Oakland Motor Sales Company was organized, I believe, some time in 1912.

Q. What concern was it that had the agency for the Oakland car in 1911? A. I had the agency for the Oakland car in the fall of 1911.

Q. And the company was organized in 1912? A. Yes, sir.

Q. In what name was the agency? A. Called it the Oakland garage at that time.

Q. So it was Raymond E. Smith, doing business as the Oakland Garage? A. Yes, sir.

Q. And that was the concern which had this agency? A. Yes, sir.

Q. And then you afterwards amplified that into a corporation? A. No, sir.

Q. Did you organize a corporation and turn the Oakland Garage over to it? A. No, sir; it never was a corporation.

Q. You continued the business under that name afterwards? A. Yes, sir.

Q. You just changed your trade name? A. That is it.

Q. You made some money in that business? A. I think a little.

Q. If you didn't have a conversation with Mr. Scarlett, which you referred to this Oakland car business in the spring of 1911, what time was it

that you did have that conversation with him? A. I don't remember any such conversation.

Q. Are you sure about that? A. I can't say that I ever remember any such conversation regarding the automobile business.

Q. At no time at all A. No, sir.

Q. When you put through this trust agreement which you say was in the interest of the bank, of course, intended, when the money was paid back, that it would go to the bank, did you not? A. Yes, sir.

Q. And to that extent you were interested in getting back your $4200 which you had personally advanced on behalf of the bank, were you not? A. I didn't advance it.

Q. What is that? A. I didn't advance $4200.

Q. Didn't you sign this check, your personal check, this Exhibit S-6 for $4200? A. Yes, sir.

Q. Did you advance the money or didn't you? A. I did not.

Q. Whose money was it? A. The bank's money.

Q. In other words, you drew your personal check, but it was paid for by the bank's funds? A. Yes, sir.

Q. So it became virtually a treasurer's check? A. Practically.

Q. Did you make any entries on the books on the bank? A. No, sir.

Q. Leaving yourself out for the moment, how was the bank going to know that it was going to get this $4200 back if there were no entries in the book to show it? A. I didn't make any proper entries.

Q. What entries did you enter in the books

of the bank to show that the bank was to get this $700 back when it was paid? A. I can't tell you exactly now; the checks were presented to the Roseville Trust Company, was paid, and carried in the cash a while.

Q. What I am concerned with now is how the bank, as such, was going to know that it was entitled to get back that $9700 when it was paid pursuant to the terms of the trust agreemen; you said you knew it; how did anybody else know it, the president or the directors? A. They would know it from the fact that the check was endorsed by Mr. Scarlett and he got the money on it.

Q. Which check? A. $4200.

Q. Which was your personal check? A. Yes, sir.

Q. Could the bank go to your list of personal checks and conclude that because a check was endorsed by any individual that the bank was entitled to go to the individual and get the money? A. Not necessarily.

Q. Give us a better reason. A. Because the check came through and wasn't paid by my account; it wasn't intended to be paid against my account.

Q. You say the outsider in the bank would know that? A. There is no reason why they should know it.

Q. There wasn't anything in the books to indicate it, was there? A. No, sir.

Q. You left no entries or memoranda or anything of the kind fastened to the papers to indicate that it was a bank affair and not your personal affair, isn't that true? A. That is true.

Q. Do you say that this letter of resignation of February 3, 1913, addressed to the directors, was not enclosed with the oath, or that you have no recollection of it? A. It wasn't enclosed with the oath.

Q. Do you want to swear to it possitively? A. I am perfectly sure that it was not enclosed in the same letter with the oath.

Q. Do you say that the question of Mr. Scarlett's resignation had not been discussed prior to that date? A. Not to my knowledge, yes, sir.

Q. Not to your knowledge A. I don't remember that, no, sir.

Q. Were you there at that meeting held between Christmas and New Year's 1912, which has been the subject of testimony in this case? A. So the minutes say.

Q. Have you any recollection of it? A. No, I have not.

Q. Do you undertake to contradict Mr. Munroe when he says that that matter was discussed, or you have no recollection? A. I don't pretend to contradict anybody at all; it might be brought up in the meeting, but not in the regular way, but not in a resolution or anythiing of that kind.

Q. I ask you if you deny that any such thing was discussed at that meeting?

Mr. Mott: There was not anything said about resignation. It was a matter of reelection.

Mr. English: He said that the question of being reelected was discussed and that they thought he had better be reeleced and then could resign afterwards. If that is not a discusson about a resignation, I don't know what is.

The Court: You can answer that question whether you remember it.

A. No, I don't remember it.

Q. Do you remember the queston of Mr. Scarlett not standing for reelection discussed at that meeting? A. I don't remember that either.

The Court: Mr. Munroe said Mr. Scarlett said he had better not stand for reelection and somebody suggested they had better not have a vacancy, and it was left in that way. It was apparently a discussion, but nothing officially done at that time.

Q. Do you remember that Mr. Scarlett and the others discussed the fact that his personal affairs were in bad shape and it was a question whether it was desirable for him to stand for reelection? A. No, sir.

Q. Do you remember that the question of whether Mr. Bannister should stand for reelection was discussed? A. I remember that the Bannister matter was being discussed at certain meetings, yes, sir.

Q. You remember about Mr. Bannister? A. At some meeting, yes, sir.

Q. Do you remember whether it was at this meeting held between Christmas and New Year's? A. I don't remember.

Q. Do you remember that it was suggested that the same course should be followed in reference to Mr. Scarlett? A. No, they were not connected at all, to my knowledge.

Q. How is it you can remember such details about the check, but you can't remember a conversation of this character? Can you give us any explanation for that phenomena in your testimony? A. I haven't a great deal of recollec-

tion of certain checks, except checks that have come back regularly and going through and so on, such as these checks you speak of.

Q. You think you have a good memory for checks and not conversations? A. There are circumstances connected with these checks that make the matter fresher in my mind.

Q. Were you testifying from memory about all these checks that you have been giving two days on the stand? A. No, sir; not entirely.

Q. How long have you been up here in Newark this last time? A. About a month, I guess.

Q. And you spent a great deal of time with the prosecutor in the preparation of this trial? A. I spent quite awhile.

Q. You have been over all of these papers with them? A. Most all of them.

Q. And you have examined with them various bank letters here that have been put in evidence? A. Yes, sir.

Q. And you have examined these various checks and telegrams and letters, and what not, that have been shown you on the stand here yesterday and today? A. Yes, sir.

Mr. Guild: I object to that part of the question in which he says checks shown him here, that he had examined them with the prosecutor. There might have been a number of checks shown here by the defendant.

Mr. English: He can say so if it is not so.

The Court: The question seems to state a situation which is not a fact. The prosecutor suggests that you incorporate in the

question shown him by the prosecutor and which he has not examined, because they were produced by you.

(Question read.)

The Court: Mr. English indicates he means with the exception of those that were produced by himself.

Witness: Yes, sir.

Q. And who, on behalf of the State, have you conferred with in connection with these things —Mr. Hargan? A. Yes, sir; some.

Q. And Mr. Ferguson, this gentleman here (indicating)? A. Yes, sir.

Q. Mr. Vredenburgh? A. Very little.

Q. Who else besides Mrssrs. Hargan and Ferguson—Judge Guild? A. A little bit.

Q. Very little? A. Yes.

Q. Chiefly with Messrs. Hargan and Ferguson? A. Yes, sir.

Q. Anybody else? A. I don't think of anybody else now.

Q. And when were those various conferences held, at various times during the month you have been up here now? A. Yes, sir, various times.

Q. And particularly since the defense closed their testimony last week? A. No, sir.

Q. Before that? A. Before that.

Q. Do you undertake to say that if it had not been for the fact that you have been shown all these papers that you would have this very active recollection that you have given on the stand yesterday and today, all these papers shown you by these gentlemen?

Mr. Guild: I object. It is compound, having been shown these papers and hav-

ing them explained to him by these gentlemen.

The Court: Maybe it is the other way around. He may have had to explain it to them.

Q. Did they explain them to you? A. I think not.

Q. Did you explain them to them? A. Some of them.

Q. And you discussed between you the State's theory as to how they fitted in? A. Yes, sir.

Q. Did you have any personal recollection of any of the transactions at the time you took them up with them? A. Yes, sir.

Q. For example, just looking at a bank letter, like S-66, which I show you, which has simply the word "Union National Bank," and the word "Metuchen," figures "$2000," and a date, did you have a recollection of that paper, just standing by itself, put your finger on the particular transaction which that figured in, along with the thousand other checks which you handled during that time? A. Yes, sir.

Q. Do you think now that simply taking them at random out of the files and looking at them, you could say, after four years, that that referred to a specific check drawn by the Middlesex Hat Company, deposited by John B. Scarlett, and protested three times, and all that?

Objected to.

Objection overruled.

Q. (Question read.) A. I can't answer that yes or no. I can tell you, though, what it means.

Q. Could you reach such a conclusion before we had all those things dovetailed together the

way they have been in this file, finding that at random among the papers? A. I don't get you.

Q. Separate from your mind what has taken place in this trial and imagine, if you can, that you are shown this paper a month ago, any of the checks, without your recollection being refreshed and without the benfit of the gentlemen who are associated with the prosecutor, you would have been able to say, just by looking at that, what transaction or check it referred to? A. I would know it was a Middlesex Hat Company check.

Q. Would you know what one? A. From that letter I would know what one.

Q. Would you know from the date of the check? A. No, not ecessarily.

Q. Or how many times it was protested, if at all? A. No, I couldn't tell that.

Q. So isn't it a fact that your recollection from which you testified has been somewhat stimulated by these conferences of going over these records and all those things since this trial was imminent? A. I can't say it has been stimulated by the conferences; it has been stimulated by the records of the bank themselves.

Q. You don't claim that you have an individual recollection of each of these papers which have been shown you yesterday and today? A. Not each one; I know they belong to the institution; there is not any doubt about that.

Q. Turn to the individual ledger account, Mr. Scarlett's individual ledger account; that account seems to have been balanced, according to that ledger, on the 19th of December, 1910, wasn't it? A. Yes, sir, the 20th, I think.

Q. And the section of the account which you

testified to is embraced between the date of December 20, 1910, and April 6, 1911, and the last item you referred to was $1201.30? A. That is correct, I think.

Q. You testified to a deposit of $1200 on December 22d which was represented by a deposit slip. You remember that? A. Yes, sir I think so.

Q. And you showed that on December 24th that came back charged with a protest is that right A. I don't think I testified to that.

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

Q. I remember that you did. Do you want to testify in some other respect about that item of December 24, 1912, $1201.30 on the debit side? A. I think the $1201.30 on the debit side on the 24th represents the one that was put in on the 19th.

Q. Going back of that date, back of the date of the balance? A. Yes, sir.

Q. Then what became of that $1200 deposit on the 22d? A. I think that one was paid.

Q. That was all right? A. It must have been.

Q. So coming down to that point, December 24, 1910, the account showed a balance, didn't it, the one charge counteracted the credit and vice versa? A. Showed a balance of $3.12.

Q. Then on December 31st a deposit was made of $805? A. Yes, sir.

Q. And then you had a balance of over $800? A. For about a minute, yes, sir.

Q. I didn't ask you how long, I asked you what it was? A. On the 31st of December there was a check returned for $801.50 that was charged a-

gainst that deposit of $805 that was made on the same date.

Q. That fleeting balance of a minute? A. Yes, sir.

Q. Was reduced to $6.64? A. Yes, sir.

Q. That still showed a balance? A. A balance on the right side, yes.

Q. And the account shows a balance, either momentary or otherwise, sometimes larger and sometimes smaller, right down to the date when you closed your testimony with reference to it, namely, in April, 1911? A. Yes, sir; it shows a small balance at times and a large balance at other times.

Q. It was always something in excess of nothing in that account? A. According to the ledger.

Q. Until April? A. April 6th.

Q. It seems to be balanced, according to this statement, May, 1911, which shows a balance of $188.40? A. Yes, sir, on May 9th.

Q. That went beyond the time of your testimony. So far as the ledger account shows Mr. Smith, these various checks which you have testified about and which you say were protested, and what not, were counter-balanced every time by some kind of a deposit, as the ledger shows? A. Every time?

Q. Yes. A. Every time.

Q. If not at the immediate time, by some subsequent deposit, or the account was balanced up, there was always something on the credit side of the ledger? A. I don't understand you.

Q. There is nothing complicated about that question. Doesn't the ledger show a balance, either large or small? A. Yes, sir, I should think.

Q. Isn't it a fact, that notwithstanding all these checks that went through and were protested, nevertheless , because of the deposits which were made on the one side of the debit, on the other side there was always a balance in the ledger to the credit of the depositor of either smaller or larger dimemsions? A. Yes, sir, but—

Q. Just answer that question. A. I can't say that.

Objected to.

Q. I show you Exhibit D-32 and D-33, when you charged up the protest fees on that did you include this ten cents the New Brunswick man was so strenuous about, or just the $1.58? A. $1.58. apiece, evidently.

Q. $3.16 you made your total? A. Yes, sir.

Q. Why didn't you put in the ten cents? A. I don't know why that wasn't done. I perhaps can explain that, though.

Q. Have you any recollection of it? A. I might refresh my memory on it if I can have the right book, the receiving teller's proof book of that matter. (After examining book.) There was a cash variation?

Q. It should have been $3.36 instead of $3.16? A. Yes, sir.

Q. What is that? A. I presume so, from this amount here.

Q. Are you so positive now that the entry in the ledger which you say represents this protest charge does, in fact, represent it? A. I am sure it does, yes, sir.

Q. But you have to explain it on the cash varieting in the teller's cash? A. Yes, sir.

Q. Do you claim to have a personal recollect-

tion of the check which was represented by the protest D-32 and D-33? A. I do, yes .

Q. Although you have not seen the check since 1910? A. No, sir.

Q. You say those checks were taken up by other deposits and handed back to Mr. Scarlett; is that your recollection? A. Taken up by other checks, did you say?

Q. I am asking you if that is what you did say; that is my recollection of your testimony? A. Yes, sir; that is true.

Q. You gave them up because they had in effect been paid by being charged to the account and therefore you were through with them? A. Yes, sir.

Q. Why did you give them up? A. Because they were paid by two other checks.

Q. They were paid by other checks? A. Yes, sir.

Q. Were they charged to the account? A. No, sir, because they were paid by other checks they were not charged to Mr. Scarlett's account.

Q. In every case, isn't that the way to do it? A. Yes, sir.

Q. That is the customary way? A. Yes, sir.

Q. If the check turns out to be no good the account is charged with it? A. Yes, sir.

Q. If another deposit is made to take care of it the account is credited with it? A. Yes, sir.

Q. That is the ordinary banking? A. Yes, sir, that is one way.

Q. Why didn't you proceed with that method in this case? A. I didn't; I charged the checks up.

Q. In the first place, why didn't you credit the check up when the checks were deposited? A.

The checks were not deposited; they were cashed.

Q. When the checks came back why wasn't he charged with the amount of the cash? A. His ledger account wasn't good for it.

Q. How does the ordinary bank treat a check which is cashed and comes back no good, don't they charge it up against their man? A. If the account is good for it.

Q. Suppose the account is not good for it, what has that got to do with making the entry? A. A whole lot.

Q. Why was that? A. They would rather carry it in the cash rather than have an overdraft appear on the ledger.

Q. Is that true of all banks? A. True of all banks I know anything about.

Q. How many? A. Three or four.

Q. Were you employed in three or four different banks before you got in this concern? A. No, I was in two others.

Q. Do they do business that way? A. Yes, sir.

Q. Did they conduct their business the way you conducted the Roseville Trust Company business? A. I am not saying that.

Q. You say when that check came back it wasn't charged because the account didn't have balance enough to charge it against? A. Yes, sir.

Q. What memorandum, if any, did you keep by which your bank would know that this depositor owned the amount of that check? A. The check would appear as a returned out in the exchanges.

By the Court: Q. You said you kept the check as a memorandum? A. Yes, sir; kept the check as a memorandum for a day perhaps—that is,

I am speaking of the time when the check came back, the day it comes back, if the endorser's name is not good for it the check is either held in the cash or else it is put through again, try to get the money on it.

Q. Which was done in this particular case; you remember the case. A. The check was put through again.

Q. When the check was put through again and it went out of your possession you had nothing to show that you had paid the depositor the amount of these checks? A. Yes, we did.

Q. What did you have? A. The original entries.

Q. Where were these original entries? A. In the paying teller's proof book.

Q. Just show us on the particular check. A. There are two checks.

Q. I am referring to the checks that are referred to in the two protests D-32 and D-33, checks, dated the 15th day of November, 1910, each for $1000? A. (Witness examines book.)

Q. What do you point to in answer to my question? A. Paying teller's proof book.

Q. You point to two items in the paying teller's proof book in the column headed "Foreign" on which are the letters "N. J."? A. Yes, sir.

Q. And the figures $1000 each? A. Yes, sir.

Q. You say that is your record by which you charged John B. Scarlett with $2000? A. No, sir.

Q. That is what I want to find out. A. I don't think your question was put that way.

Q. You say that is your record to which you point and from which your bank figures out John

B. Scarlett owes $2000 on these checks which were cashed? A. The records show that Mr. Scarlett got the money on those two checks, or his representative did.

Q. What record? A. The paying teller's proof book.

Q. This which you point to? A. Shows that those two were cashed.

Q. I know the record shows that two foreign checks, N. J., were cashed, but I ask you what is there that anybody else besides yourself there which would mean that John B. Scarlett ought to be charged with $2000? A. That record alone does not show it, but there are other records that leads up to that, that that is linked to.

Q. Show them to me. A. The outgoing letters of that day.

By the Court: Q. That check which has gone out with this outgoing letter of that date, the amount of which is put in the paying teller's proof book, does that come back to you if it is not paid? A. Yes, sir.

Q. If it is paid you get the money back? A. Yes, sir.

Q. So that you either get the money or the check? A. That is, we get credit, the same thing.

Q. You are asked to produce some other record which would enable a stranger by examining this book, a stranger would know what this transaction was? A. Yes, sir.

Q. What is it? A. An outgoing letter to the Union National Bank, Exhibit S-44.

By Mr. English: Q. Please point out to the jury what there is on this Exhibit 44 which would enable an outsider, looking over the books of the bank, to say that John B. Scarlett ought to be

charged with $2000, standing either by itself or together with the receiving teller's proof book?

Objected to.

The Court: I will permit that question.

Q. By an outsider, I mean a person not familiar with the transaction itself, some person in the bank if you will, but some person not familiar with the actual cashing of the check, an accountant or someone familiar with bank methods.

The Court: Can you answer that question?

Witness: May I go into details?

The Court: Answer the question by going into detail.

Witness: There is nothing on that record of these two checks which would convince anybody that these checks should be charged against Mr. Scarlett's account, but there is a record there that shows that they went through the paying teller's cage and the money went out for those checks, but there is no record to show that they should be charged to Mr. Scarlett's account on that day, and they were not charged to Mr. Scarlett's account on that day.

Q. I know they were not; I am asking you whether there is anything there which would tell any person not familiar with the transaction that he should be charged with that $2000? A. No.

Q. Wouldn't it be as clear if you had said "John B. Scarlett, charge $2000"? A. No, sir, would have to make two entries.

Q. You have got two books to go to? A. Yes, sir.

Q. Is it more simple to go to half a dozen records or one, on the question of simplicity? A. That is looking at it from an outsider's stand-

point entirely; looking at the work end of it, it is wrong.

Objected to.

The Court: (After discussion.) Objection overruled.

Q. Suppose, while you had these two entries before you, S-44, and the receiving teller's proof book, your check is lost while it is going around through the bank, what record have you got to enable your bank to show that a depositor owed $2000? A. Outgoing letter.

Q. That is Exhibit S-44? A. That is one record.

Q. What is there on that which you can point to tie up to John B. Scarlett without anything else? A. The name of the check itself enables anyone in the institution to know that it is John B. Scarlett.

Q. Would it enable Mr. Ferguson, as a representative of the banking department, looking over the files that day? A. It would enable anyone who is familiar with the book.

Q. It would enable the bank examiner? A. I think so.

Q. What in that would enable Mr. Ferguson, who knows nothing about that, to say that Exhibit S-44 shows that John B. Scarlett owes the bank $4000? A. He could find out easily through investigation.

Q. Suppose you only have this record of the check? A. We would get that record out naturally and we would find in which department of the bank the checks went through, find out the history of them.

Q. Can you find them out from record? A. Procure new checks if they were lost, from the endorser, the man we got them from.

Q. Do you think there is anything on this Exhibit S-44 to tie that to an outsider? A. On that one, I think there is.

Q. You think Mr. Ferguson, as an outside bank examiner, could take that up and immediately say that there was a charge that should be made against any given depositor, say Mr. Scarlett? A. Not immediately, no, he could through investigation.

Q. You didn't charge the check to the account, but you set it out a second time, and it comes back a second time, what do you do with it then? A. Charge it up to the account if it is good.

Q. If it is not good, what? A. Carry it as a cash item perhaps.

Q. For a day? A. For a day or perhaps a week.

Q. And send it out? A. Yes, sir.

Q. When are you going to come to the end of that endless circle of performances, going around, sending out and coming back, in the meantime when are you going to determine when you come to the end of that rope? A. When there are funds to pay them.

Q. Take an imaginary case, where there never were any funds, would you keep on going until the end of time, sending it around to the banks? A. No.

Q. What would you do? A. Probably take a loss on it, probably.

Q. That is the way you conducted the bank? A. Eventually we would take a loss on it.

Q. You wouldn't take the check back, call it to the attention of the depositor and say, "You owe the bank so much money and we want it paid?"

A. Certainly. I am taking it for granted that both men were worthless, from your question.

Q. You have detailed this account, this legder account, and these various checks back and forth, and you figured out that that $2000 represented by the protest D-32 and D-33 were paid by being taken up by another check; is that right? A. Two other checks, yes, sir.

Q. How much were those two other checks? A. The same amount, $1000.

Q. What became of those in the course of human events? A. They were paid finally.

Q. They were actually paid? A. Yes, sir.

Q. So that that check took care of that item and the bank did not lose anything on that? A. Yes, sir, took care of those items.

Q. You were next asked about this check of December 27, 1910, for $2000 which you said was cashed and finally took care of that item? A. It was sent through several times.

Q. What finally took care of it? A. It was finally renewed, I believe, with a new check.

Q. You mean another check substituted for it? A. Yes, sir.

Q. So that was taken care of? A. Yes, sir, in that way.

Q. What was the substitute check? A. A check on Metuchen, I think.

Q. But I mean for how much and what date? A. Two thousand dollars.

Q. What date? A. I think it was the 16th or 18th of January.

Q. Two $2000 checks were deposited about that time? A. Yes.

Q. And one of them was used to pay this check of December 27th? A. Yes, sir; I think so.

Q. And the other $2000 check, what became of that, do you remember? A. I think it was one that was cashed on the 3d of January.

Q. I am talking about two checks which were deposited on January 18, 1911, as the ledger shows, and as you testified, but you say one of those checks was used to take up this check of Decemebr 27th; I ask you what the other check was used for? A. They were both deposited to Mr. Scarlett's account.

Q. One was paid; what became of the other one? A. I didn't say one was paid.

Q. I understood you to say so. A. I didn't mean to say so.

Q. What did you say about it? A. I said they were sent through for collection and credit on the 18th.

Q. And the credit made by their deposit took care of this previous check of December 27th? A. Yes, sir.

Q. That helped that, and up to that point the bank had not lost any money? A. Yes, sir.

Q. You talked about a check of January 11th which you cashed. How much was that for? A. Two thousand dollars.

Q. What became of that? A. That was returned.

Q. How was that finally taken up? A. On the same basis, the 18th, by that deposit of $4000.

Q. So that was taken care of, too? A. Yes, sir.

Q. So then your substitute for those previous checks are those two deposits of $2000 each or a total of $4000; is that right? A. No, sir.

Q. What is right? A. On the 24th there was a check—the check that was cashed on the third went out three times and came back again and

finally returned, I think, on the 24th, and a new check was substituted for that $2000.

Q. What was substituted on the 24th? A. Two thousand on Metuchen, I think it was.

Q. Was substituted in place of what? A. Of a $2000 check that had been returned, that was cashed originally on the 3d of January.

Q. Why didn't you credit the account with these checks that were substituted and against which those other checks were charged? A. Well, there was so many of them it was really just as easy or easier to put an new check in the place of an old one.

Q. Didn't that necessitate somebody carrying a lot of data in his mind which might have been put down on the book? A. Not necessarily.

Q. Wouldn't it have been very much simpler to credit the account with the deposit and then charge the cashed check against it? A. It might have been easier; it might have been an easier way to keep track of these checks.

Q. Wouldn't that have been the normal way to have done it?

Mr. Guild: Mr. English is assuming that these substituted checks which came back were originally deposit items. They were cashed items.

The Court: I think the witness has made it quite clear that they were never deposited. They were simply cashed and sent through for collection, and that process continued by substituted checks.

(Question read.)

A. Take it and credit it, you mean?

Q. Yes. A. It would have been one way to do it, but—

Q. Wouldn't it have been the normal way to have done it?

The Court: By that you mean would that not have been good banking practice?

Mr. English: Yes, sir, and the usual banking practice.

A. Probably would have—that is, in a case where one check may have come back that had been deposited or cashed, but where checks were coming back every day almost it would be a different proposition.

Q. The ordinary case, when a man deposits a check his account is credited with deposit, isn't it? A. Why, certainly.

Q. I want to know why it was that you didn't credit the account with these checks which you say were deposited? A. I haven't said they were deposited.

The Court: The witness did not say they were deposited.

Mr. English: I understood checks were deposited.

Witness: Yes.

Q. A cashed check was charged and sent off; is that right or not? A. These are checks that are really renewals for checks that have been already used.

Q. I don't care what label you may put on them; what I want to know is whether when a check was cashed and then came back and another check was given to take it up, whether the check that was so given was a deposit which ought to have been credited to the depositor's account or not? A. It was treated as a deposit sometimes and sometimes not.

Q. When it was treated as a credit why wasn't it charged on the account? A. Every time it was treated as a deposit it was credited on the account.

Q. You mean to say that every check that was deposited as a deposit was credited on the account? A. Every check that was treated as a deposit by us was treated as a credit.

Q. Do you mean to say that every check which was sent up and deposited to the credit of John B. Scarlett was credited on his ledger account? A. Every check that was sent up and deposited to John B. Scarlett's account went to his credit.

Q. That doesn't answer the question.

(Question read.)

The Court: That is an answer. He said every check that was sent up for deposit went to his credit.

By the Court: Q. By that you mean it was put on his personal account on the ledger? A. Yes, sir.

By Mr. English: Q. Why wasn't the $5700 deposit put on his ledger account? A. It was not.

Q. Why wasn't it if it was a deposit? A. That is different.

The Court: Just tell us why it wasn't.

Witness: Because it wasn't deposited.

Q. Haven't we got a duplicate deposit slip of your bank, and is your answer that when a bank gives a duplicate deposit slip that nevertheless it was not deposited? A. This transaction of $5700?

By the Court: Q. Yes, why wasn't it, the $5700, represented by a certain deposit slip, produced by them, credited on Mr. Scarlett's account? A. This $5700 deposit contains two checks;

we couldn't use $1000 and $1700, and as several checks had come back from Metuchen amounting to more than the remainder of the deposit I applied that $3000 check on some return items that came with Mr. Scarlett's endorsement.

By the Court: Q. You mean to say that he owed some money and you used that $3000 to pay what he owed you? A. Yes, sir.

By Mr. English: Q. Wasn't he entitled to the credit when he made the deposit? A. No, he was not, not under the circumstances.

Q. Why not? A. Because I had other things that should take the deposit.

Q. Why didn't you set up a charge if there were other things, wasn't he entitled to know that? A. He did know.

Q. Answer my question? A. I did.

(Question read.)

Witness: Wasn't he entitled to know it?

Q. Wasn't he entitled to have that deposit set up in his cash book and when the bank book was balanced have the vouchers that were charged against him? A. Ordinarily he would be, yes, sir.

Q. He didn't have that treatment in this case? A. No, a good reason for it.

Adjourned until Monday, March 29, 1915, at ten o'clock, a. m.

ESSEX OYER AND TERMINER

ELEVENTH DAY.

Monday, March 29, 1915.

Continued pursuant to adjournment.
Present, counsel as before stated.

RAYMOND E. SMITH resumes the stand.

Cross-examination (continued) by Mr. English:

Q. When we adjourned, Mr. Smith, I was asking you some questions about the $5700 duplicate deposit slip. Ordinarily when checks are sent up accompanied by a deposit slip and the checks are taken by the teller, if the man presents a book the book is credited, is it not? A. The deposit is marked in the book?

Q. Yes. A. Yes, sir.

Q. In the absence of a book it is customary to give a duplicate deposit slip? A. Yes, sometimes.

Q. And apparently that was done in this case? A. Yes, it looks that way.

Q. When a depositor turns in any deposit and receives either entry in his pass book, or failing that, a duplicate deposit slip, he is entitled to suppose that he has received credit on the books of the bank for the checks which he sent up? A. Ordinarily.

Q. I understand you to say that in this case you didn't credit the checks to his account? A. No, sir.

By the Court: Q. What do you mean by qualifying your answer to the use of the word ordin-

ary? A. I meant by that answer that a deposit may be sent up for some specific purpose, although not necessarily accompanied by a letter testifying what it is for, but we have a right to assume that it is given for certain purposes.

By Mr. English: Q. That is to say, some indication from the depositor that he wants the money placed in some way other than the ordinary way? A. Not necessarily an indication; we take it for granted, perhaps.

Q. What right have you to take anything for granted out of the ordinary unless the depositor so indicates to you? A. It depends who the depositor is and what he has done previously.

Q. Then you as a banker set yourself up as a judge as to what the depositor wants done with his money in the absence of instructions? A. Not in all cases, no, sir.

Q. That is what that means, doesn't it? A. No, sir.

Q. When you receive a check that is endorsed for deposit that means the only lawful use that can be made of it is to deposit it to the depositor's account? A. Naturally think so, yes.

Q. If I send up to the bank a check and endorse it "For deposit" and sign my name to it, I being a depositor, presumptively that is to be deposited to my credit, isn't it? A. If it is acceptable.

Q. What is that? A. If the item is acceptable.

Q. I mean, if it is a good check? A. Yes, sir.

By the Court: Q. By that you mean if it is good? A. Yes, sir.

By Mr. English: Q. And if the bank does not deposit it according to the endorsement on the back then it makes some other use of it, doesn't it? A. I don't get the question.

Q. It goes contrary to the depositor's instructions if it makes some other use of a check other than depositing it to a depositor's account when it is endorsed by him? A. I don't think so.

Q. In the absence of any instructions from him what right has the bank got to do anything but deposit it? A. Well, there are cases where a check can be sent up for deposit and a check for like amount drawn against a deposit where we can decide just to use the one check and return the man's check that has been used for cash, cash the check, if it is satisfactory.

Q. I don't quite understand that. You mean to say, I go up with a check in one hand to be cashed, and a check in the other hand, to be deposited, a simultaneous transaction, is that what you mean? A. I mean, you can make the one entry and not use both checks.

Q. The one entry where? A. You can send through a man's check that he sends up for deposit if it is agreeable to him.

Q. That is what I am talking about, if it is agreeable to him. I am trying to find out if it is not a fact, in the absence of any instructions or anything to indicate he has another desire, when a check is sent up endorsed for deposit isn't the proper thing to do to credit that acocunt with that deposit slip? A. As a rule, yes, sir.

Q. I show you the check Exhibit D-18, which is the Scarlett check of $3000, certified, dated February 8, 1911, and sent up for deposit, and I call your attention to the entry on the back "For deposit, Roseville Trust Company, John B. Scarlett"; don't that indicate, in the absence of any contrary instructions, the bank was expected to

credit that to Mr. Scarlett's account? A. You would naturally think that.

Q. And that check accompanied the $5700 duplicate deposit slip? A. Yes, sir.

Q. You have said that there were sent up with that $5700 duplicate deposit slip two other checks, one for $1000, and one for $1700, which check you said you couldn't use. What did you do with them? A. Returned them to Mr. Scarlett.

Q. How did you know you couldn't use them? A. It wasn't a case of couldn't use them; didn't want to take them.

Q. Does a bank man ordinarily know whether a check is going to be good or bad until they send it through for collection? A. In some cases, yes, sir.

Q. I ask you ordinarily? A. No, not ordinarily.

Q. Do you know what bank or banks those two checks were drawn on, or either of them? A. I don't remember now.

Q. Do you say that you had a sufficient knowledge of the bank account on which they were drawn to sit in judgment on those checks without any further information and say they were not good checks and therefore you would not accept them? A. I simply judged the checks by the former checks.

Q. Is that always a safe method? A. Not always; sometimes it is.

Q. Didn't you take somewhat of a hazard in turning down those checks instead of sending them through for collection A. No, sir; I did not.

Q. Didn't you do an unusual thing when you did that? A. Not from the bank's standpoint, no, sir.

Q. You think it is for a bank arbitrarily to say

that they will not take these checks instead of sending them through for collection? A. What do you mean by collection?

Q. I mean, sending them through the exchange bank to see if they were good?

The Court: I understand these checks were sent up for deposit and credit.

Q. They were sent up for deposit and credit? A. Yes, sir.

The Court: Your question seems to indicate for collection.

(Question read.)

Q. Do you understand the use of the word collection? A. Yes, sir; I understand it.

Q. Is that an ordinary thing to do? A. The bank has a right to refuse any check.

Q. But ordinarily when a check is sent up for credit isn't it the usual thing for the bank to credit the depositor and take the check and send it to the exchange bank and see whether it is good or not—that is the ordinary practice? A. That is the ordinary practice, but I don't call this the ordinary practice.

Q. I am asking about the ordinary case; then when the check is sent up that way, if it turns out to be a bad check, the account having already been credited with it, the proper practice is to enter a charge slip or some other evidence of a charge against that same bank? A. If the money has not been drawn out in the meantime.

Q. And then the depositor's account shows the whole situation on the books of the bank? A. Yes, sir.

Q. And then when his account is balanced and the vouchers are sent in he gets a charge slip to

offset the credit which he got when he sent up the check? A. To offset the check that was sent to him, that was returned.

Q. I am assuming that he was credited with it and when it was first turned in it turned out to be bad, and then you entered a charge slip and debited his account? A. You are assuming the deposit in this case?

Q. The deposit or any part of it. A. Yes, sir.

Q. Then when the book is balanced the voucher for the charge is this charge slip; isn't that the ordinary practice? A. That is the ordinary practice.

Q. I want to know whether a bank would credit a depositor with a check which it did not accept, if it did not accept it? A. I don't quite understand that question.

Q. (Question read.) A. The bank would credit a depositor.

Q. With a check it did not accept? A. I don't quite understand that.

Q. Would a bank credit a depositor with a check it did not accept? A. No, sir; it would not.

Q. If they sent the check back they wouldn't give him credit for it? A. Yes, sir.

Q. Now, I ask you why your bank issued a duplicate deposit slip for these two checks of $1000 and $1700 each and gave it to the depositor, which duplicate deposit slip is equivalent to an entry in his pass book if it did not accept those checks?

Q. I don't care about that; the depositor; they were brought by a messenger.

Q. I don't care about that; the deposit tor got a duplicate deposit slip. I want to know why that was issued by your bank if the check

wasn't accepted? A. Simply to show that they were sent up to the institution.

Q. That they were physically received? A. Yes, sir, and returned.

Q. Is there anything to indicate there that they were received? A. Yes, it shows they were received by the fact he got a duplicate deposit slip.

Q. That paper standing by itself means you credited his account? A. No, sir.

Q. You mean to say if I go to the bank, in the absence of any book, and get a duplicate deposit slip, I am not supposed to think that my account has been credited with the amount of that deposit slip? A. It wouldn't naturally follow that the account had been credited with it.

Q. I would naturally be entitled to suppose that my account had been credited with it? A. Might.

Q. I would naturally be entitled to suppose, when my messenger came with a paper like that, that I had been credited with the amount on the books of the bank? A. You would.

By the Court: Q. Do you know how long after this deposit slip was received these two checks were sent back to Mr. Scarlett? Did you say they were received by you and sent back to Mr. Scarlett, if you know how long an interval of time that consumed? A. I think they were returned the same day, your Honor, as far as I know.

By Mr. English: Q. Have you any personal recollection or knowledge of that? A. No, sir.

Q. Did you attend personally to returning the check or was that done by somebody in the bank? A. I think I did myself.

Q. Have you any personal recollection of having those sent back to Mr. Scarlett? A. I have a faint recollection of it.

Q. A very faint recollection? A. Yes.

Q. As I undertsood your testimony, you said that when these various checks were sent up they were cashed by you. Did you cash the same check more than once—do you claim that? A. No, I don't claim that.

Q. To whom did you give the cash? A. Scarlett's representative.

Q. Can you tell us who it was? A. Different ones, as I remember.

Q. Male or female? A. Sometimes one and sometimes the other.

Q. And was the check cashed by you personally or was it cashed at the teller's window? A. Most of them cashed at the paying teller's window, I believe.

Q. Were you there at the time? A. I think I was.

Q. Why do you say you think you were—weren't your duties in the other room, treasurer's room, instead of hanging around the paying teller's cash? A. Not all times.

Q. Did you happen to be there every time these checks came up to the bank? A. No, sir.

Q. How did you happen to be there if you were there? A. Because I usually saw that the checks were taken care of by the teller; he would want to have the check O. K'd, or somehing, before he would cash it.

Q. Did you see the teller physically hand the money to the messenger? A. Sometimes.

Q. All times? A. Not all times; sometimes I handed it to the messenger myself.

Q. Now, these various checks were entered up in the paying teller's proof book when they were

physically bound in the paying teller's drawer; isn't that the reason? A. They were part of his cash.

Q. And whatever is in that drawer during the day is entered up in the paying teller's proof book? A. Yes, sir, anything of that kind, in the way of cash items.

Q. And is this considered a cash item? A. Unless it is held as a cash item.

Q. That is what I mean. You, as a matter of fact, prior to your leaving the bank, used to put a check in the paying teller's drawer and take the cash out, didn't you? A. I might have with one of my own and cashed it sometimes.

Q. I ask you if it is not the fact that prior to your leaving this bank in August, 1913, and sometime prior to that, you did not from time to time put a check in the paying teller's drawer as a voucher and take out the amount in cash? A. I don't remember using any checks that way.

Q. What did you use? A. Usually charge it, a bank or individual.

Q. Charge slips to an individual? A. Sometimes.

Q. Or a charge against a bank? A. Yes, sir.

Q. Then you would take the money? A. I wouldn't take the money, no.

Q. You took it out of the drawer? A. Usually took up some cash items.

Q. You would take the money out of the drawer and put something in the place of it, wouldn't you? A. Take checks out of the drawer and put charges in place of it.

Q. Out of whose drawer? A. Paying teller's.

Q. Why would you take checks out instead of

cash? A. They were cash items that I wanted to take care of.

Q. And you used to take cash out that way, didn't you? A. Might have been a few cases like that, that is, in small amounts that were left over from the charge or something like that.

Q. No might have been about it, that was the fact, wasn't it, Mr. Smith? A. It was a very small amount of money, as a rule? I can explain to the Court what I mean. Oftentimes charges would go through for different amounts of checks taken out of the cash, and naturally there would be a little cash difference between them, and in that way the cash would come out of the drawer for the difference.

Q. And there were cases where you simply destroyed the deposit slip and appropriated the cash? A. No, sir; I don't remember any such case.

Q. Don't remember anything like that? A. No, sir.

Q. As I understand your testimony, you say that you cashed certain checks drawn on the Middlesex Hat Company.

Mr. Guild: I don't think Mr. Smith has said any such thing.

The Court: He said they were cashed by the Roseville Trust Company.

Mr. English: I mean the Roseville Trust Company.

Mr. Guild: You ought to draw a distinction. You claim that money was advanced by Smith personally to Scarlett.

Q. As I understand your testimony, you say that the Roseville Trust Company cashed certain

checks of the Middlesex Hat Company and that afterwards those checks were taken care of by some subsequent checks which came in, is that right? A. Not always.

Q. Sometimes? A. Yes.

Q. So that instead of entering a charge on the depositor's account when the check came back protested for a subsequent credit of whatever deposit was made, you simply pursued the practice of taking care of one check by another check without any entry being made in the depositor's account, that is right, isn't it? A. Yes, sir.

Q. As I understand you, that process continued, one check taking up another check, until you got down to two checks, one for $2000 and one for $2700, along in January, I think it was, of January, 1911? A. There were other checks out besides those at that time.

Q. You finally paid up with a couple of checks which aggregated $4700 and which you took care of in another way; those are the checks I am talking about. Have you got that in your mind? A. I remember two checks coming back on that date, the 26th of January, 1911.

Q. One for $2000 and one of $2700? A. Yes, sir.

Q. Now, you said the bank examiners were coming along about that time and you took care of those checks by appropriating some cash which had been collected on some savings bank drafts and which you charged to the Irving National Bank; isn't that right? A. I didn't say they were coming along at that time; I said they were there.

Q. I don't remember whether they were coming or they were there. At any rate, the way you took care of those checks was by appropriating cer-

tain cash which was represented by savings bank drafts put in by depositors and charged to the Irving National Bank? A. Yes, sir.

Q. So the checks were paid by the cash of that depositor? A. By a charge to the Irving National Bank.

Q. So far as your bank is concerned, it got the money on those checks at the expense of the Irving Bank?

Mr. Mott: I object to that. It involves a question of law.

The Court: I don't think it has appeared that it was at the expense of the Irving Bank.

Mr. English: It may appear if this question is answered.

The Court: Your question is somewhat complicated and the conclusion at the end of it is not exactly a question.

Mr. Mott: At the expense of the Irving Bank. —at the expense of the funds of the Roseville Trust Company on deposit with Irving Bank.

Mr. English: What is the difference?

The Court: Of course, there is a difference in that statement. If it was the funds of the Roseville Trust Company it was not at the expense of the Irving Bank. The witness may know whether that question embodies a correct statement. If he knows di:erently he may state; if he doesn't know he cannot answer the question.

Q. (Question read) A. No, sir; it did not.

Q. At the expense of the depositor who put in the savings bank draft?

Mr. Mott: Isn't that a question of law?

Q. (Question read.) A. No, sir.

Q. At whose expense then? A. I mean by no, sir, the charge to the Irving National Bank was a perfectly legitimate one.

The Court: Counsel wants to know who sustains the loss on that transaction?

Witness: The Roseville Trust Company.

Q. How do you say that—because it owes the money to the depositor? A. Certainly.

Q. So in other words, the Roseville Trust Company misappropriated the amount of these saving bank drafts which have been put in by that depositor; is that it? A. Yes, sir.

Q. And that depositor never got the money? A. Yes, he did.

Q. How does the bank owe it to him? A. Did owe it to him at that time.

Q. How do you know he has got it since? A. Because I know it was put there.

Q. Somebody else's money went to pay him? A. I think so.

Q. Who was the unfortunate one that paid the first one? A. I can't remember that.

Q. And that system you were pursuing all along, sort of robbing Peter to pay Paul? A. Quite often yes.

Q. You would take depositor A's money to pay a check of B, and later on you would take C's money to pay back A? A. I don't know who they are.

Q. That was the system, wasn't it? A. Yes, that was the system.

Q. Then the particular check that was paid in that way was paid to your bank, wasn't it? A. No, sir.

Q. If it was paid, no matter whose money paid it, it was paid, wasn't it? A. No, sir.

Q. You say that when the final showdown came the Roseville Trust Company owed money to some of its depositors? A. No, sir; I say that because the checks were never collected, were never honored by the bank they were drawn on.

Q. Because you kept them in your Box 55? A. Not exactly.

Q. That is one reason? A. That is not the reason.

Q. It is one reason, isn't it? A. No, sir.

Q. You mean to say, if a check is physically locked up in box 55, of course, it cannot be sent down to the bank it is drawn on to be honored? A. It wasn't locked up in box 55 at all times.

Q. We will talk about a check that was? A. I don't know of any that was.

Q. In other words, before a bank can honor a check it has got to be sent down to them? A. Yes, sir.

Q. If the check is at some other place and it is not presented to the bank it is drawn on, of course, the bank cannot honor it? A. Not very well.

Q. You say these various checks were not paid, those checks we have been talking about, because they were not sent down or presented?

Mr. Mott: I object. We ought to know whose check.

Mr. English: The check of A, B and C.

The Court: What do you mean by answering no, they were not sent down or they were not presented for collection?

Mr. Mott: Mr. English's question does not call attention to any particular check, whether you are speaking of imaginary

checks of A. B and C or whether you are speaking of the checks which came up with the $6700 deposit.

Mr. English: We can apply it to the $2700 check and $2000 check.

The Court: You can apply it to the $2700 check and $2000 check because they were never accepted for collection or deposit; they were taken through the window, and Mr. Smith says sent back to Mr. Scarlett.

Mr. English: He says they were not honored by the bank. I am trying to find out how the bank could honor a check if it was not presented at the bank on which the check is drawn.

The Court: Apply the question to those checks.

Q. You say that the check for $2000 and the check for $2700, which you paid through the medium of the charges against the Irving Bank, and so forth, were not paid because they were not honored by the bank upon which they are drawn; is that right? A. No, I didn't say that.

Q. Did you say that? A. That is not the reason they were not paid the first time when we had them in the cash.

Q. Were they sent down to the bank upon which they were drawn? A. When?

Q. I don't know. Any time after you got them in your possession? A. They were presented.

Q. Presented where? A. Presented over the telephone several times.

Q. That is, sort of by the absent treatment? A. It is done every day in every bank.

Q. So you presented them over the telephone and they were not honored? A. They were not honored.

Q. Then you took care of them through the medium of the charge against the Irving Bank? A. Yes, sir.

Q. After that what was done with them? You said they were put in box 55. How long did they stay here? A. After that they were presented over the telephone several days after.

Q. You took them out of box 55 and presented them over the telephone? A. Yes, sir; did that several times.

Q. In the meantime they had been paid on the books of the bank? A. They had been taken out of the cash items.

Q. My question is that in the meantime they had been paid on the books of the bank? A. No, sir.

Q. Didn't the books of the bank show they had been paid? A. The real checks never have been paid.

Q. Didn't the books of the bank show that they had been paid? A. Yes, sir.

Q. That is the reason you fixed up that scheme to fool the bank examiner, wasn't it? A. Yes, sir.

Q. You wanted it to appear to the bank examiners that those checks had been paid? A. He wouldn't know whether they had been paid because he wouldn't know anything about them.

Q. You wanted it to appear that they had been paid in case they did know something about them? A. If they didn't know they were there they couldn't know whether they were paid or not.

Q. As far as the books of the bank are concerned, it shows they were paid. How long did

you keep them until you undertook to apply the $5700 deposit against them? A. I think it was February 8th that I applied some of that deposit on those checks.

Q. Have you any records to show that you applied that $5700 deposit on those checks? A. I think so.

Q. What is it? A. Paying teller's proof book.

Q. (Showing witness book.) Will you produce it? I would like to see, or just show me what you point to. A. I can't show you how the check was used, but it says it was used on February 8, 1911, through the city exchanges.

Q. Now, first you ask for the paying teller's proof book; you look through that and find nothing; then you ask for the receiving teller's proof book, is that right? A. Yes, sir.

Q. Just show me what you point to in the receiving teller's proof book which you say indicates that the $5700 deposit was applied to that alleged $4700 indebtedness?

Mr. Guild: He didn't say any such thing. He said that a part of it was used. It is not right to put anything in his mouth that he didn't say.

The Court: I do not think the question correctly states the witness's testimony. Objection sustained.

Q. Did you apply the $5700 deposit to the payment of those checks? A. No, sir.

Q. Did you apply some of it to the payment of this check? A. I did, as far as I can remember.

Q. Point out to me in the receiving teller's proof what there is to indicate that a part of that $5700 deposit was applied to the payment of the alleged $4700 indebtedness? A. (Indicates in book.)

Q. You point to the name "National State Bank"? A. Yes, sir.

Q. And you point to the figures "$3024.44"? A. Yes, sir.

Q. And you say that indicates on the records of the bank that that application of those moneys was made? A. It represents the money that was used that day in that department.

Q. Have you got any personal recollection of this transaction after four years? A. I have a personal recollection of the check.

Q. Answer my question. Have you any personal recollection of this transaction after four years? A. Yes, sir.

Q. You think that this column of figures here indicates or refers to that particular transaction, do you? A. Refers to that particular check.

Q. Are you able to say that from anything except your personal recollection of it? A. I can tell that from the check itself.

Q. Just answer my question. Looking at these ngures is there anything here except your personal recollection which would enable anybody to say that they referred to that transaction? A. Well, the figures would show if there is a large check gone through on the National State Bank.

Q. That shows checks of $3024.44; in other words, that shows there went through the National State Bank checks to that amount on that day? A. Yes, sir.

Q. Where is the National State Bank? A. Newark.

Q. Does that mean that you sent them to the bank that day? A. It means they went through the exchanges the next day.

Q. Does that mean that you sent to the National State Bank checks that day for that amount? A. We did through the Union National Bank, yes, sir.

Q. You say that because Mr. Scarlett deposited on that day a check for $3000? A. No, sir.

Q. If some bank examiner were coming along and looking at that record, is there anything there that you could show that you made any such use of that deposit? A. No, sir, except that he could perhaps trace it out from that.

Q. Wouldn't the ordinary way to have been to have credited Mr. Scarlett's account with the amount of deposit and charged it with the amount of the charge which you made against it? A. Why, that would have been one way, yes, sir.

Q. That would have been the simplest and usual way, wouldn't it? A. The usual way with most customers, yes, sir.

Q. When the bank book was balanced, the debit and credits, with the vouchers, would appear? A. Yes, sir.

Q. This arrangement which you point to here, there wouldn't anything appear, as far as you were concerned? A. Not on his account.

Q. He would have to take the bank's word for it that that application was made of them, wouldn't he? A. He would have to have something more than the bank's word.

Q. He wouldn't have to have the books balanced up, with debits on one side and the credits on one side? A. No, sir.

Q. Why did you ask for this book? A. I had an idea that the exchanges were listed in the paying teller's proof book.

Q. So that was another entry where this same $4700 alleged indebtedness was paid? A. No, sir.

Q. That don't show on the books of the bank that it was paid? A. I don't think that I said it went toward the payment of the $4700.

Q. You did not. What is the object of charging it up if it didn't go in payment of these checks? A. May have gone to something that took those checks out of the cash at that time.

Q. How would that be, and you take those checks out of the cash at that time? A. I think I have told you a charge to the Irving National Bank.

Q. So that might be another credit item of the Irving National Bank? A. No, sir, that was a perfectly legitimate charge.

Q. I haven't said a word about legitimate. A. If it is a regular charge there is no reason why the $3000 should be credited back to the Irving National Bank.

Q. Was it a regular charge to the Irving Bank? A. I said it was, yes, sir.

Q. The irregular part of it was on that unfortunate depositor who turned in this savings bank draft, wasn't it? A. Not crediting to the party that left them there for collection, he didn't get the credit for them, not that day, no, sir.

Q. What is this charge on the receiving teller's book, what does it show, standing as a charge on the books of the bank? A. I can't tell you without looking it up.

Q. What else did you undertake to take care of with the $5700 deposit? A. I can't tell without looking up the books.

Q. What is that? A. I don't know.

Q. You seemed to know when you were testifying last week; you don't remember what you said about that? A. What else did I take up?

Q. Yes.

The Court: Take care of.

A. I have forgotten; I can't remember without looking it up.

Q. Your recollection is not as good as it was last week? A. I don't remember answering that question at all.

Mr. Guild: I can't recollect that there was any testimony regarding the matter that Mr. English is inquiring about.

The Court: My recollection is that he said that of that deposit he took $3000 of it, a check for $3000 which was satisfactory to him, and credited that on something that Mr. Scarlett owed the bank, and that the other two items, $1000 and $1700, making a total of $5700, he returned to Mr. Scarlett.

Mr. English: That is right. Your Honor has not given the details of what he said it was credited on. I am now asking him if he can remember.

Q. Can you remember what else you applied that $5700 deposit on, or part of it? A. That $3000, you mean?

Q. Any part of the $5700 deposit. A. It was applied for the benefit of this $4700 worth of checks.

Q. The way you have described. What else? A. What else?

Q. What is that?

The Court: How can he do anything else with $3000 after applying it to $4700? I do not think he said $3000 to pay $4700.

Q. I want to know what else you applied to Mr. Scarlett's credit or which he was entitled to credit about that time to this $4700 alleged indebtedness, if anything? A. Nothing else.

Q. Do you remember that you said you put a thousand dollars to his credit in January? A. Yes, sir.

Q. Do you remember you said you took care of that also at the time this deposit was made? A. No, sir.

Q. Don't you remember that you said that Mr. Scarlett had borrowed some money on a note of Stevenson, Rye at that time? A. I don't remember saying that; I might have said it.

Q. Did he borrow some money on a note at that time? A. I know he had a Stevenson, Rye note in the bank; I don't remember the date of it; a $2000 note.

Q. Don't you remember that you said you took care of that about this time, too? A. Care of what?

Q. This note. A. I never said that.

Q. That Stevenson, Rye note was not taken out until some time in March, March 21, 1911? A. I think it was later than you said.

Q. So if you did say you took it up you are mistaken? A. I never said that.

Q. Was there any way that Mr. Scarlett would know how you applied those funds if you didn't tell him? A. Which funds do you mean?

Q. That $5700 deposit. A. Yes, sir.

Q. If you didn't tell him? A I think so.

Q. Do you remember that his bank book, which afterwards turned up, was found in your box 55? A. No, I don't remember that; I don't think it did.

Mr. Guild: There is no evidence at all that that book was found in box 55. There has not been any such evidence.

Q. I will ask him if he left it there. Did you leave it there? A. No, sir.

Q. Where did you find it? A. I don't know; I didn't know it was in the bank.

Q. Did you suppose that Mr. Scarlett had it? A. I supposed it had been lost.

Q. I think you said that you cashed checks D-20 and D-21, which are dated November 20, 1910, for $1000 each? A. I don't remember saying any such thing.

Q. You don't? A. No.

Q. Did you cash them? A. For whom?

Q. Anybody. A. I can't answer that yes or no.

Q. Were they in fact cashed? A. Yes, sir.

Q. By Mr. Scarlett? A. Indirectly, yes.

Q Why do you say indirectly—through the medium of a messenger? A. No, sir.

Q. Just explain indirectly. A. Do you want me to explain how they were taken care of—how they were cashed?

Q. My question is why you say they were cashed indirectly from Mr. Scarlett? A. Those checks were sent up by Mr. Scarlett presumably for deposit, but he, having had the cash for two checks already, of the same amount on the same bank, drawn by the same company, I refused to take them—that is, I refused to cash them or credit them to his account.

Q. So he never got either the cash or the credit for them? A. He did indirectly.

Q. How do you say that, if you refused to take them? A. Because those checks were sent through

and the money taken out for those checks the day they went through, out of the receiving teller's cash—

Q. These checks went through the bank? A. I am not through yet. They were sent through in the regular way as cash items, and they were paid, and it was the money we received on those two checks that took care of the checks that were out at that time.

Q. My question is whether you cashed them at the window? A. Cashed them in the receiving teller's department.

Q. Who did you give the cash to? A. Held the cash out in trust.

Q. In trust for whom? A. Until I got the payment of those other two checks.

Q. The $2000 checks, those which came in on November 16th, for which we have the protest, they turned out no good? A. No, sir.

Q. The notice of protest is dated November 19, 1910? A. Yes, sir.

Q. Did you know then that they were not good checks? A. The day they were used we knew about it.

Q. Just answer my question. Did you know prior to the receipt of protest that those checks were not good checks? A. No, sir.

Q. Those checks did not leave New Brunswick or Metuchen until November 19, 1910. How can you say then that on that date, when those checks were sent up, you know those others were not good? A. The checks were not used until November 22d.

Q. I ask you how you knew on November 19th, the day these checks were sent up, that the two

previous checks were not good if you hadn't yet received the protest? A. I haven't any record of having received the checks on November 19th.

Q. When did you receive them? A. On the 22d of November.

Q. How do you know that? A. By the stamp that is on them.

Q. That shows the date they went through the Roseville Trust Company, that is, the day they were used? A. Yes, sir.

Q. Do you say you didn't get them until that day? A. Certainly.

Q. What checks did you get on the 19th of November? A. I don't remember getting any checks on the 19th of November.

Q. You didn't get any on the 19th of November? A. I don't think so; I don't remember.

Q. How can you be sure? A. The outgoing letters will tell me.

Q. Have you any recollection of any outgoing letters showing the recepit of checks on the 19th of November?

Mr. Guild: I think if the witness has to refer to any record he should be permitted to do so.

The Court: I have told him already that he may request any record that he may want.

A. No, sir.

Q. You haven't any recollection of any outgoing letters on the 19th of November? A. No, sir.

Q. If any letters went out on the 19th of November that would show those that went out that day? A. Not necessarily.

Q. How can you tell that any deposits were made on the 19th day of November, 1910? A. The ledger.

Q. See if the ledger indicates anything. The ledger is not always conclusive evidence. A. I think it does in this case.

Q. You think it shows everything that was deposited? A. I didn't say that. There is no deposit here on the 19th of November.

Q. What letters would you have to find out? A. Nothing.

Q. Nothing else—that is enough, is it? A. I could refer to the outgoing letters to satisfy myself that no checks went out that day with Mr. Scarlett's name on them.

Mr. Guild: We have none.

Q. Then there are no letters that went out on the 19th then that would say that these checks, or any checks, were deposited on the 19th? A. These checks were not deposited on the 19th.

Q. I will ask you whether any checks were deposited by Mr. Scarlett on the 19th? A. There were not.

Q. I show you a paper having the signature R. E. Smith at the bottom. Is that your signature? A. I believe it is.

Q. That is a duplicate deposit slip dated December 19, 1910, with two $1000 checks, isn't it, signed R. E. Smith? A. Yes, sir.

Q. Do you want to change your testimony now as to whether any deposits were made on the 19th? A. No, sir.

Q. There is no entry on the ledger of that date, is there? A. No, sir.

Q. I want to direct your attention to the Long note, as it has been called here, the note that Mr.

Long got the money on. Have you a personal recollection of that transaction? A. Yes, sir, I have.

Q. And you say that you handed the money to Mr. Long? A. Yes, sir; I think I did.

The Court: That is the $2500 matter?

Mr. English: The exhibit number is S-20, a check of $1245.47.

Q. You said you went to the window with him and he got the money? A. I went to the paying teller's cage, yes, sir.

Q. He was outside and you were inside? A. Yes, sir.

Q. And you took the money out? A. I believe so.

Q. And handed it to him? A. The paying teller counted it after me.

Q. What did you do with the money? A. Handed it to Mr. Long.

Q. What did he do with it after that? A. Took it with him.

Q. Did he hand it back to you? A. No, sir.

Q. Ordinarily, when a check is cashed it is put on a spindle, isn't it? A. It is according to what kind of a check it is.

Q. A check of a depositor? A. As a rule, yes.

Q. What about the treasurer's check? A. It is not put on a spindle.

Q. Why not? A. It is a general item, it is not an individual ledger item.

Q. How many stamps did you have to show that checks were paid? A. Two or three—two, I think.

Q. Can you describe any one of them? A. One was dated and the other wasn't.

Q. Were they both of the same general appear-

ance? A. Yes, sir; we may have had two; perhaps we had two or three of them, I guess.

Q. Who operated those stamps? A. Different clerks.

Q. Do you think you handed him the money and he went out with it? A. Yes, sir, I know he did.

Q. Did you understand that that money was for Mr. Scarlett? A. Yes, sir.

Q. Did anything go through the books of the bank to indicate that that money went to Mr. Scarlett? A. No, sir—that is, in the books of the bank, did you say?

Q. Yes. A. No, except the treasurer's check went to Mr. Long, who was his representative—

Q. That shows it went to Long. I asked you whether anything went through the books of the bank to indicate that the money went to Mr. Scarlett? A. No, sir.

Q. Where did you keep that declaration of trust that you were so solicitous about?

Objected to.

Objection sustained.

Q. Where did you keep that declaration of trust that you testified about? A. I kept it in the safe.

Q. Do you know where it was found after you left in August, 1913? A. Safe deposit box, I guess.

Q. Are you sure about that? A. I think it was.

Q. Wasn't that found at your house, your private residence? A. I don't think so.

Q. By your trustee in bankruptcy? A. No, sir; I don't think it was.

Q. Well, now, be as accurate as you can about it. A. That is as accurate as I can be. I believe it was in the safe of the bank.

Q. I want to know whether you didn't find that it was at your house, found at your house?

The Court: He has answered the question three times. He has given the best of his recollection.

Q. Where were those letters found that accompanied the checks for $350, $400 and $500, do you remember that?

Mr. Guild: There is no evidence that Mr. Smith was there when the checks were found.

The Court: He can testify when he last saw them.

Objection sustained.

Q. Where did you last leave these letters before you left town, August, 1913? A. In the files of the bank, I think.

Q. Did you leave them with the declaration of trust? Does that refresh your recollection any about that? A. No, sir; I think not.

Q. Is it or is it not a customary method of endorsing a check for deposit, to make it payable to the bank in which it is deposited? A. I wanted to change my testimony in one matter in direct-examination, if I may.

The Court: You may.

Witness: The endorsement on those checks—Mr. Guild asked me if there was anything to indicate they were not deposited—I mean in the endorsement, and I took his question to mean the endorsement of Stevenson, Rye & Company, if I remember rightly. I see there is two endorsements on there. I wanted to know, so there wouldn't be any question about it, whether that was the endorsement or the endorsement that was

supplied by the bank that he had reference to. The checks came to us endorsed "Stevenson, Rye & Company, per J. B. S."

The Court: You may state the fact, the correction, if any.

Witness: It could be taken to mean that they were for deposit, the way they are stamped on the back by the teller, "pay to the order of Roseville Trust Company, J. B. Scarlett;" it could be taken for that, or it could be taken to mean that it went through the receiving teller's window.

By Mr. Guild: Q. I think you ought to make that a little clearer. You say they could be taken as going through the paying teller's window. You know what that means, we don't. A. Receiving teller's window, I mean to say.

Q. You know what the effect of that would be on the history of the check. I should like, for the edification of the Court and jury, you to tell us just what you mean by that? A. "Pay to Roseville Trust Company or order," stamp was used in the receiving teller's department, and I would naturally take it that it was his stamp and it went through his department.

By the Court: Q. Do I understand you to say that that stamp was used indiscriminately for checks which were for deposit and checks which were sent through for collection? A. I don't think it was ever used on checks that were sent through for collection.

Q. Checks that were cashed? A. Checks that were deposited, as a rule.

Q. To clear up this matter, which check are you talking about? A. Two checks on the Middlesex Hat Company.

The Court: Which ones are you referring to?

Mr. English: I hold in my hand D-20 and D-21.

The Court: I think the testimony was that the checks had not been left there for collection, and my question being whether they were left there for deposit; I wanted to make that clear.

Witness: I wanted to explain it in the right way, that they could be taken for deposit with that stamp on the back.

Mr. Guild: The question is what were they taken for, not what they could be.

Witness: That is not the question I had in my mind.

(Previous question read as follows: "Q. Is it or is it not a customary method of endorsing a check for deposit to make it payable to the bank in which it is deposited?")

Witness: That custom is used a great deal.

By Mr. English: Q. When it is endorsed by the receiving teller that indicates that he wanted to make it appear that it was sent in for deposit? A. Not exactly. He wouldn't endorse a man's name in blank on the check because it would be forgery.

Q. He would endorse it with a stamp? A. Yes, sir.

Q. When it recites "Pay Roseville Trust Company or order" signed, "J. B. Scarlett," that indicates that he receives it for deposit? A. Indicates that he receives it in his department, the depositing department.

Q. That indicates from his point of view that he receives that check for deposit to the account of the depositor? A. Yes, you can say that if you want to.

Q. And that is what that stamp indicates? A. Yes, sir, most always.

Q. When a check is endorsed like that it is to be credited to the account of the depositor, isn't it? A. As a rule, yes.

Q. Were those checks credited to the account of the depositor? A. No, sir.

Q. Are you in the habit of keeping deposit slips of other banks in your desk? A. I think we have some of the Union National Bank.

Q. Irving National Bank? A. I don't remember any of the Irving National Bank. There might have been some.

Q. You remember the Union? A. Yes, sir, we used them every day in transaction of business.

Q. You spoke about a Zuccarelli note that was set forth in the declaration of trust? A. I didn't speak of any Zuccarelli note; I spoke of Zuccrelli notes.

Q. What was the date of those notes? A. I don't remember.

Q. Who was the maker of them? A. Zuccrelli.

Q. Rev. James Zuccrelli? A. Yes, sir.

Q. Do you know to whose order they were drawn? A. I think it was Mr. Sica's order.

Q. Do you know how much they were drawn for? A. $750 and $500.

Q. I show you a note purporting to be signed by James Zuccarelli, dated February 13, 1913; is that the note you referred to, is that one of the notes you referred to? A. I think this is a renewal of it; I don't think it is the note I spoke of.

Q. I show you another note signed the same way, the same date, for $750, one of the notes you referred to. A. I don't think that is the original note.

Q. Those are original notes, aren't they? It is a note signed by the maker, isn't it? A. Certainly.

Q. Were those the notes or not? A. Those are not the notes I mean.

Q. You think there were some notes earlier than these? A. Yes, sir.

Q. Do you know how much those notes amounted to? A. Not exactly.

Q. These were three month notes? A. Yes, sir.

Q. Were you referring to three month notes? A. I can't tell whether they were three or four months. They were probably three months, the notes.

Q. It would seem so from the fact that these are? A. Yes, sir.

Q. Was there more than one renewal that you remember of? A. I don't know.

Q. Prior to this date? A. I think there were at least one or two renewals.

By the Court: Q. Were those notes subsequently consolidated? A. No, sir; I don't think so; I think they were always separate.

The papers referred to are marked D-67 and D-68 for identification.

By Mr. English: Q. How long prior to your leaving town in August, 1913, had you been misappropriating moneys of either the bank or the depositors? A. I didn't quite get that.

Q. I said how long prior to your leaving town in August, 1913, had you been misappropriating

moneys of either the bank or depositor or depositors?

Objected to.

Objection overruled.

A. Do you mean continuously?

Q. I want to know the earliest date you began prior to August, 1913? A. About the first of 1911, something along there.

Q. About the first of 1911? A. I think so.

Q. So in October, 1912, when you say you were acting as a trustee in the interest of the trust company, you were in the habit at that time of misappropriating moneys, were you not, and prior to that date? A. Very little.

Q. I didn't ask you much or little. That was the fact? A. There had been some.

Q. You pleaded guilty to an indictment for embezzlement?

Mr. Guild: I think that question has been asked and answered.

Mr. English: He says he took nothing for himself. I want to know whether he pleaded guilty to an indictment of embezzlement.

Q. Have you pleaded guilty to an indictment for embezzlement in connection with this Roseville Trust Company? A. May I make a lengthy answer to that?

Q. You have pleaded guilty to embezzlement? A. Yes, sir.

Q. And you took a good deal of money, didn't you?

Objected to as not cross-examination.

Objection sustained.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. Were the moneys mentioned in this memorandum agreement of October 25, 1912, being Exhibit D-27, which refers to an indebtedness of Mr. Scarlett to you of $9700, was any part of that money paid at the time the bank closed? A. No, sir.

Q. Any part of the $9700 mentioned in the so-called declaration of trust at the time the bank closed? A. No, sir.

Q. Or any interest on the note? A. Not a dollar, no, sir.

Q. There has been reference to a Stevenson, Rye Company note which the bank had purchased. Had that note been paid at the time the bank failed?

Mr. English: Objected to. The note went through in the regular way. It was referred to in the minutes, which are in evidence, and there is nothing irregular about it at all. It doesn't make any difference in this issue whether the note was paid at any time.

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.

H. V. OSBORNE,
Judge.

(Seal)

A. The note had been reduced considerably, but not in full at that time.

Q. Can you say how much was paid on it at the time the bank closed? A. I think about eleven hundred and fifty and some odd dollars.

Q. And the original amount was how much? A. $2000.

By the Court: Q. Mr. Smith, you have testified regarding two checks of January 26th for $2000 and $2700 that you had taken care of by the Irving National Bank. Are those checks in Court?

Mr. English: No, those checks cannot be found.

Q. Have you any recollection as to whether those checks were ever paid by Mr. Scarlett or not? A. They were never paid by Mr. Scarlett, that I remember.

Q. Do you know what became of them? A. I think there are other checks given since that time that perhaps took the place of those two checks and they should have been returned to Mr. Scarlett in the regular course of business.

Q. If they were taken up by other checks in the regular course of business they would be returned to Mr. Scarlett? A. Yes, sir, ought to have been, yes, sir, should have been.

By Mr. Guild: Q. I show you D-64, which is Middlesex Hat Company check dated December 27th, and I also show you check of Middlesex Hat Company for $2000, dated January 3, 1911, which is D-66. Now, you have testified that those were cashed checks? A. Yes, sir.

Q. They came back protested and appear to have been sent out several times? A. Yes, sir.

Q. In an effort to collect them. I ask you when they eventually came back and held in the bank. If they had been charged to Scarlett's account what would have been the effect on his account? A. I will have to look at the ledger for that. You mean the last time they came back, of course?

Q. Yes. Now, each time that they came back, if they hadn't been sent out again and had been charged up to his account, what would his account have shown as to his balance?

Mr. English: That is a funny question. The prosecutor puts the book in evidence and stands on the record. Now he asks the witness if he did something that he ought not to have done. I object to the question. It seems to me that the prosecutor is trying to impeach his own evidence in that way.

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.

H. V. OSBORNE,
Judge.

(Seal)

A. This check of $2000, dated December 27th, was charged to Mr. Scarlett's account on the 18th of January, 1911.

Q. When it came back on January 4th, if it had been charged to his account, was his account good for it? A. No, sir. The first time it came back, on the 4th, the balance on the ledger was $4.96.

Q. Is that why you sent it out again? A. Yes, sir; that was the reason we used it a second time.

Q. I ask you to make the same investigation as to the other check? A. The one of January 3d, it was returned to us on the 10th, I guess it was; the balance on Mr. Scarlett's account was $3.28.

Q. Was his account good for that check when it came back the first time? A. No, sir.

Q. Was it good at any time when it was returned, about the time it was being last returned? A. No, sir.

Q. Would it have resulted in an overdraft if it had been charged up? A. Yes, sir.

Q. Is that the reason it was sent out three times? A. Yes, sir.

Q. And it was never charged to his account? A. No, sir.

By the Court: Q. How was it taken care of, if it ever was? A. It was renewed with another check for a like amount.

CHARLES C. LURICH sworn in behalf of State in rebuttal:

Direct-examination by Mr. Guild:

Q. Mr. Lurich, you reside in Newark? A. No, I reside in East Orange.

Q. Were you at any time director of the Roseville Trust Company? A. I was.

Q. Do you remember when you first held that office, the date? A. At the inception.

Q. How long did you continue to serve as a director? A. Until the collapse.

Q. After the failure of the trust company were there any meetings of directors of the trust company?

Objected to as immaterial.

The Court: You mean to say after the close of the bank? That was after March 17th.

Objection overruled.

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)

Q. What is the answer? A. The answer is that there were meetings held by the directors.

Q. Did you send out notices calling such meetings? A. I did.

Q. At whose request? A. At the request of the president of the former Roseville Trust Company, and that was Mr. William P. Odell.

Q. Was Mr. Raymond E. Smith in town at that time? A. No, not at that time.

Q. Can you give us approximately the date when those notices were sent out? A. Well, the night of the day that Smith went away we were called in by the banking department, and there was present Mr. Odell, Mr. Fairlie, Mr. Mott and Mr. Foster and myself; I think there were five of us, and it was then arranged that we should have—

Objected to.

Q. We are trying to get at the date. A. It was that date.

By the Court: Q. Can't you get at the date without telling us anything else? A. It was on August 13, 1913; I think that was the date.

By Mr. Guild: Q. Pursuant to that meeting at the bank which you say was called at the request of the bank examiner you say it was arranged to have a meeting of the directors? A. Yes, sir.

Q. And you were requested to send out the notices? A. I was.

Q. And you sent a notice to Mr. Scarlett?

Objected to.

Objection overruled.

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 sent the notices to every one of record as a director.

Q. Did that include Mr. Scarlett? A. It did.

Mr. Guild: I ask for the production of the notice that was sent to Mr. Scarlett.

Mr. English: We haven't got it.

Q. Pursuant to that notice, was a meeting of the directors held? A. There was.

Q. Were you present? A. Yes, sir.

Q. Who acted as secretary of the meeting? A. I did.

Q. Did you keep a record of the minutes? A. I did.

Q. Have you the record with you? A. Yes, sir.

Q. Will you turn to it, please? A. (Referring to book.) The first meeting of which there was any record kept was on August 23, 1913.

By the Court: Q. Is that the meeting that you just told us about, that was called pursuant to a notice sent out by you? A. That was called pursuant to a notice sent out by me.

Q. Is that the meeting you have been testifying about? A. Yes, sir.

Q. And which you say was held pursuant to a meeting sent out by you? A. I would say yes; previous to that we met at Mr. Odell's house and discussed matters in general.

Q. That is the meeting that was held on August 12th about the date that Smith left town? A. Yes, sir.

Q. At that meeting it was arranged to have another meeting and you were to send out notice? A. Yes, sir.

Q. Did you send out notices? A. Yes, sir.

Q. And a meeting was held? A. Yes, sir.

Q. You are now referring to the minutes of the meeting? A. I am not referring to the minutes that were kept—

By Mr. Guild: Q. You sent out notice of a meeting? A. Yes.

Q. The first meeting held pursuant to the notice was held when and where? A. The first meeting held pursuant to the notice that I sent out was held August 23, 1913, in the bank building, 507 Orange Street, Newark, New Jersey.

Q. The minutes that you are referring to and which you have before you were kept by whom? A. I kept those minutes.

Q. And did you write them out? A. I wrote them up.

Q. Was Mr. Scarlett present at that meeting? A. He was present.

Q. And what was the purpose of the meeting? A. The purpose of the meeting was for to try to rehabilitate the institution.

By the Court: Q. What kind of a meeting was that, a meeting of whom, and what I have been trying to connect up the previous testimony, where you say there was a meeting of the directors held, with these minutes, but you don't want to seem to connect them. That was a meeting of directors. Was this meeting that you have just

been telling us about a meeting of the directors of the trust company? A. This was a meeting of the trust company—I think perhaps I can make the matter clear. There were no meetings held after the night that we were called in by the bank department, of which there had been no notice, one told the other "We are going to meet at Mr. Odell's house," and then it was decided that we should have meetings and form some sort of an organization, and somebody should attend to that, and I was asked to be the president of it and secretary, which I did, and from that time on I kept a record of minutes and records.

Q. At these meetings held pursuant to one telling the other, were they meetings of the directors? A. I don't know whether you could call them that.

Q. Did Mr. Scarlett meet at any of those meetings? A. Yes.

Q. Then there is an interval of time where the directors held meetings when Scarlett was present, between the time Mr. Smith went away, and the minutes you are referring to? A. It was at Mr. Odell's call.

Q. I ask you if at that time meetings were held? A. Yes, sir.

By Mr. Guild: Q. You kept no record of those minutes, no record was kept? A. No.

Q. Will you please read your minutes?

Mr. English: I object.

Q. I want you to read beginning at the date when you started off with a date.

Mr. English: I object to the question. The minutes are not in evidence.

The Court: Objection sustained.

Mr. Guild: I offer in evidence the min-

utes the witness has been speaking of, being the meeting of August 23, 1913.

Mr. English: I would like to cross-examine on this offer.

CROSS-EXAMINATION by Mr. English:

Q. This was the meeting at which Mr. Odell requested you to send notices out? A. Yes, sir.

Q. And you sent a notice to everybody who appeared of record to have been a director on that date? A. Yes.

By the Court: Q. This was a meeting attended by the gentlemen who had previously been directors in the bank, is that it? A. Yes, sir.

Q. That is, the individuals who attended were those individuals? A. Yes.

By Mr. English: Q. You didn't keep the minutes of the regular minute book of the bank? A. No.

Q. And you were not the secretary of the corporation? A. No.

Q. And you simply acted as secretary at the request of Mr. Odell? A. Yes, with the sanction of those who were present.

Q. And the object of this meeting, as you said some time ago, was to effect a reorganization?

The Court: No, he said rehabilitation.

Q. Didn't you say that this meeting was held to form some kind of an organization? A. Yes, sir.

Q. And that organization was for what object? A. It was the object of rehabilitating the Roseville Trust Company and conserve the interests of the depositors in any manner or shape that we could.

Q. The banking department had taken over the bank? A. Yes, sir.

Mr. English: And the directors themselves were relieved of the management of it? It does not seem to me that these are minutes of meetings as such; they seem to be minutes of meetings made up of individuals who had been directors at one time.

The Court: I think they are competent.

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.

Marked Exhibit S-115.

Q. I ask you to read that part of the minutes so as to show the object of the meeting, beginning with your first entry, which is the date, I think.

The Court: Start at the top of the paper.

A. (Reading.) "Meeting of the Board of Directors of the Roseville Trust Company was called by the president to take place in the trust company, 507 Orange Street, Newark, New Jersey, Friday, August 23, at 5, p. m. Officers and directors present were William P. Odell, President, William Fairlie, Vice President, H. W. Foster, second Vice President. Present, Directors, Krug, Dunn, Munroe, Woodward, Sexton, Scarlett, Klein, Mott, Banister, Benjamin, Kilgus, Lurich. At the request of president Odell Vice President William Fairlie presided and outlined in general the failure of the trust company and what the officers and directors who

were within reach had done to conserve the interests of depositors.''

Q. Were the officers of the bank whom you have mentioned also directors? A. Yes, sir.

Q. Was there any discussion at that meeting looking to the rehabilitating of the bank? A. Do you wish me to refresh my memory from the minutes on that subject?

Q. If you need to, yes. A. Yes, there was.

Q. Did Mr. Scarlett take part in the transaction? A. Referring to the minutes, he was one of the parties that offered to contribute a certain sum toward the rehabilitation.

Q. What did he offer to contribute? A. The item here is $2500.

Q. Now these minutes are signed in what way? A. ''Charles C. Lurich, Secretary.'' While it is in typewriting, at the request of President Odell, somebody wrote there ''Pro tem.'' in lead pencil. That looks like a correction made at the meeting.

Q. Is that correction in your handwriting? A. No, sir.

Q. Were subsequent meetings of that character held? A. There were.

Q. Will you turn to the next one that you have a minute of? A. The next meeting was in August 25, 1913.

Q. Did you keep these minutes also? A. I did.

Mr. Guild: I offer the minutes of that meeting in evidence.

Mr. English: I object on the same ground.

Objection overruled.

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

H. V. OSBORNE.

(Seal.) Judge.

Marked Exhibit S-116.

Q. Will you please tell us where the meeting was held? Just read your first few lines. A. (Reading): "Meeting of the Board of Directors, Roseville Trust Company, was held Monday, August 25, 1913, at four p. m., at 507 Orange Street, Newark, New Jersey."

Q. What was 507 Orange Street? A. That was the bank building.

Q. Who were present at that meeting? A. President Odell presided. The directors present were Fairlie, Foster, Scarlett, Banister, Sexton, Krug, Mott, Keim, Kilgus, Bell, Dunn and Lurich; Benjamin is written in lead pencil; he came in late.

Q. Was everyone present at that meeting a director of the trust company?

Mr. English: I object to that. That is a question of law.

The Court: He can say that they acted as such. I think it calls for a conclusion on the part of the witness which he may not be able to answer, and the objection is sustained.

Q. Do your minutes show what the purpose of that meeting was? A. Of course, it tells what was done and what was to be done, motion made and motion passed.

Q. Tell us what was done.

Mr. English: Do not the minutes speak for themselves on that?

The Court: Can you not meet the situation by asking whether the minutes show that Mr. Scarlett participated in the proceedings of the meetings, unless there is something in the minutes which you want to get in specifically.

Mr. Guild: I will let the Court's question stand for my question.

By the Court: Q. Do the minutes show that Mr. Scarlett participated in the proceedings of that meeting? A. The minutes show that he participated like all of us, to this extent: at this meeting each director was allotted a list of certain stockholders to see if we could get them to sign over their stock to Mr. Fairlie and Mr. Dunn, which was one of the first moves toward rehabilitation, and I see that Mr. Scarlett's participation in that connection was that he was delegated to see certain parties; two parties he was to see.

By Mr. Guild: Q. Read their names. A. Charles B. Lister, who had three shares of stock, and Mr. Marzulli, who had one share of stock.

Q. Is there anything further to indicate what the object of that meeting was? A. That is all that was accomplished at that meeting. There was a letter read, a communication from Director Munroe was read, he was ill at the time and he couldn't attend the meeting.

Q. Are these minutes signed by you? A. Yes, sir.

Q. In what capacity? A. Secretary pro tem.

Q. When did you hold your next meeting if you held another? A. August 27th.

Q. Let me ask you, at the previous meeting was there an adjournment to a fixed day? A. Regarding the previous meeting, "Meeting adjourned to Wednesday, August 27th at four, p. m."

Q. Was there any adjournment at the second meeting?

The Court: He says that the second meeting was adjourned to the 27th.

Q. At the first meeting, was there an adjournment noted on it? A. The first meeting, "Vice President Fairlie announced that a meeting will he held Monday, August 25, at 4 p. m., and all directors be present on time, and that the secretary notify all those that were absent."

Q. And you held your next meeting the 25th, and you have given us what took place there. A. Yes, sir.

Q. And regularly adjourned until the 27th? A. Until the 27th,

Q. Did you hold a meeting on the 27th? A. Yes, sir.

Q. Did you keep the minutes of that meeting? A. I did.

Q. The 27th of August, 1913? A. The same place.

By Mr. English: Q. Signed by you Mr. Lurich? A. Signed by me, yes.

Mr. English: This is the same situation. 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.

H. V. OSBORNE.
Judge.

(Seal.)

Mr. Guild: I offer those in evidence.

Marked Exhibit S-117.

Q. Did Mr. Scarlett attend that meeting? A. He did not.

Q. Was any report received from Mr. Scarlett which was read at that meeting? A. Yes.

Q. If you have a note of it, please read it? A. (Reading): "Director Scarlett sent written report of progress, relating to getting these old stockholders to sign their stock"—

Q. Have you the report? A. Yes, a letter from Mr. Scarlett.

Q. I show you a letter dated Newark, N. J., and the word appears "Aigust," evidently intended for August, bearing date August 26, 1911, and the signature of John B. Scarlett. Is that the paper that was received? A. That is the document that was received.

Q. Are you familiar with Mr. Scarlett's signature? A. I couldn't say that I am.

Mr. Guild: Do you admit that is Mr. Scarlett's signature?

Mr. English: Yes.

Mr. Guild: It is admitted that the letter referred to is signed by Mr. Scarlett, the defendant. I offer it in evidence.

Mr. English: There is nothing to indicate that he signed as a director, and on that ground I object to it. It is on the question of in what capacity it was signed.

The Court: The paper will be received. It is a letter received by this witness that is being referred to in the minutes.

Q. Was that letter of Augcst 26, 1911, read at the meeting? A. It was.

Q. Read it now. A. It is addressed to William P. Odell, Roseville Trust Company, City. "Dear sir. Frank Marzulli is out of town and will not return home until Sunday. I will see him Monday morning in reference to signing an agreement of his share. Charles B. Lister, of Morristown, is also away, but is expected home within a day or so. I will get word to him as soon as he returns and see him then. I am detained in a lawyer's office closing a deal, and I am afraid I will be a little late in getting up to the bank meeting. I met Mr. Ed. Ward to day and had quite a talk with him and I have an idea that he might be prevailed upon to join us in reestablishing the account. He is going away to his home in Maine for a couple of weeks and will make up his mind definitely what he will do, and things will have a chance to settle down. I thought I had better send up my report on these people whom I promised to see in case I am detained longer than I anticipated. Yours truly, John B. Scarlett."

Q. Were there any subsequent meetings? A. Yes, sir.

Q. Any records of them kept? A. Yes, sir.

Q. Is there anything said there about adjournment? A. (Reading.) "Meeting adjourned to Friday, at 4:15, p. m."

Q. It does not give the date? A. No.

Q. Pursuant to that adjournment did the board of directors meet, if so, give us the date, please?

Mr. English: I object to the question including the board of directors. A meeting was held, I will admit that.

The Court: It does not appear that these

gentlemen were not the directors. It seems to me that at the suspension of business these gentlemen were directors, except Mr. Scarlett, and he disputes that alone, and the testimony is, I think, that they continued along as directors, and a reference to them as such is all right.

A. There was a meeting held August 29, 1913, four, p. m., at the same place, 507 Orange Street.

Q. Did you keep the minutes of that meeting? A. I did.

Q. As secretary? A. As secretary.

Q. Was Mr. Scarlett present at that meeting? A. No.

Q. Was an adjournment of that meeting taken to a later late? If so, what date? A. "Meeting adjourned to Tuesday at two p. m. The secretary was instructed to notify and have every director present."

Q. That would be Tuesday, what date? A. I will have to withdraw that. I looked at the wrong page. "Meeting adjourned to Saturday, August 30th, at two p. m.

Q. Did the board of directors meet on Saturday the 30th, pursuant to that adjournment? A. They did.

Q. Where did they meet? A. They met at 507 Orange Street, Newark, which is the bank building, at two p. m., that Saturday afternoon, the 30th.

Q. Did you act as secretary and keep the minutes of that meeting? A. I did.

Q. Do you now produce them? A. They are here.

Mr. Guild: I offer them in evidence.

Mr. English: The same situation exists and I make the same objection.

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.

H. V. OSBORNE.

(Seal.) Judge.

By the Court: Q. Was Scarlett present at that meeting? A. Yes, sir.

The Court: Unless he was I do not think they would be admissible.

Marked Exhibit S-119.

By Mr. Guild: Q. Did anyone outside of the Board of Directors meet with the board that day? A. Yes, sir; there were others that met with the board that time.

Q. Who were they? A. A committee from the depositors of the Roseville Trust Company. They were Mr. McAvoy, Mr. Stromeyer, Macksey, and a stockholder, Menzel, four.

Q. Can you say by reference to your minutes or from your recollection what the business transacted at that meeting at the board of directors was? A. By referring to the minutes. I would rather do that.

Q. To refresh your recollection. A. Do you wish me to divulge what transpired here?

Mr. English: Does that refer to the minutes? The minutes speak for themselves.

The Court: You may read from the minutes, the minutes being better than your recollection, what the minutes show in re-

gard to anything the prosecutor has reference to in his question.

(Question read.)

Witness: My answer to that was that I would rather refer to the minutes than my memory.

Q. That is what you are supposed to do. A. At that meeting the reading of the minutes of the previous meeting—

The Court: Do you want Mr, Scarlett's participation?

Mr. Guild: Yes.

By the Court: Q. Do you find any reference to his participation in the proceedings of the meeting? A. No, I can't say that Mr. Scarlett took any particular—

Mr. Guild: The question is withdrawn.

Q. You say the record does not show any participation by Mr. Scarlett except his presence there? A. That is all.

Q. Have you any recollection on the subject? A. Two years ago—

Q. I am merely asking you if you have any recollection of his participation other than his mere presence? A. No.

Q. Was there any adjournment taken at that meeting? A. (Reading): "Meeting adjourned to Tuesday, two p. m. The secretary was instructed to notify and have every director present."

RE-CROSS-EXAMINATION by Mr. English:

Q. Did others besides those who are listed in these minutes attend any of these other meetings outside of the meeting of Saturday, August 30th, when that committee of the depositors were

there? A. Yes, sir, there were others that attended.

Q. They were depositors, some of them? A. They were depositors, yes, and counsels.

Q. Was there any stockholder? A. The counsel of the depositors.

Q. You mean the counsel of the stockholders and the depositors? A. The counsel of the depositor's committee was there, I believe, on that occasion.

Q. I ask you if others than those who are named in these so-called minutes attended a meeting of the board at which depositors were present?

The Court: You are asked as to your recollection.

A. My recollection is that no one attended those meetings aside from the directors until the meeting of August 30th referred to, where Mr. McAvoy and those others I mentioned before attended.

Q. Mr. McAvoy took a very active part in these proceedings, didn't he, after he once got in? A. Yes, sir.

Q. And he endeavored to get stockholders to sign off, and all that sort of thing? A. He did everything in his power to help us out in rehabilitating.

Q. He worked just as hard as any so-called director, didn't he? A. Yes.

Q. So there wasn't any distinction in the matter of activity as to those who were labeled directors and some of those who were not? A. He acted in his own interest because he was a depositor.

Q. I don't care whose interest it was; I am talking about the apparent activity. A. We were all active.

Q. Where did you get the record from or the names from to whom you sent out notices—from the minute book? You said you sent out notices to a list of names; did you get those out of the original minute book of the bank? A. I think Mr. Munroe gave those to me, the counsel of the bank, because I hadn't the addresses. Of course, the names I knew, I knew every one.

Q. Do you know where he got the names from? A. No.

Q. He just handed you a list of names? A. Yes.

Q. And you sent out the notices of those names? A. That is to the best of my recollection as to the source from which those names came.

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

After recess.

HARVEY MOTT sworn in behalf of State in rebuttal.

Direct-examination by Mr. Guild:

Q. Mr. Mott were you a member of the Board of Directors of the Roseville Trust Company? A. I was.

Q. When did you first go into the board? A. When the bank was organized.

Q. How long did you remain? A. Until the 13th of August, 1913.

Q. Then you were there until the bank was closed? A. Yes, sir.

Q. Actively as a member of the board of directors? A. Yes, sir.

Q. Do you remember a meeting of the board of directors held August 23, 1913? A. Yes, sir.

Q. After the bank closed? A. I wasn't at all of those meetings, I think.

Q. Were you present at that meeting? A. I think so.

Q. Was that a meeting of the Board of Directors? A. Yes.

Q. So considered by you? A. Yes.

Q. And so far as you know, were all the members present?

Mr. English: I object. It is not anything he can know.

The Court: If, in response to a notice of a directors' meeting, everybody came there and nothing there to indicate that they acted in any other capacity, it is within the knowledge of this witness.

Q. And so far as you know they were all there? A. Yes.

Q. By the Court: Q. That is to say, you don't know anything to the contrary? A. Nothing to the contrary.

By Mr. Guild: Q. At the meeting of August 27th, do you remember having heard read a report from Mr Scarlett as to what he had accomplished in the way of securing shares of stock from shareholders? A. Yes, sir.

Q. I ask you to look at the letter of August 27th and I ask you if that is the letter you refer to? A. Yes.

Q. Do you recall still another meeting of the directors held August 30th? A. I do.

Q. At the meeting of August 30th, do you find a committee of the stockholders and directors were present? A. I do.

Q. Did they attend any conference with the directors? A. Yes, sir.

Q. Are you able to say whether at the three meetings to which I have called your attention, the meeting of August 23d and 25th and August 30th, Mr. Scarlett was present? A. I don't think he was present at the meeting of August 30th when the depositors were there, you have reference to; is that it?

Q. Yes. A. I don't think he attended, but he got—I think we received a letter, something was read about he was detained somewheres.

Q. To refresh your recollection about that I will show you the minutes of August 27th, and call your attention to the letter or report which Mr. Scarlett made, and ask you whether that letter was not presented at the meeting? A. There was a letter presented there from Mr. Scarlett.

Q. At the meeting of August 27th? A. It is one of those meetings right there somewhere, the latter part of August.

Q. If the minutes record him as being present would you say he was there? A. Well, if the minutes say so I think I would say he was there. Of course, I attended about all of those meetings, I think all of the meetings.

CROSS-EXAMINATION by Mr. English:

Q. How long did these meetings keep up? A. I think they were kept up until some time in September.

Q. Continued on until September? A. Yes, sir.

Q. Do you remember how many meetings were held after August 30, 1913? A. No, I don't know how many.

Q. Quite a number? A. Well, I couldn't answer that question, how many meetings there was.

Q. I don't ask the exact number; I don't suppose you do remember; I was wondering whether there were many or few occurred after August 30th? A. I don't think there was so many held after September 1st. In August there was a good many meetings.

Q. This was a sort of get together by everybody interested in the bank and try to put it on its feet? A. As director, yes, sir.

Q. Stockholders and depositors? A. There were not many stockholders at the meeting; I think there was one, Mr. Menzell.

Q. And some depositors? A. Yes.

Q. So it was, then, to a certain extent, an effort of the parties interested to get together and get the bank on its feet? A. I think there was once they met with us.

Q. Of course, it was different from the ordinary directors' meeting? A. It was all directors' meetings.

Q. I say that in that respect it differed from the ordinary directors' meeting, having depositors and stockholders present? A. I know there were depositors present at that meeting.

Q. Before the bank failed you didn't have depositors and stockholders present at your meetings? A. No.

JOHN H. LONG sworn in behalf of State in rebuttal.

Direct-examination by Mr. Mott:

Q. Where do you reside? A. 157 Garside Street Newark.

Q. Were you formerly in the employ of Mr. Scarlett? A. I was; the Middlesex Hat Company.

Q. I show you a check dated July 22, 1912, known as Exhibit S-20, and ask you if your signature is written in your handwriting on its back? A. That is mine.

Q. Do you recall where you signed this check? A. In Mr. Scarlett's office, 764 Broad Street.

Q. Shortly after you signed this check did Mr. Scarlett send you anywhere? A. He did.

Q. Where did he send you? A. To the Roseville Trust Company.

Q. Did he give you anything to take with you? A. A letter.

Q. To whom was the letter addressed? A. Mr. Smith.

Q. Was the envelope sealed or unsealed? A. Sealed.

Q. What did you do with the envelope when you got to the Roseville Trust Company? A. waited until Mr. Smith came in and gave it to him.

Q. After you gave Mr. Smith the letter what did you see Mr. Smith do? A. He walked out to the paying teller's desk and took the money out of it and enclosed it in an official envelope and handed it out to me.

Q. Did you notice the money at the time Mr. Smith was taking it out? A. If I recollect right, it was large denominations, large bills.

Q. What did Mr, Smith put the money in? A. One of these large official envelopes.

Q. What did you do with that envelope? A. Took it down and gave it to Mr. Scarlett.

Q. Did you see Mr. Scarlett do anything with the envelope after you gave it to him? A. He opened it.

Q. What did he do with it? A. He counted the money and said there was something short.

Q. After he said there was something short did he do anything? A. He called on the telephone to Mr. Smith.

Q. Did you hear anything that Mr. Scarlett said at that time over the telephone? A. About there being a shortage in it; I don't recollect how much there was short, but there was a shortage there.

Q. Had you seen Mr. Smith that same day to endorse this check? A. I can't say that I saw him that same day; I saw him in the office, though; it might not have been the same day; I can't exactly remember that.

Q. Do you think it was before or after you went to the Roseville Trust Company that you saw Mr. Smith at Mr. Scarlett's office? A. I saw Mr. Smith before I went to the Roseville Trust Company.

Q. How long, if you can remember, previous to going to the Roseville Trust Company was it that you saw Mr. Smith in Mr. Scarlett's office? A. Very shortly.

Q. What was he doing there? A. Having a talk.

Q. Whereabouts? A. Mr. Scarlett's rear office.

Q. Was there anything about the talk that attracted your attention in any way? A. To recall—

Mr. English: Just yes or no.

Witness: No, not there. I wasn't in the office when they were talking; I was outside.

Q. Was there anything that attracted your attention after they got through talking, after they came out—was there? A. Yes, sir.

Q. What was it?

Mr. English: I object to this as immaterial, what it was that drew this man's attention after this conversation was over.

Q. I withdraw the question. What did Mr. Smith or Mr. Scarlett do after their conversation in the office was over that attracted your attention?

Mr English: It seems to me it is utterly immaterial. It is not rebuttal; it does not rebut anything.

The Court: I cannot tell until I hear it. Objection overruled.

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.)

A. To draw a note and have someone else's signature on it outside of Mr. Scarlett, better

have someone else to have their name on the paper.

Q. Who said that? A. I overheard that; I can't say who said it. I think Mr. Smith.

Q. Said what? A. It would look better to have somebody else's name on the note than to have Mr. Scarlett's name.

Q. You don't know what was in the envelope that Mr. Scarlett gave you to take up? A. I don't know.

Q. I show you Exhibit S-21, being a note dated February 20th, as I read it, 1913, and ask you if that is your signature on the back as endorser? A. Yes, sir.

Q. How did you come to endorse that note? A. For the convenience of Mr. Scarlett.

Q. Do you recall whether you had previous to the date of that note endorsed a note for which that is the renewal? A. I think I do. This is not the same name that was on the note—

Q. Whose name was on the original note? A. William Reynolds.

Q. The maker of that note is Mr. Sica, isn't it? A. Yes, sir.

By the Court: Q. When was that note dated? You speak of a previous note; do you know when that was? A. That I don't know.

Q. Do you know whether there were more than one predecessor note? A. I only recollect one.

Q. What is the date of that? A. February 20, 1913.

Q. I show you this S-20 which you have just looked at and you said you wrote your name on the back of it. Using that to refresh your mem-

ory, can you say whether or not the predecessor note which you say was signed by you at about that time is the one? A. It seems to me it was, as I recollect now.

Q. You will have to speak louder. A. I think it was.

Q. It appears that this so-called Long note, the note that we have referred to here as the Long not, being S-21, is not an original. It has been stated here, I think by both Mr. Scarlett and by Mr. Smith, that this was a renewal note, and that there were one or more predecessor notes. Have you any recollection of any note preceding this one which related to it in the sense that this was a renewal in one or more of the predecessor notes? A. I only recollect the one, which was the one with Reynold's name on it.

Q. You recollect the one with Reynolds' name on it? A. That is the one I recollect.

Q. When do you think, according to your best recollection, that it was endorsed by you? A. I can't recollect that; as to the date I can't recollect.

Q. As to some incident, other circumstance? A. Nothing that I can recall.

Q. Was it before or after you went up to the Roseville Trust Company and got the envelope, that money, the time you endorsed the check? A. If I recollect right, it was quite a warm day when I went to the bank to get that money; it was in the morning and it was a warm morning, a warm pleasant day.

Q. You say that the day you took that note up was a warm day? A. If I recollect right, it was a nice, pleasant, warm day.

Q. Do you remember the circumstances of going up and getting that money? A. Yes, sir.

Q. Did you take a check? A. I can't say what was in the envelope.

Q. Can you say when you endorsed this predecessor note, that is, the predecessor of S-21, before or after that warm day when you went up to the Roseville Trust Company? A, No, sir; I can't place the time at all.

Q. You can't fix it with relation to that? A. I recollect about the endorsement, but I can't place the time.

Q. But you do know it was a predecessor note of this one? A. There was a note had Reynolds' name on it and that has not Reynolds' name on it, only the original note was Mr. Reynolds' note, and I think why that was put there, Mr. Reynolds died in the meantime.

Q. By that you mean Mr. Sica? A. Mr. Sica took his place on that. Mr. Reynolds died.

Q. When did Reynolds die, if you remember? A. I think he died in December, if I recollect right.

By Mr. Mott: Q. Did you ever go up more than once to the Roseville Trust Company and get money? A. I only recollect going there once.

Q. Where was your office during 1912, where did you make your headquarters? A. Well, I reported to Mr. Scarlett, of course, every day.

Q. You were employed by the Middlesex Hat Company? A. I was.

Q. All you remember now is that one warm day you took a sealed envelope to Mr. Smith? A. I did.

Q. And before you started off you signed your name on the back of a check? A. Before I started off I signed my name on the back of the check, but I can't say just when I started off; some time before I did.

Q. Do you remember what check you signed your name to when you started off? A. No, sir.

Q. You don't undertake to say that it was this particular check S-20? A. A. No.

Q. All you know is you signed your name to some check and then went up to the bank? A. Yes, sir.

Q. Do you remember the amount of the check to which you signed your name? A. No, sir.

Q. You don't know how much money you brought back? A. I do not.

Q. You didn't count the money as Mr. Scarlett counted it when you brought it back? A. I didn't have my hands on it.

Q. Did you sign any papers at all when you were at the bank on that errand? A. No, sir.

Q. Didn't you sign any check at the bank? A.No sir.

Q. And you didn't sign any note at the bank? A No, sir.

Q. Did you sign the predecessor note of this Reynolds note before or after you signed this check in Mr. Scarlett's office? A. I can't say.

Q. Do you remember endorsing more than one check? A. No.

Q. Do you recollect endorsing more than one? A. The Reynolds note I recollect very well.

Q. But when that was with reference to the date of that check you don't know? A. I do not.

Q. But you are quite sure that you didn't sign any note or check at the bank when you went up? A. Very sure.

Q. Mr. Smith didn't go out of his office and go to the window and have you sign something? A. I don't think so; I didn't see him.

Q. All he did was to go to the cage and put it in an envelope and give it to you? A. Yes, sir.

Q. And you have no recollection of how much it was and know nothing about it? A. I know something about it being short, or something.

Q. I understand that, but I mean the amount? A. No.

Q. Are you sure this is your name on the back of this check S-20? A. It looks like it.

Q. It looks like it? A. It looks very much like it.

Q. Did you ever endorse any check in the Roseville Trust Company bank? A. Not that I recollect.

FRANK C. FERGUSON sworn in behalf of the State in rebuttal.

Direct-examination by Mr. Guild:

Q. Mr. Ferguson what is your business? A. State Bank Examiner.

Q. How long have you been engaged in that occupation? A. About six and a half years.

Q. Are you still connected with that department? A. I am.

Q. Have you had anything to do with examin-

ing the Roseville Trust Company affairs since the bank closed? A. I have, yes, sir.

Q. Prior to that what experience have you had in examining banks? A. I have been connected with the banking department and have examined various banks in my five and a half years' experience in connection with the banking department.

Q. How many banks have you examined? A. Over a hundred, anyway.

Q. Previous to your examination of the Roseville Trust Company after its failure had you examined any insolvent banking institutions? A. No, sir.

Q. Then up to that time your experience has been limited to banks that have been insolvent? A. Yes, sir.

Q. What have you done in connection with your examination of the Roseville Trust Company? First, prior to your going to the State Banking Department what had been your business? A. All of my business life has been engaged in the banking business, in the banking business.

Q. What has been your position? A. I have worked in all the various positions in a bank.

Q. Tell us what they are. A. Well, I started in as check clerk and worked on the individual ledgers and as receiving teller and as paying teller and on the general books.

Q. In what banks? A. The Savings and Investment Trust Company of East Orange and the People's Bank of East Orange.

Q. How long were you in that business? A. Eight years.

Q. Then you had eight years private experience before you went with the banking department

and since then you have had six and a half? A. Yes, sir.

Q. What did your examination of the Roseville Trust Company include? A. You mean since the failure, since the insolvency?

Q. Yes when did you start in at that work? A. I started in August, August 13, 1913.

Q. Answer the previous question. A. We examined the books and records with the idea of arriving at how much each depositor was entitled to receive and examined the conditions of the bank generally.

Q. Did that include an examination of the accounts of depositors? A. It did, yes, sir.

Q. A minute examination or only a surface examination? A. A minute examination.

Q. You examined the account of John B. Scarlett? A. I did.

Q. Personally? A. Personally, yes, sir.

Q. Did you have occasion to examine into a check of the Middlesex Hat Company dated November 16, 1910, drawn on the Metuchen National Bank for $1000—in fact, two checks of that date drawn by the same company on the same bank for $1000? A. I did.

Q. With special reference to John B. Scarlett's interest in it? A. I did, yes, sir.

Q. Limiting yourself to March 17, 1913, in your examination of Scarlett's account, what do you find was the condition, down to that date—not a later date than that—in this inquiry we can't come down to a later date than March 17, 1913, so that any answers that you give as a result of your examination must be to a period not later than that.

Mr. English: I am not clear whether you want the witness to say what the condition was down to that date. Another part of the question limits him to the date of March 17th.

Q. What did you find the condition of his account, on March 17, 1913, was?

Objected to.

Objection sustained.

Q. In connection with your examination of Scarlett's account what books of the Roseville Trust Company did you examine? A. I examined the individual ledger in which Mr. Scarlett's account is set forth, the outgoing letters showing checks sent out for collection and credit, deposit tickets, debit book and credit book and the checks which he had drawn against the account.

Q. Paying teller's proof-book? A. Paying teller's proof-book—in fact, such an examination as would take in almost all the books.

Q. Have those books been offered in evidence? A. Yes, sir.

Q. And the other papers that you refer to? A. Yes, sir

Q. I show you Exhibit S5, which is Scarlett's check of March 17, 1913, for $350, being the check in the indictment, and I ask you what the condition of his account was on that date as shown by the books you have examined, what papers you have examined, and the records you have examined? A. Then I may refer to anything that is necessary?

The Court: Yes.

Q. You are referring to what? A. I am going to refer now to the ledger account, worked down to date.

The Court: You are only to refer to his ledger account worked down to the date of March 17th.

By the Court: Q. You mean you have a transcript made from the book? What is this paper? Explain it, how and when you made it up? A. I made this paper up within the last two or three weeks and it shows in detail the deposits made in the account and the checks drawn against the account and putting in of checks and bringing it to the date of August 4th. Now, this question then will refer to the date of March 17th, so I will go back to that date and find out what the condition of that account was that date.

Q. I understand this was a paper made by you from an examination of the books and papers in evidence here, that this paper contains a transcript or record in the form of a digest of the entries in these books and papers in evidence concerning Mr. Scarlett's account which are here gathered together in concise form by you? A. Yes, sir.

Q. And that is what you desire to use in answering this question? A. Yes, sir, that is right.

The Court: You may cross-examine on it.

By Mr. English: Q. That is not a copy of the individual ledger at all? A. The items appearing on the individual ledger are used in here.

Q. With other things? A. With other things.

Q. In other words, this statement sets up your theory of what this account ought to show? A. No theory at all.

Q. It sets up the various documents which you have turned up in going over this account which you think apply on the Scarlett account? A. Not

what I think; what actually does appear. Nothing appears in the account except as shown by the records of the bank.

Q. Have you got the Middlesex Hat Company check there? A. When they are returned, yes, sir.

Q. They are not a part of the record of the trust company? A. Yes, sir.

Q. Did you use the checks that have been offered in evidence? A. I didn't need the checks. I am working from book records.

Q. Have you got on there the amounts and the date containing some of the checks in evidence here? A. Yes, sir; I have.

Q. We produce them? A. You produced the physical checks.

Q. What have you got? A. I have got the amounts and dates of such checks.

Q. Where did you get it from? A. The books and records of the trust company.

Q. And these letters and tellers proof book, and those things? A. Yes, sir.

Q. There is nothing in this standing by itself that enables you to pick out the particular checks that were produced here; you had to have somebody's word on it? A. Oh, no, I didn't.

Q. Do you mean to say that you can go to a teller's proof-book, in the column headed "Foreign," and simply the initials "N. J." no amount or anything else, and say that it refers to any particular book? A. Not alone, no, sir.

Q. How did you look it up? A. I found such an item and then made inquiry in the books of the bank to find out what that particular item is.

Q. Isn't it a fact that there is more on there than appears by the books—Mr. Smith or Mr.

Thompson or somebody helped you out? A. No, sir, not a thing.

Q. You mean you have dug these up, I suppose, without the aid of anybody? A. This stuff has been dug out of these books; where we needed something to corroborate the books we might ask the Metuchen Bank or the Union Bank for information.

Q. Oh, you supplemented that with outside inquiries? A. Yes, sir, where our books were not as clear as they should be we inquired from the other bank.

Q. Who did you inquire from? A. The Union National Bank, Metuchen National Bank, National Bank of New Jersey, the Fourth Street National Bank, Philadelphia, the National Shawmet Bank, Boston, the B. M. C. Durfee Safe Deposit & Trust Company and Fall River and some bank in New Haven; that is all.

Q. You had a series of correspondence with these various banks? A. We did.

Q. How long did it take you from the time you started until you finally got this thing in shape? A. I don't know.

Q. Some weeks or some months? A. Not some weeks or some months either.

Q. A few days? A. A matter of a few days.

Q. You had to take long enough to get answers from these cities? A. Yes, sir.

Q. Who else did you consult? A. No one else except the records of the bank.

Q. Didn't you consult Mr. Smith about it at all? A. After the thing had been made up he was asked if that was so, if that was the condition of the—

Q. And you clarify your conclusions from him? A. After it was made up, yes, sir.

Q. And you made such changes as were necessary? A. No changes were necessary.

Q. Did you consult Thompson about this thing? A No, sir.

Q. Jennings? A. No, sir

Q. Miss Hicks? A. No, sir.

Q. Who else in the bank besides Smith? A. Smith is the only one.

Q. When did you consult him about it? A. After he came from Trenton.

Q. When was that? A. About a month ago.

Q. When was it you started to make up this statement? A. While this statement itself was not made up until about two weeks ago, yet the material for the statement has been in my possession for a long while.

Q. Now, there is nothing on that statement which shows checks which were deposited, but for which no credit was given and for which there are no records in the bank? A. This statement gives credit for every item that Mr. Scarlett appears to be entitled to credit for.

Q. That is what you say, but what I am asking is whether that shows checks which were deposited by him, but of which no record appears in the bank? A. Give me a specific instance and I will tell you.

Q. That check of Knauth, Nachad & Kuhne appears on this record, check of a thousand dollars, the $5700 duplicate deposit, does that appear there? A. As a $5700 credit?

Q. Yes. A. No, it does not

Q Two checks of $1000 each which it appeared this morning were deposited on November 19, 1910, have you got that down? A. Under that

date there was no deposit made in the trust company.

Q. So you haven't got them down? A. You are asking me a question I can't answer in so many words.

Q. Because you say there wasn't any record of the trust company? A. Of those deposits made on that date.

The Court: I do not think Mr. Smith said they were made on that date.

Mr. English: We have got his signed statement.

The Court: Your question seems to be based upon something that is not in evidence and that is as a fact disputed. What you want to know is whether there is anything appearing in this statement regarding those checks which bear date November 19, 1910.

Mr. English: My question was whether he shows the deposit made on November 19, 1910. That is my inquiry.

Witness: No, sir.

By the Court: Q. Can you find in the books of the bank and in the other evidence that is here reference to all of the items which you have on that paper? A. Yes, sir.

Q. Then do I understand that this paper merely contains these items that are in evidence assembled on it by you? A. It contains more than that, your Honor. We have only been trying a certain portion of the acount an this paper on my lap contains the whole account.

The Court: That can be eliminated by drawing a line down to the part that you

refer to, down to the 17th of March. The only objection seems to be it contains other figures.

By Mr. English: Q. Could you have made up that paper in the shape it now is if you hadn't had this correspondence with these outside banks? A. Yes.

Q. For example will you look at the receiving teller's proof-book under date of February 8, 1911, opposite the printed name "National State Bank," the figures $3024.74, could you without consulting some bank or outsider tell what that referred to? A. I would know from this that those were the exchanges of that date.

Q. I want to know if, knowing that much, that it was some checks checks that went through the exchanges, you could say just by looking at that and without consulting outside information that that referred to this entry (indicating)? A. No, sir.

Q. You had to go to the National State Bank? A. No, sir, I could not.

Q. That is one of them.

By the Court: Q. Are there any other records or books or papers in evidence that you can refer to to identify that item without referring to the bank? A. By referring to the check of $3000.

Q. Is it in evidence? A. It is in evidence.

Mr. English: We have produced it. That is just the point. We produced a lot of stuff that was not in this man's hands, and now that the thing is all in he can build up a beautiful theory.

Witness: I saw your $3000 check months ago.

By Mr. English: Q. I show you Exhibit S94;

it has got two figures, "do. do.," the word "returned" above and the figures "1000," could you, without consulting some outside information tell what that was by simply looking at it? A. I could, yes.

Q. You can see the word "do., 1000"— A. You didn't ask me if I could go to some other record of the bank and tell what that was.

Q. Could you? A. I could, yes, sir.

Q. Did you have to consult another outside bank to get that? A. No, sir.

Q. You figured that out? A. Yes, I figured that out, what it was.

The Court: Does this witness wish to use this paper merely for the purpose of refreshing his memory and not offer it in evidence? There is a big difference.

By the Court: Q. You started to refer to this paper. What was your purpose in referring to it? A. To tell the amount of the overdraft on that date. I can't remember it.

Q. Could you tell it by referring to some thing else as well, or if, after referring to this paper, could you find the same item in the book of the bank? A. No, sir.

Q. That wouldn't show on the account of Mr. Scarlett? A. No, sir.

Q. If that paper were taken away could you take these books and reassemble the figures? A. Yes, sir.

Q. Then you could tell by a reference to the books of the bank? A. Yes, sir.

Mr. English: What I had in mind about the use of this statement is that this gentleman has been going through these books

off and on for a great many months and with the aid of the book and his ingenuity—this is my diagnosis—he has built up a case which he has given to the prosecutor and he has a paper here which substantiates his theory. He is going to testify in substantiation of that theory.

Mr. Guild: It might be well to have it appear on the record that the information which the witness says he got from these outside sources has all been put in evidence on this trial. He was here and heard the evidence and he would be able to say whether or not that is true.

The Court: He has made certain figures as a result of his examination of these books and he now wishes to refresh his memory. I think he may do so.

Objection overruled.

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)

By Mr. Guild: Q. What was the condition of this account on the 17th day of March, 1913? What was the condition of the account on this date when this check was certified?

Mr. English: Shown by the books he examined.

The Court: According to the records of this bank.

A. Immediately prior to the charging

up of this check the account was overdrawn $7655.82, and immediately after charging up the check the account was overdrawn $8005.82.

Q. You say immediately. Will you—

Mr. English: His answer bears out my diagnosis exactly. The evidence in this case is that the check, was never charged up—in fact it was never charged up. He is giving us the benefit of his theory.

Q. My next question was, what do you mean when you say immediately prior, when the check was charged up, before, and immediately after the check was charged. Was the check ever charged? A. No, sir.

Q. Why do you use the word "charge"? A. In my memorandum.

Q. As a matter of fact, the check was never charged. A. Never charged to his account.

Q. For the reason— A. That his account wasn't good for it.

Mr. English: I move to strike out the answer to the question which followed my examination because it is just exactly the wrong thing. He is not giving what the books show at all, but his idea, setting up his idea of what the situation ought to be.

The Court: He says the books show it. You can cross-examine on that and prove that he is wrong in his figures, and he says that as soon as that check was certified that added that much more to the amount which in fact was an overdraft, according to his testimony, which made him short $8005.82. I understand he said Mr. Scarlett's account does not show it because that check was not

in fact charged up to Mr. Scarlett's account. The records of the bank show that it was certified.

Witness: Yes, sir.

The Court: Therefore the records do show this situation. The question to Mr. Ferguson is, do the books show these figures, if you include them that you have just given us.

Witness: They will, yes, sir.

Q. I show you check of John B. Scarlett, dated March 4, 1913, $500, being Exhibit S13, and ask you what the books and records of the Roseville Trust Company show was the condition of his account on the date of the certification of that check?

Mr. English: I object to the question because we are not concerned with what the situation was before or afterwards. We are charged here on a specific date that we overdrew our acount. It doesn't matter what we did before or afterwards. If we didn't do it on that date it is not material.

The Court: I will admit the evidence.

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

H. V. OSBORNE,
Judge.

(Seal)

A. Immediately prior to the payment of the check the overdraft—

Q. I asked you about certifying the check? A. Immediately prior to the certification of the check the overdraft was $6965.82.

Q. That is a check for how much? A. $500.

Q. What was the condition of the account when the check was paid by the Roseville Trust Company? A. There was $465.82.

Q. What? A. Overdraft.

Q. I show you check dated February 19, 1913, made by John B. Scarlett, check for $400, certified February 19, 1913, being Exhibit S15, and ask you what was the condition of his account the day that check was certified?

Mr. English: The same objection.

The Court: Same ruling.

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

H. V. OSBORNE,

(Seal) Judge.

A. Immediately prior to the time the account was $6165.82 overdrawn and immediately after—

Q. Immediately after what? A. Immediately after the check was certified.

Q. Strike out the balance of his answer "immediately after." I want to know what the condition of his account was the day the check was paid?

Mr. English: I don't know whether the check was paid. The check was stamped paid; there is no evidence that it was paid. Whether it was paid or not is one of the questions for this jury to say.

The Court: Is it a certified check?

Mr. Guild: Yes, sir.

The Court: I think the inquiry should be limited to the time it is certified; that is when the bank assumes the obligation, im-

mediately upon the certification of that check, regardless of when they pay it .

Q. I would like you to see what the condition of the account was immediately prior to its being certified. A. $6165.82 overdrawn.

Q. And after the check was certified? A. $6,565.82 overdrawn

Q. Have you examined the books for the purpose of ascertaining whether this check was paid by the Roseville Trust Company? A. I have; yes, sir.

Q. Are you able to say whether it was paid?

Mr. English: I think that is one of the questions in this case for the jury to say, whether the check was paid, particularly as it was not stamped paid.

The Court: Your objection seems to be based on the theory, as I understand it, that if this check, although it is certified by the bank, was not in fact paid by the bank that that there was no overdraft?

Mr. English: How could there be?

The Court: The difficulty seems to be that you have a misconception of the law on the subject. As I understand, when a check is certified there is then created an obligation on the part of the bank and it becomes the bank's obligation and an overdraft is created immediately upon that certification, regardless of whether that check is ultimately paid by the bank, for instance, because of its failure in the meantime it comes back for presentation.

Mr. English: Suppose somebody comes along and applies the money to the account

and the account is then good for the certified check?

The Court: That does not make any difference. That is after it has all happened. If somebody comes in afterwards and makes restitution that does not change the situation at all.

Objection overruled.

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)

(Question read as follows: "Are you able to say whether it was paid?")

A. The check was paid.

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

Q. I will ask you the same question as to Exhibit S5, being the check of March 17, 1913, whether that was paid by the Roseville Trust Company? A. It was, yes, sir.

Q. And the day it was paid what was the condition of his account? A. His account was overdrawn.

By the Court: Q. At the date of certification or the date of the check? A. I am taking this as of the date of certification.

Q. Certification? A. Yes, sir.

The Court: I take it that is the correct way to apply it.

CROSS-EXAMINATION by Mr. English:

Q. You say you examined this bank after the failure? A. I helped, yes, sir.

Q. Did you examine it before the failure? A. No, sir.

Q. Did you ever examine this bank until the failure had occurred? A. No, sir.

Q. The bank was examined by your department before the failure? A. Yes, sir.

Q. A number of times? A. Yes, sir.

Q. And these irregularities not discovered?

The Court: Have you any knowledge on the subject?

Witness: I have no knowledge on the subject.

Q. You undertook to strike a balance, did you, of Mr. Scarlett's account on the various dates you have testified to? A. I did.

Q. Did you undertake to give him credit for everything he was entitled to credit for? A. Yes, sir.

Q. And did you undertake to charge against him everything that you thought he should be charged with? A. I did.

Q. Referring to the date of March 17, 1913, what you credited him with makes the credit balance as of that date? A. There was no credit balance of that date.

Q. What date prior to that had you found a credit balance? The books of the bank, according to the testimony, showed $1.30, the ledger account, and that is what the testimony has been, according to their ledger it was $1.30. You repudiate that, do you? A. Yes.

Q. When prior to that date did you find a credit in his favor, according to your figuring? A. A credit balance in his favor?

Q. Yes. A. Not a deposit, a credit balance, you mean?

Q. Yes. A. January 26, 1911.

Q. On January 26, 1911, you found a credit balance in his favor? A. I did.

Q. How much, according to your figures? A. I want to explain that, if I may.

Q. Can't you give me those figures first? A. No, I have got to explain it. I say that there was a credit balance on that day because I have in this analysis credited his account with everything he put in, irrespective of whether it was good or not. On January 26th I have given him credit for the $1000 which the witness Smith has testified he put to his account, and on the 24th I gave him credit for a $2000 outgoing check which had been given in substitution of a return check, so that the balance that appears in his account on January 23d is a good balance, and if I say, in answer to the question, that that balance in his account on that particular date is a certain amount, it gives the impression that he has a good balance collected funds, which he has not.

The Court: I understood Mr. English wanted the first good balance.

Q. Give us the balance, January 26th, good or bad, and then you can tell us all about it. A. I will change that again. There is no credit balance on January 26th after all the debits are charged up to the account.

Q. Have you got a balance on your paper that day? A. Only in explaining the various items.

Q. Give us what figures you have got down there? A. At the close of business January 26th, you want to know how the account stood?

Q. Yes. A. The account stood $1608.50 overdrawn.

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Q. That is the way you figure it out now, where is that bad balance that you said was good? A. I said the account showed a credit balance except I had neglected to look down far enough to see what deposits were charged in the account.

Q. What I would like to have you tell me is what that credit balance was which you had on the 26th without taking into consideration those other things which you say ought to be charged against it? A. I said I made a mistake; I said there was no credit balance on January 26th.

Q. Now, go back far enough and give us a balance to credit, if you can find one.

The Court: Give him the credit balance nearest to and preceding the 17th of March, 1913, regardless of whether it is a good balance or a bad balance.

Witness: Then I will say on July 21, 1911.

Q. Which is the latest? A. Yes, sir.

Q. What do you say on that date? A. I say on that date there was for a minute a credit balance of $1000.30.

Q. A credit of $1000.30 for one minute on July 31st. Are you able to testify to the exact time that that credit balance stayed in existence? A. Yes, sir, I know. The same time the credit entry was made the debit entry was made, the same time July 21, 1911.

Q. A credit of how much? A. $1001.30.

Q. Now, what have you charged against that credit balance on March 17, 1913, to make up the debit which you testified to you thought existed on that date? A. You want to know all the debits charged against that credit balance?

Q. I want to know what you make up that debit

there? A. On the 21st day of July, 1911, charge, $2000.

The Court: Do you want him to give those items from the 21st of July, 1911, to the 17th of March, 1913?

Mr. English: He says on March 13th the account is overdrawn $1000. He has presumably arrived at that by charging various items against it. I would like to know what those charges are.

Q. Did you charge in that debit Mr. Smith's personal check for $4200? A. I did not.

Q. Did you make any charge of $4200 against that? A. I did not.

Q. Did you charge in that the amount of the Sica note? A. What amount?

Q. Any amount in connection with that Sica note? A. Give me the amount of the note.

Q. $1247. A. I didn't charge any note at all.

Q. I don't care whether you call it a note. The figures of that amount to how much? Did you charge around twelve forty-seven? A. You mean $1247.76, I guess.

Q. That is the amount, is it, that is what you charged against him? A. I charged a check which Scarlett drew on the 17th of September for $1247.76 against his account in this analysis.

Q. You know now that the bank got that so-called Sica note for that, don't you? A. I don't know that.

Q. If they did get that, then you charged it up, notwithstanding it was offset to a certain extent by that note? A. I don't know that it was offset.

Q. If it was offset by that note then you charged it up as an out and out charge? A. I charged the check which Scarlett drew on his account.

Q. Don't you know that it was the check that paid this note? A. I don't know that.

Q. You have heard that testimony here? A. Yes, sir.

Q. You charged $2475 paid for the Long note? A. What check are you referring to—a treasurer's check?

Q. Yes. A. No, that is a treasurer's check; I didn't charge that.

Q. Did you charge any figure around that note relating to this Long note? A. No, sir.

Q. Go back to the first charge you made after July 21st, 1911? A. On the 26th of September, $152.33.

Q. What year? A. I think it is all 1911.

Q. That was what? A. That is a check.

By the Court: Q. What was this $2000? A. That was a note of Stevenson, Rye, there was a renewal put through the same date. The renewal I entered on this sheet prior to the date of charging up.

By Mr. English: Q. What was the date of the renewal note? A. 7/ 21/11.

Q. What is the next one? A. Again on the 26th of September, $502.60.

Q. What is that? A. A check.

Q. Drawn by whom? A. I can't tell you now. October 19th, $652.02.

Q. What was that? A. That is another check.

Q. Do you know to whom it is drawn? A. No, sir, but I will tell you the number of it.

Q. What number are you referring to? A. S41 for identification and $502.60 is S25, and the $152.33 is S24.

Q. Go on. A. October 29th, $652.54.

Q. Another check? A. Another check. Do you simply want the debit or the credits, too?

The Court: He asked you for all the debits down to the date of this alleged overdraft.

Witness: November 22d, $1500.

Q. Do you know what that was? A. Stevenson, Rye note, I think, March 22, 1912, $1350. I think that, too, was a Stevenson Rye note.

Q. Was that one item? A. That is one item.

Q. And that is what date? A. I think that is a Stevenson, Rye note. April 3, $150.

Q. What? A. S42 for identification.

Q. A check? A. Yes, sir, July 22, 1912, $1224.

Q. What was that? A. Note.

Q. Stevenson, Rye? A. I think so.

Q. All right. A. July 23d, $500.

Q. A note or check? A. I think that was a certified check. August 12th, $50.

Q. A note or check? A. I think it was a certified check, August 19th, $75.

Q. Check? A. Check. August 22d, $350.

Q. Check? A. I think so. September 17th, $1247.76.

Q. That is what we call the Sica note transaction? A. Yes, that is the check.

Q. It relates to that note transaction, doesn't it? A. December 20th, $500.

Q. A note or check? A. I think it is a check. December 23d, $300.

Q. Another check? A. Another check. January 26th.

Q. What year? A. This is 1913. $2000.

Q. What was that, a check? A. Check. January 29th, $50, and again on January 29th, $89.95.

Q. Both checks? A. Yes, sir. February 5th, $82; February 13th, $125.

Q. Were both of those transactions checks? A. All of them were checks. February 15th, $86.92, check. February 19th, $400.

Q. That is one of the checks we have in evidence here. A. February 21st, $400.

Q. Was that a note or check? A. These were all checks. March 4th, $500.

Q. That is a check? A March 11th, $100.

Q. Check? A. Yes, these were all checks. March 13th, $90, and then this $350.

Q. And then March 17th? A. Yes, sir.

Q. They are all debits you charged against that beginning back there in July, 1911. The one for July 21, 1911, what was that, the first one you named; is that a check or a note? A. That was the Stevenson, Rye note.

Q. For $2000? A. Yes, sir.

Q. Then you charge on that account Stevenson, Rye notes to the amount of $2000 on July 21st, 1911, $1500, and on November 22, 1911, $1500; March 22, 1912, $1350 and July 22, 1912, $1224. Is that right? A. Yes, sir.

Q. All Stevenson, Rye notes? A. Yes, sir.

Q. Why did you charge those to Mr. Scarlett's account? A. Because they went to the account.

Q. What do you mean by that? A. The original credit appeared in Mr. Scarlett's account and therefore when it was renewed he should be given credit.

Q. What became of the notes, do you know? A. Yes.

Q. What? A. Returned to him.

Q. How do you know that? A. Well, I am speak-

ing now about my general knowledge of banking business.

Q. You must remember that ordinary banking business has to be discounted in this Roseville Trust Company. You say it would be returned to him? A. Yes, sir.

Q. The only reason for saying they were returned in this case—

By the Court: Q. Did you find him credited with it on the account and charged? A. Yes, sir.

By Mr. English: Q. That was a check used to purchase the Sica note, or rather the proceeds of the Sica note? A. I didn't know that.

Q. You have heard it testified to in this case, that it was supposed to represent the proceeds of the Sica note, didn't you? A. I remember something about that, yes, sir.

Q. The bank, on that note, isn't the bank entitled to be credited with that note? A. Those are taken from the records of the bank. How do I know who is to be given credit for it?

Q. You are explaining on these irregular records, are you? A. I don't know if they are irrefular.

Q. You have sat here for two weeks and don't know that these records are irregular? A. May be irregular in some respects, but this record isn't irregular.

Q. What I am trying to find out is whether you made your record up strictly from the records of this bank or whether you have tried to find out all the information you could and give him the benefit of everything he is entitled to. A. I made up my record from the records of the bank.

Q. What have you charged against this account? A. Those were the charges.

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

Q. Did you give him credit for $2000 on November 19, 1910? A. November, 1910—on November 19, 1910, did not give him credit for $2000.

Q. Did you give him credit for $2000 on November 22, 1910? A. I did.

Q. Did you give him credit for deposit on January 18, 1911? A. I did.

Q. Did you give him credit for the amount of the Sica note, $1247? A. When?

Q. At any time? A. Well, I would have to go through the whole thing to look at that, but my recollection was that the Sica note was taken care of by a treasurer's check, and, of course, it wouldn't go through his account.

Q. I want to know whether you gave credit for the amount of that Sica note which the bank claims and the evidence shows it was sold by the Roseville Bank to the Mutual Bank of Roseville? A. I didn't give him credit for it, no, sir.

Q. Did you give him any credit for the Long note, so-called, which the evidence shows the bank claimed and which was sold to the Mutual Bank of Roseville?

Mr. Guild: Won't you explain? He has answered these questions no.

Witness: May I explain that?

The Court: Yes.

Witness: I didn't give him credit for the Sica note nor for the Long note because they got hteir credit in other ways, by getting treasurer's checks and getting the treasurer's checks cashed, and so of course they wouldn't go to their account the same as the Stevenson, Rye Company.

Q. The bank retained those notes? A. Yes, sir.

Q. I want to know what they are. What are the credits? A. November 22, 1911, there is a credit of $177.

Q. Do you know what that was? A. A deposit.

Q. What is the next one? A. On November 22, 1911, $2313.

Q. That is a deposit also? A. No, I think that is the proceeds of a note—I think—I am not positive. March 22, 1912, $1200.

Q. Do you skip from November 22d to March 12th? A. Yes, sir. On the same date, March 22, 1912, $150. On July 22, 1912, $250; on July 22, 1912, $1100; on December 26, 1912, $300. That is all.

Q. Those are the total credits you gave him? A. Yes.

Q. Then you didn't give him the credits which appear on this individual ledger account? A. I guess I did.

Q. When did you start those credits—back in July, 1911, when you have a balance to his credit of $1000? A. I didn't start the credit until November 22, 1911.

Q. That is when you began? A. Yes, sir.

Q. You had better go back a little bit. A. There are none.

Q. No credits prior to that date at all? A. No, sir.

Mr. Guild: He doesn't mean that exactly.

Witness: He asked me for the balance between those credits.

Q. Did you give him credit for $5700 on February 8, 1911? A. That is a long way previous to this.

Q. I understand that. A. No. I didn't give him credit for $5700.

Q. Suppose the bank went out and cashed them and got the money on them, the depositor has already been charged with the treasurer's check; if the bank gets its money back isn't the depositor entitled to credit? A. There is no treasurer's check charged.

Q. You are charging him with $1247? A. I did.

By the Court: Q. What is the $1247 check? A. It is Scarlett's own check drawn against his account in the Roseville Trust Company.

By Mr. English: Q. You charge him and then I ask you this: if the bank at that time had a note for $1247 and got the money on it ought not Mr. Scarlett have the benefit of that as a credit? A. No.

Q. Why not? A. Because how do we know it is his?

Q. The evidence shows it was, that is how you know.

The Court: It was until he sold it to the bank.

Mr. English: Yes.

The Court: Then it was not his, was it?

Mr. English: The question shows that the bank discounted this note and then sold it to the Mutual Trust Company.

Q. It was a treasurer's check for that Long note, wasn't it? A. Yes.

Q. Did you put that in the account one way or the other? A. Of course not.

Q. What else did you leave out, the $5700 deposit and the $2000 deposit on March 19th? A. I didn't say I left them out.

Q. You said you didn't give him credit for it? A. On those particular dates—you pin me down to certain dates?

Q. Did you ever give him credit for the $5700 which were deposited on February 8, 1911? A. I gave him credit on February 8, 1911, for $3000.

Q. Did you ever give him the credit for the deposit which was made on November 22d? A. I did.

Q. What date? A. The date it went through the books, November 22d.

Q. It appears here that a check of Kanouth, Nachad & Kuhne went through on that date. Is that the check you gave credit for? A. I gave credit also.

Q. That is in addition? A. In addition.

Q. What date did you give credit for that? A. November 22d.

Q. How much did you give him credit for on November 22d? A. $4000.

Q Have you got that on your account? A. I have.

Q. Why didn't you give him the credit for the $2700 which appeared on the $5700 deposit? A. Because the bank didn't get the money.

Q. Did you find that out from what somebody told you or what the books show? A. From what the books show.

Q. There is nothing in the ledger account to show that? A. No, sir.

By the Court: Q. If the bank didn't get the money would there be anything in the ordinary course of business to indicate it? A. No, sir.

By Mr. English: Q. The ledger shows a deposit doesn't it, ordinarily? A. Ordinarily.

Q. When it turns out no good there is a charge to offset it? A. When a good deposit is made, yes, sir.

Q. Did you charge him anything on November 27, 1910? A. I did.

Q. How much? A. $2003.16.

Q. Well, now, I show you Exhibit D60, which is a charge slip, $3.16. You add $3000 to that? A. I do.

Q. How much, if anything, did you charge him on January 11, 1911? A. I charged him with $2001.68.

Q. I show you a charge slip, S105, for $1.68, you added $2000 to that? A. I did. May I make an explanation about that?

The Court: Yes.

Witness: The reason I charged him with $2003.-16 on November 23d, and with the $2001.68 on November 11th—the reason I charged them for the full amount was because I gave them credit for the amount which went out; it results in the same thing, as though I had simply charged the fees to the account; after I gave him credit for the other one that goes out I get the same result by charging him with the $2003.16 and crediting him with $2001.68 which I would have gotten had I simply charged him with $3.16.

By the Court: Q. Do I understand, you made a debit and credit of $2000, which left the same total? A. Yes, sir; the ledger shows on November 23d a charge of $3.16 and no credit, so I charge the account with $2003.16 and credit him with $2000.

Q. Because that was the transaction which this ledger acount shows resulted? A. Yes, sir.

Q. So in order to show the transaction in full you put the full figures? A. Yes, sir; the result is exactly the same.

Q. Did you charge him anything on January 4, 1911? A. Yes, sir.

Q. With how much? A. $2001.68, and credited

him with $2000, which is exactly the same thing as charging him with $1.68.

Adjourned to Tuesday, March 30th, 1915, at 10 o'clock.

TWELFTH DAY

ESSEX COUNTY OYER & TERMINER

Tuesday, March 30, 1915.

Continued pursuant to adjournment.
Present, counsel as before stated.

Mr. Guild: I find by oversight that a number of checks which have been recognized by Mr. Scarlett as his checks that have been marked for identification have not been put in evidence. Perhaps Mr. English will waive formal proof.

Mr. English: I haven't a doubt that the Prosecutor got those checks at the bank. The Prosecutor has handed me a number of checks which are divisible into two sections, one, checks drawn on the Roseville Trust Company, and another, checks drawn on an outside bank. I have no doubt that the checks drawn on the Roseville Trust Company were found up there. These others we know nothing about. The banking department gave Mr. Scarlett a month ago a list of the checks which have been

turned up and drawn on the Roseville Trust Company. Those we know about. These we know nothing about, I mean these drawn on the outside bank. I think we ought to have some proof on that.

Mr. Guild: Mr. Scarlett has identified them all.

Mr. English: That may be, but that doesn't say that they have anything to do with this case.

The Court: I don't know that the prosecutor has to prove their source. Mr. Scarlett has admitted his signature.

Mr. English: That is not the point of my objection.

Mr. Guild: It is fairly good evidence that they did not go back to Scarlett or anywhere else if they are in our possession.

Mr. English: The prosecutor has offered in evidence checks for identification as follows: S28, S29, S31, S32, S34, S35, S37 and S38. These checks were all drawn on the Roseville Trust Company and are stamped certified checks. No one of them is stamped paid, and therefore there is a question as to whether or not they were frauds, unless the fact that they are stamped certified. The evidence is that Mr. Smith certified checks in connection with the frauds which he perpetrated on his company, and the principle of law is well settled that an agent engaged in the perpetration of fraud is not the act of his company and therefore I say, the simple fact that they were certified by a man who is engaged in the perpetration

of fraud on his company does not make them admissible, and therefore I say that those checks were not in any sense overdrafts and should be charged to the account, and the purpose of the offer is that they should be deducted from the account, and I object to them. He has handed me another series of checks, Exhibit S30 for identification, S33, S36 and 43, and these checks are drawn on the Roseville Trust Company and not certified nor stamped paid. The evidence is that when an ordinary check, without reference to a certified check, is put through and paid, it is stamped paid, or there is something on it to indicate that it has been paid. There is nothing on these checks to indicate any such thing. The simple fact that any depositor draws a check and the check is not presented for payment, there would be no charge against his account. I object to these as immaterial and having no bearing on the case at all. The other set of papers which the prosecutor offers are marked for identification as follows: S24, S25, S39, S40, S41 and S42. S24 and S25 are checks drawn by the Bras d'Or Land Company on the State Bank of Hartford, Connecticut.

The Court: Signed by whom?

Mr. English: Signed by the Bras d'Or Land Company.

The Court: By whom?

Mr. Engish: By Mr. Scarlett as treasurer, and my objection to those is that they are checks drawn on some outside banks

and have no connection with this case whatever, nor is there any evidence that I remember connecting these checks with the case in any particular. S39 is a check drawn by the Middlesex Hat Company by Nicolas R. Sica, treasurer, on the Metuchen National Bank and I object to that for the same reason. It is drawn on an outside bank, and there is nothing in the evidence connecting it with this case. I say there is nothing in the evidence connecting this check with this case; although Scarlett's name is on the back of it.

The Court: What is the amount of it?

Mr. English: $350, but the check is drawn on another bank and has the stamp of the Roseville Trust Company on the back of it. S24 and S25 have not even got the Roseville Trust Company stamp on it; there is absolutely nothing to connect those two with this matter one way or the other. S29 has a stamp of the Roseville Trust Company on it, and to that extent it may have some connection, but my objection is that it is drawn on an outside bank, and outside of the stamp, there is nothing to connect it. S40 is a check drawn by Scarlett on the Brooks National Bank, Torrington, Connecticut. There is a stamp on the back to indicate that it went through the Roseville Trust Company. There is nothing in the evidence to connect it with this case. The next exhibit, S41, is drawn on the Durfee Trust Company up in Fall River, Massachusetts. That is endorsed by the Roseville

Trust Company. To that extent it, at least, refers to the trust company here. It was shown to him and admitted to have been drawn by him. S42 is drawn on the Broad & Market National Bank to his own order and has the Roseville Trust Company on the back of it, the date being March 21, 1912; where that figures in the case I don't remember, except it is drawn by Mr. Scarlett. I don't think I object to that. These blue ones are drawn on the State Bank of Hartford. There is nothing to indicate that they came near this trust company. The Brooks check is in the same class, except it has the stamp on the back.

Mr. Guild: I understand that Mr. Englinsh objects to the check drawn on the Roseville Trust Company on the ground that they have not been connected with the case—

Mr. English: I said on the ground that there wasn't any evidence that they had been paid and therefore they have no bearing on this case, and they are offered here on the theory that they ought to be deducted from his account.

Mr. Guild: I say, if we fail to show that they were properly chargeable against the account, then they would go out.

Mr. English: Why don't you hold them until you submit your proof?

Mr. Guild: We are able to show that those checks, all of them, were found in the bank, and they are part of the items that Mr. Ferguson has used in making up his analysis of Scarlett's account.

The Court: And you are able to say that they relate to Mr. Scarlett's account during a certain period? If you show that they were in the bank, I think they are part of the records of the bank. The fact that they were there and had been used in this account, if those checks appear in Mr. Scarlett's account, I think undoubtedly they are competent because that is one of the principal questions in this case, the state of Mr. Scarlett's account. Of course, if you cannot show that these checks went through his account in some shape or other—I do not mean necessarily entered on his personal ledger, but were within his dealings with the bank up to the 17th day of March, 1913—they are competent. What have you to say as to this question of the fraudulent certification? Mr. English does not contend that certification would not bind the bank, but whether fraudulent certification would bind the bank, so the extent of your interrogation is the fraudulent certification.

Mr. Mott: If it be true that Mr. Scarlett and Mr. Smith were engaged in a conspiracy to rob that bank, and the evidence sems to show that they were, then the fraudulent certification was a misdemeanor under the statute, and every man who participates in any way in the commission of a misdemeanor is a principal, and Mr. Scarlett is just as guilty of the offense as Mr. Smith, and if he reaped the benefit of it, the testimony would show that there was this conspiracy between them.

The Court: (After discussion.) You may offer whatever additional proof you may think necessary to lay a foundation for this evidence. You may offer that proof before Mr. English continues his cross-examination of Mr. Ferguson.

FRANK C. FERGUSON, resumes the stand:

Further Direct-examination by Mr. Guild:

Q. I show you Exhibits S28 for identification, S29 for identification, S31 for identification, S32, S34, S35, S37, S38, S39, S43, S30, S33, S36, S42, S24 for identification and S25 for identification, and ask you whether you saw those checks in the Roseville Trust Company Bank after the bank closed? A. Yes, sir; I did.

Q. Where did you see them? A. I saw them—they were handed to me by one of the examiners.

Q. In the bank? A. In the bank, yes, sir.

Q. And in making up Mr. Scarlett's account have you used those checks? A. Yes, sir.

Mr. Guild: I offer them in evidence.

By Mr. English: When was it that they were handed to you, Mr. Ferguson? A. Immediately after they were found.

Q. What period of time are you speaking about? A. After August 13, 1913.

Q. You didn't see them when they were found or where they were found? A. I didn't see them when they were found, no.

Q. They were handed to you by some other examiner? A. Yes.

Q. In the bank building? A. Yes, sir.

Q. You say you used them in making up the account. You mean, you charged the account? A. When necessary, yes, sir.

Q. That don't mean anything to me, when it was necessary. So you did charge these checks? A. Yes, sir.

Q. Including those drawn on out of town banks? A. Yes, sir.

Q. They are not entered on the individual ledger, are they? A. None of those checks, no, sir.

By the Court: Q. What checks were they? You say none of these checks was entered on the individual ledger? A. The account wasn't good for the checks.

Mr. English: You weren't in the bank at the time. That is your theory. You were not there when the checks went through.

Q. You mean the account as you found it on the books, when you made your examination and when you made up your summary of the account, you didn't charge them to him? A. Yes. In my summary I did charge them.

Q. I understand that you had before you all the checks of Mr. Scarlett and such other checks as should go properly in his account in order to get a correct statement of it? A. No, I didn't have all the checks.

Q. How could you, without all the checks, make a statment of his account? A. A great many of his checks had been returned to him when it was balanced; it had been balanced several times.

Q. It is quite apparent from an examination of those checks that some of them have no relation, direct relation, to this case, except as they have been identified by Mr. Scarlett as bearing his signature and were found in the bank and were used by the witness in making up a statement of Mr. Scarlett's account. Isn't that as you understand it?

Mr. Guild: Yes.

The Court: Some of them, I see, are to the order of the people, and for amounts not mentioned in this case.

Mr. Guild: I think Mr. Ferguson will be able to say that these checks appear in his analysis.

Mr. English: That don't make them evidence.

The Court: The situation as here presented is this: Mr. Scarlett bases one of his defenses on the correctness of his account, and he undertakes to go on the stand and testify as to what the condition of his account was at certain times, giving the details in some respects, and claiming that certain checks which were deposits were not credited to his account which should have been, and claiming that there was at one time, at the end of November, a credit balance in his favor of $4000, and later in February a credit balance of at least $5,700, making a total of $9,700. Now the State has attempted to show that it is not true, in rebuttal, and produces the records of the bank, as far as they go and

as far as they are admittedly correct, such as they are, to prove that it is not true, and it seems to me that any records of the bank relating to his account during the period covered by this inquiry are competent. Just what weight they will have with the jury because of the inaccuracies pointed out in them is a question for the jury. I think the testimony is admissible in view of the fact that this line of inquiry has been opened by the defendant himself, and the only way it can be met by the State is to produce such evidence as they are able to produce that will meet Mr. Scarlett's testimony to the effect that he had these balances in question on the dates in question, and any evidence of the records which will tend to do that properly, identified as being connected with this account, are admissible for that purpose, and I will admit these checks for the reasons just stated.

Mr. English: Your Honor will allow me an exception to each exhibit offered?

The Court: Of course, if any of these exhibits by inadvertence are not properly connected, they can have no adverse effect, because they have no bearing on the case and cannot be considered in connection with it.

The papers referred to are marked Exhibits S-28, S-29, S-31, S-32, S-34, S-35, S-37, S-38, S-36, S-24, S-25, S-39, S-43, S-30, S-33, and S-42.

CROSS-EXAMINATION (continued) by Mr. English:

Q. I understood you to say that you charged against Mr. Scarlett's account all of these various checks which have just now been admitted in evidence? A. Yes, sir.

Q. Including these drawn on out of town banks? A. Yes, sir.

Q. Checks, for example, as the check on the Brooks National Bank, you charged that? A. Yes, all of them.

Q. And the checks on the bank in Hartford? A. Yes, sir.

Q. And the check which was drawn by the Bras d'Or Land Company; you charged that? A. Yes, sir.

Q. In striking up your balance you debited his account with all these checks? A. Yes, sir.

Q. In making up his balance also I understand from what you said yesterday that you debited his account with the two checks of $1000 each, dated November 15, 1910, and referred to in those two notices produced which are in evidence as Exhibits D-32 and D-33; that is true? A. When they were returned I debited the account.

Q. And you charged them on the theory that they had been cashed by the bank? A. Charged them on the theory that they had been returned unpaid.

Q. Also on the theory that Mr. Scarlett got the money for them? A. That he received the benefit originally.

Q. When you say received the benefit, you mean he got the money? A. Yes.

Q. You charged those checks on the theory that they were cashed at the bank and he got the money? A. Yes.

Q. The same thing is true of the check of December 27, 1910, for $1000 which is in evidence here as Exhibit D-64? A. I charged that because the records show that he got the money for that check.

Q. That was the theory on which you charged it? A. I don't like that word theory.

Q. If the records were wrong in that respect your charge was wrong? A. Yes, sir.

Q. In other words, if he in fact did not get the money, he should not be charged with checks; that is right? A. Yes, sir.

Q. The same thing is true of the check dated January 3, 1910, which is in evidence as Exhibit D-66? A. Yes, sir.

Q. You charged that against him because you say the records show that he got the cash? A. Yes, sir.

Q. If the records are wrong then again your charge is wrong? A. Yes, sir.

Q. And the same thing is true of the check of January 7, 1911, for $2800, Exhibit S-101? A. Yes, sir.

Q. These are the Middlesex Hat Company checks I am talking about, that you charged him, and if your records were wrong in that respect then your charge is wrong? A. If the records are wrong my charge is wrong, yes.

Q. In other words, you took these records and interpreted them to mean that Mr. Scarlett cashed those checks and had gotten the money for them? A. Yes, sir.

Q. And therefore you said, in making up this statement, that his account ought to be debited? A. Yes, sir.

Q. There has been some testimony here of a check which went up to Syracuse for $2700. Did you charge him with that? A. What is the date of it?

Q. I think it was in January, Mr. Ferguson. A. No, it is not in January. It is away back in March or April.

Q. What year? A. 1911.

Q. It could not have been April because we haven't had anything beyond March 17th. A. Well, it is somewhere in March, I am pretty confident.

Q. The check I am talking about, it went to Syracuse? A. Yes, but I don't know the amount of it.

Q. It was $2700? A. All right.

Q. "Syracuse. New York, check, Scarlett $2700, handed to notary." That is dated March 15th—3/15/11; that is the check I am talking about. Were you right if you charged that to Mr. Scarlett in making up your statement? A. I have a charge in the account on April 1st of $2701.30. That may be, yes, but my record does not show what charge it is.

Q. That is the check, in fact, isn't it? A. I think it is, yes. (After examining book.) Yes.

Q. What is the answer? A. Yes, that check was charged to his account when it was returned.

Q. And that was charged on the assumption that he got the benefit of it? A. No, not on the assumption; on the actual fact that he did.

Q. That is the record, isn't it? A. Yes, sir, and as my account charges it to him.

Q. Your records are no better than the records of the bank, are they. A. When the check came in I gave him credit for it and when it came back charged it to him.

Q. You have talked to me about these records and you show what the records do show? A. Yes, sir.

Q. And if the record is wrong then your paper is wrong? A. Yes, sir.

Q. You charged him with that. Did you also charge him with the $1200 check which went around New Castle, Pennsylvania? A. Yes, that check was charged to his account.

By Mr. Guild: Q. It had been credited to his account? A. Yes, sir.

Q. And when it came back you charged it? A. Yes, sir.

By Mr. English: Q. Was that put through by you on the theory that it had been cashed or deposited, or what was the ground of your entries? A. The ground of the entry was that it had been deposited.

Q. To the credit of the account? A. Yes, in this reconstructed account of mine.

Q. Nothing in the individual ledger to show that, is there? A. It is in the account.

Q. Is the Syracuse check in the account? A. Yes.

Q. Those hat company checks are not in the account except the $2800 one? A. The $2800 is in the account as a debit.

Q. It is not there as a credit? A. No, sir, it wasn't deposited; it was cashed.

Q. That is what you say. In making up the credits on your paper you mention credit for the amount of that Sica note for $1247 and some cents? A. No, I didn't give any credit for it.

Q. Although the bank had the note? A. The bank had the note.

Q. And has since sold it to the Mutual Bank of Roseville? A. Who sold it?

Q. That is the testimony in this case. A. They didn't sell it in the sense that they got money for it.

Q. Were you there when it was sold? A. Yes, sir.

Q. They sold it just the same? A. Selling in the sense of transferring title.

Q. At any rate you gave no credit for that? A. No, sir.

Q. As a matter of fact he ought to have credit for it, oughtn't he? A. No, he ought not to have credit for it.

Q. This $1247 note? A. No.

Q. Don't you think that he ought to have had credit for it? A. No. If I had thought so I would have given him credit.

By the Court: Q. Why do you not think he should have credit for it? A. Because his name did not appear on the note; his name does not appear on that note at all; there is nothing in the records of the bank to show that that note had anything tod o with the check except the mere coincidence that the amounts agree.

By Mr. Guild: Q. You are talking about a check and the Court is talking about a note. A. I don't think that he should have been credited

with the note at all. If I had thought so I would have put it in there.

Q. According to the records of the bank? A. Yes, sir.

Q. If you knew that that was his note, and the name on it was just on there to accommodate him, don't you think he should have been credited with it? A. No, I do not. I think he owes the check, not the note.

Q. What do you mean by that? A. I mean this: a check was given and a note was given at the same time—

Q. A check was given by whom? A. A check was given by Mr. Scarlett to pay taxes in Irvington, and at the same time he gave a note—

Mr. Guild: No, he did not, not his note.

Witness: At the same time a note was given to the Roseville Trust Company for exactly the same amount of the check. Mr. Scarlett's name does not appear on this note at all; his name does appear on the check. Mr. Scarlett got the benefit of that check, he got the money on that check, therefore he owes the check. That in my theory.

Q. Then as I understand it, there are two pieces of paper representing that transaction, one a check and one a note? A. Yes, sir.

Q. They were both taken to the bank at about the same time, being for the same amount, they were both given to the bank, the check was cashed; is that right? A. The check went through the exchanges.

Q. Well, a check was used and paid by the bank? A. Yes, sir.

Q. The note was not used? A. The note was used, too.

Q. Was it ever drawn on, the proceeds of that note ever drawn on? A. No, not to my knowledge.

Q. So if you credited him with both the check and the note he would have received a credit twice; is that what I understand? A. I mean to say, if I charged the check to his account, then under Mr. English's theory I ought to give him credit for the note, then I would immediately have to charge the note to his account when it came due. It amounts to the same thing in the end; it doesn't make any difference.

Q. You say it is all one transaction because the note represented security for that check? A. Yes, sir, brought out in this trial. The books of the bank don't show that.

Q. Well assuming that the note was given as security for the check, the proceeds of which went to Mr. Scarlett's benefit, then there should only be one entry in the book showing that transaction? Yes, sir.

Q. And that is what you made? A. That is what I made.

Mr. Guild: Does your Honor understand that the check was Scarlett's check drawn on the Roseville Trust Company and paid?

The Court: Yes, I understand that the check was paid. He got the benefit of that check to the extent of $1247.

(Check and Note produced.)

By the Court: Q. As I understand it, Mr.

Scarlett draws this check S-17 for $1247.76 on the Roseville Trust Company? A. Yes, sir.

Q. Is his account good for it at that time? A. No, sir.

Q. His account is not good for it? A. No, sir.

Q. And he at the same time hands the bank S-31, which is the Spinoza note, or its predcessor, endorsed by Sica for the same amount. If that note is credited to his account then this check is good? A. Yes, sir.

Q. For that amount, if the amount is credited to his account? A. Yes, sir.

Q. In other words, a man has not the money, but discounts the note and draws against it? A. That is right.

Q. That is the effect of this transaction, according to you? A. It would have been if it was his note.

Q. And his name appeared on it and he discounted it so this check is certified and this note is handed to the bank, the check is paid, Scarlett has got the benefit of it, according to your theory, and the bank has got the note; in other words, Scarlett has got the money and the bank has got this note—did have at that time—when that transaction was completed? A. That is right.

Q. So that all that appears on the books is a charge for $1247 against Scarlett? A. It don't appear on the individual ledger. I charge it to him in my analysis.

Q. Do you give him credit for that note? A. No, sir.

Q. Why? A. Because the day is Scarlett's.

Q. Assuming that you knew Mr. Scarlett should have been credited with that note which has since been transferred to some other concern as part of the assets of the Roseville Trust Company and treated as an asset of the Roseville Trust Company, if you knew that, wouldn't you have given him credit for it? A. I would have given him credit for it at that time, but then I would have charged the note up to his account when it came due.

By Mr. Guild: Q. Why? A. Because, if you give him credit for it when it comes due you have got to charge him.

Q. Why did you charge him? A. Because this note had not been paid.

By the Court: Q. This note has not been paid or its predecessor? A. No, sir.

Q. It has to be treated as an asset of the bank? A. It was handed over to the mutual bank.

Q. It may be paid or it may be a worthless piece of paper? A. I know that the note has not been paid.

Q. So Scarlett has been charged with $1247.76, but has not been credited with this note? A. No, sir.

By Mr. English: Q. You said yesterday, when you examined the files of this bank, you tried to find out who got the debits and credits of depositors—who got the credit for this note——somebody was entitled to it? A. I don't know who got the credit for that note. I know now, but I didn't know from the record.

Q. What is your knowledge now? A. My knowledge now is that this note took care of this check.

Q. Then Mr. Scarlett ought to have had the credit for this note? A. I don't agree with you.

Q. Who in the world should have had credit for it, what depositor? A. I don't know; I won't undertake to say that.

Q. Can you name any depositor in the Roseville Trust Company except John B. Scarlett who actually ought to be entitled to the credit of that note? A. No.

Q. If anybody is entitled to credit it is he? A. I won't say that.

Q. Is anybody else entitled to credit? A. I won't say, for the reason, suppose you say this note cancelled this check, that this note paid the check, where is your evidence of that against Scarlett? His name does not appear on the note but he got the benefit of the check. It is his obligation; he got the money.

Q. My question is who, of all the depositors of the trust company, is entitled to the credit of that note if it is not John B. Scarlett? A. I don't know.

Q. Nobody? A. I don't know.

Q. Isn't he more entitled to it than anybody else? I mean as a matter of equity, and not strict bookkeeping? A. I don't think he is entitled to the credit.

Q. I am speaking comparatively—more than other depositors? A. I don't speak comparatively when I say I mean he is not entitled to it.

By the Court: Q. You don't believe that that piece of paper is worth any more than that, as far as any evidence that you have discovered on the books? A. Yes, and I know further than

that, you couldn't hold him on the note, and you could on the check.

By Mr. English: Q. You couldn't hold him; he left the note in the custody of the bank. Suppose it went out as against an endorser, who would you credit it to? A. I don't know.

Q. Wouldn't you credit John B. Scarlett, who caused the note to be turned over to the trust company? A. Yes, sir.

Mr. Guild: If the note had been paid.

Q. That note was renewed from time to time, and finally was turned over as one of the assets of the Mutual Bank of Roseville in settlement? A. Yes, sir.

Q. Isn't the same situation true of the Long note, so-called, for $2500? A. It is not.

Q. Did you hear the testimony of Mr. Smith in this case? A. Yes, sir.

Q. He said he regarded the $1247 and the $2000 notes, regarded them as property of his in an endeavor to secure more security in the trust company agreement? A. They are not the same transaction.

Q. He regarded the two notes as assets of the bank? A. Yes, sir.

Q. Somebody is entitled to the credit? A. Yes, sir.

Q. Who in the bank is entitled to the credit of the note if not John B. Scarlett? A. Mr. Long got the credit. There is no depositor's name appearing on the note.

Q. The bank has an asset of a note for $2,500? A. Yes, sir.

Q. Who of the depositors of the bank was en-

titled to credit for that asset? A. On the face of it no depositor is entitled to credit.

Q. The fact, having been taken in that way, who of the depositors of the bank was entitled to the credit of that unless it was John B. Scarlett? A. No depositor of the bank was. Mr. Long got a treasurer's check.

Q. When a bank discounts a note isn't some depositor ordinarily entitled to credit for it? A. Not exactly at all.

By the Court: Q. Do you understand that note was merely purchased by the bank by a treasurer's check? A. Yes, sir.

Q. And it became an unattached asset, not being credited to anybody's account? A. Yes, sir.

Q. Do banks ever buy commercial paper from other banks? A. Sometimes, yes, sir.

Q. And under such circumstances would a paper so purchased be credited to any depositor's account? A. No, sir.

Q. Just be treated as an asset of the bank? A. Treated exactly the same as this Long note, a check given for it.

Q. And banks buy paper from other banks? A. Yes, sir.

Q. When one bank has more than it needs to carry and some other bank requires it? A. Yes, sir.

By Mr. English: Q. When you say that nobody is entitled to credit for that Long note you are ignoring in your testimony the testimony given by Mr. Smith in this case, are you? A. I didn't say that anybody was entitled to the credit of the note. I said no depositor.

Q. You are directing your testimony to the

rather technical point of the face of the note. Go back of the face of the note, from the standpoint of equity, and tell me who, as a matter of fact, was entitled to the credit for that note? A. You are supposing now that I know the testimony in this case and that, based on that, I am to answer this question?

Mr. Guild: I don't think so. He is asking you for your judgment about it.

Witness: On the face of the note I can't answer in any other way—

Q. Let us get back of that.

By the Court: Q. As a result of your information as a bank examiner and your information from what ever source, and your knowledge of banking, can you answer the question? A. Yes.

By Mr. English: Q. Who is entitled to credit? A. Long, because he is an endorser on the face of the note.

Q. Did he get the check? A. Yes, sir.

Q. Why is he entitled to credit; he is not a depositor; the bank carried no ledger account with John H. Long? A. That doesn't make any difference; that is done in this business.

By the Court: Q. You think the man who got the money on the note, whether he is a depositor or not, gets the credit for it? A. Yes, sir; it doesn't make any difference whether he is a depositor or not.

By Mr. English: Q. It is not the man who gets the money, but the man who turns in the note is entitled to credit, because the man who gets the money ought to be charged? A. No. Here is a note made by Nicholas R. Sica, made to the order of John H. Long; on the face of that the endorser

is entitled to receive the benefit of that note, whether he gets it by a book account, whether he gets it by a treasurer's check.

Q. According to the banking practice? A. According to the banking practice. Here is a treasurer's check, $2,475, which is the proceeds of a $2,500 note to the order of Long, and the check is made out to Long, so he receives the benefit of the note.

By Mr. English: Q. Suppose you knew, as a matter of fact, that Long had no real interest in the note, was simply a trustee or acting as a representative of some depositor, would you say, with knowledge of that fact, that the depositor ought to have credit for that note? A. No, sir.

Q. Would you credit the man who had no interest in it at all? A. I wouldn't credit a man whose name did not appear on the note.

By the Court: Q. Why not? A. Because it would be against all banking practice to do that.

Q. Because you couldn't hold him for it? A. No.

By Mr. English: Q. So you made up your account on what you think is proper banking practice? A. I have made up my account on the books and records of the trust company.

Q. Assuming everybody pursues in that company proper banking practice? A. Assuming nothing. Taking the books as they stand.

Q. You gave no credit for the $1,200 note and the $2,500 note; you say you gave no credit for the amount of $2,500, which was the excess of $3,000 on the $5,700 deposit slip? A. I didn't say that, that last part.

Q. Did you give him credit for the full amount of the $5,700 deposit slip? A. Not on February 8th.

Q. You gave him credit for $3,000? A. I did.

Q. And you didn't give him credit for $2,700? A. Not on February 8th.

Q. Did you give him any credit for the two $1,000 checks which were sent into the bank on November 16, 1910? A. No, because the checks were cashed.

By the Court: Q. Was this $2,500 paid? A. No, sir, that note wasn't paid.

By Mr. English: Q. That went over to the Mutual Bank? A. That went to the Mutual Bank, too.

By the Court: Q. The Mutual Bank took what was left of the Rosevlle Trust Company? A. The uncollected assets.

Q. As a reorganization? A. Yes, sir.

Q. So that the bank, from the books, from your investigation, the Roseville Trust Company bank, is out the proceeds of the $1,247.76 and the $2,500 notes? A. Yes, sir.

By Mr. English: Q. When you say "out" you mean they parted with the physical possession and title to it? A. I mean that the notes had never been received.

The Court: What I meant by the question was that they paid out the money and never got it back.

Q. I understood that the Mutual Bank bought them? A. I explained that to you just a minute ago.

Q. The Mutual Bank and the Roseville Trust Company had some kind of a settlement, didn't they? A. Yes.

Q. In which the Roseville Trust Company sold to the new bank its uncollected assets? A. It sold

them in the same sense that I will sell you that book, but you don't have to pay me any money for it.

Q. I don't ask you what sense it was used; that is what happened, whether they sold it for a dollar or ten thousand dollars? A. They transferred title.

Q. They gave a bill of sale? A. Yes.

Q. And those notes were included in the assets which were sold in that manner? A. They were.

The Court: You mean to say they never paid anything for them?

Witness: No, sir.

Q. The Mutual Bank has the privilege of suing on those notes and getting the money? A. Yes, sir, they stand in the shoes of the Roseville Trust Company.

Q. And the Roseville Trust Company turned them in for what they judged they were worth? A. They didn't put the notes on the same basis.

Q. What they judged they were worth? A. All on the same basis.

Q. There was some consideration passed between the Mutual Bank and the Roseville Trust Company? A. Oh, there might have been a dollar.

Q. Wasn't it more than that? A. No.

Q. Didn't the Mutual Bank pay forty per cent to the depositors of the Roseville Trust Company? A. They paid forty per cent to those who had assigned their claims to them, gave them a book account.

Q. In other words, they paid the money which the Roseville Trust Company would have had to pay? A. They paid from the assets which had been liquidated; they stood ready to pay their

depositors forty per cent on the dollar when they opened their doors.

Q. If the Mutual Bank had not done it the Roseville Trust Company would have had to pay it? A. Yes, sir.

Q. In exchange for taking over the assets of the Roseville Trust Company the Mutual Bank paid to some depositors which the Roseville Trust Company would have paid from its assets? A. From its collected assets.

Mr. Guild: I don't think this is cross-examinaton.

The Court: I think it is competent to show the real situation with regard to those notes which they claim they should have been credited with and the witness said they should have been credited with, and this is part of his reason why they should not be.

Q. Their collected assets included about $150,000 which the directors paid in toward making up this shortage? A. No.

The Court: I do not think that is material. It is not necessary to go into the amounts.

RE-DIRECT-EXAMINATION by Mr. Guild:

Q. In answer to a question of Mr. English's you said that you did not credit Scarlett's account with $2,700 of the deposit of $5,700 for which they produce a deposit ticket. Why didn't you? A. Because the trust company never collected the checks.

Q. And that was made up of checks of what amount? A. $1,000 and $1,700.

The Court: You mean the deposit slip was made up of one check of $1,000 and one of $1,700?

Mr. Guild: It was made up of a check of $3,000, one of $1,700 and one of $1,000.

By the Court: Q. Did you credit him with the $3,000? A. Yes, sir.

Q. Why? A. Because the records show that they collected the $3,000 check, which was a certified check on the National State Bank, Newark.

By Mr. Guild: Q. I show you Exhibit S-26, which is Mr. Scarlett's private check book, and I ask you if you find there a balance on the stub of $1,499.30? A. Yes.

Q. What date is that? A. Well, it is opposite the date of May 24, 1911.

Q. On the check stub? A. Yes, sir.

Q. How much? A. $1,499.30 is the balance shown on the stub of the check book.

By Mr. English: Q. The balance is not dated; it is opposite a check of that date? A. Yes.

By Mr. Guild: Q. What was the condition of his account on March 17, 1913, as to whether or not the account was overdrawn?

Mr. English: I object to his answering the question because this is an exhibit put in evidence, being a check book of the defendant, which this gentleman never kept and never saw until after the failure, and he has got no more business to interpret it than the jury or anybody else; he can read whatever figures are there, because it is is an exhibit, but he cannot give his interpretation of it.

The Court: I think you may lay the foundation for it.

Q. Adding to the balance of $1,499.30 the deposits which the check book itself shows, and deducting from it the checks drawn after that balance appears, what was the condition of his account as shown by the check book on March 17, 1913? A. I have a paper—

Mr. Guild: Mr. Ferguson has made up these figures and I have a paper showing it and it will save time.

The Court: I suggest that you ask whether he has done so.

Q. Have you made such an ascertainment? A. I have.

Q. And does it appear on this paper which I now hand you? A. It does, yes, sir.

By the Court: Q. Made by you? A. Yes, sir.

Q. Those figures on the paper are taken from the check book? A. Yes, sir, from the check book.

The Court: Counsel can go over it and we will take a recess of five minutes for that purpose.

At this point the Court took a recess of five minutes.

By Mr. English: Q. Mr. Ferguson, as I understand it, you took the check book and you started with a balance shown here of $149.30 opposite check No. 29? A. Yes, sir.

Q. And you added to that a deposit of $250 which is written in there and the subsequent deposit of $300 which is written in there, there being no others following that, and you deducted from that total the checks which are mentioned on the stubs down to and including March 17, 1913? A. Down to and including No. 54.

Q. And in doing that you have no idea whether

the entries of deposits represent all the deposits made or only just what this book shows? A. Only what the book shows.

Mr. English: I don't think the question is of any value unless we have all the deposits. Mr. Scarlett said after the book was lost, and until he got this duplicate book, "Let this thing stand over."

The Court: It is of value because Mr. Scarlett used it to indicate that he should have had certain credits.

Witness: On that date, March 17, 1913, according to this check book, the account was overdrawn $2,423.33.

The Court: Is there any objection to that paper going in with the check book?

Mr. English: I have no doubt but that that tabulation is accurately made. I myself see no value in it. It is part of the evidence and it will only take the jury's time after they get to the jury room. I can't see any value in it because the check book does not pretend to give the deposits; it don't correspond with the books of the bank; it is worthless.

The Court: The question is whether you have any objection to that going to the jury.

Mr. English: I have, because I think it is a worthless piece of paper.

Mr. Guild: There are two matters I overlooked on my direct-examination. I desired to examine Mr. Ferguson as to the two Middlesex Hat Company checks; I think they are dated November 15, 1910,

which the State claims were cashed and which Mr. Scarlett claims were deposited.

By Mr. Guild: Q. I would like to know whether or not from your investigation you are able to say that those checks were deposited and for which Mr Scarlett was entitled to a credit, or whether they were cashed and he received the money on them? A. According to the books and records of the trust company Mr. Scarlett received the cash on those two checks.

Q. Mr. Scarlett has also testified that he went to Metuchen and took up those checks, either in the bank or at the hands of the notary. Are you able to say that that is so? A. That is not so.

Q. What is the history of it? A. Those two checks dated November 15th were cashed in the Roseville Trust Company on November 16th; they were sent for collection to the Union National Bank went through the National Bank of New Jersey, of New Brunswick, arrived at the Metuchen National Bank, where they were protested; they took the same course coming back and got to the Roseville Trust Company on November 23d, when the fees amounting to $3.60 were charged to the account and the checks—

Q. Charged to whose account? A. Scarlett's account on the individual ledger, and the same checks sent out again on November 23d; they took the same course, Union National Bank, Metuchen, back again protested unpaid, where they arrived in the Roseville Trust Company on December 1st. They were again sent out for collection on December 1st—

Q. Protest charged? A. The protest fees on that date were charged to expense account. They

were again sent out for collection, this time marked "No protest," on December 1st; they took the same course and were returned by Metuchen National unpaid, but not protested, and arrived at the Roseville Trust Company on December 7th, when they were paid, that is, the proceeds of two checks which had been given to the bank November 22d, two checks on Metuchen National—

Q. Who was the maker of those checks? A. Middlesex Hat Company.

Q. Of the same amount? A. The same amount, yes, sir.

By the Court: Q. Credited to his account? A. Not appearing as a credit on his account, no, sir.

Q. How could they have been paid by two checks given to the bank on November 22d if they didn't get back until December 7th? A. They were sent out—

Q. I understand they went around this circuit three times, according to your testimony. The last time they arrived back at the bank on the 7th of December you say they were paid by a check which was given to the bank away back on the 22d of November? A. The bank collected that check and held the money to pay these checks on December 7th.

Q. Does all this appear from the books? A. Yes, sir.

Q. Then the two checks which ultimately made these two checks good were collected at the bank, they were good checks? A. Yes, sir.

Q. Can you identify these two checks of November 15th by exhibit numbers? A. We haven't them, only the two protest records.

Q. Those are the checks identified by the protest records? A. Yes, sir.

Q. Exhibits D-32 and D-33 are two checks, by exhibit numbers, paid the checks represented by 32 and 33?

Mr. English: D-20 and D-21, the witness refers to.

The Court: Those are two checks that Mr. Scarlett claimed should have been credited to his account?

Mr. English: Yes.

Q. You say they were not credited to his account because they were used to take up these two checks? A. Yes, sir.

Q. What evidence in the book is there of that? A. The evidence in the books is that when these two checks originally sent out on November 16th came back this money had been collected, these checks were paid on November 26th—

Mr. Guild: Identify the checks.

Witness: These two checks were paid by Metuchen, D-20 and D-21, which are dated November 19 and were paid in Metuchen on November 26th, and it was that money that enabled the bank to pay the two checks that were originally sent out on the 16th and which came back for the last time on December 7th.

Mr. English: May I ask a question?

The Court: Yes.

By Mr. English: Q. Those checks were deposited November 22, 1910? A. Yes, sir.

Q. How can you distinguish them from this check of Kanouth, Nachad & Kuhne which went through the bank, S-19, for $2,000? A. I don't attempt to distinguish them. I know the Kanouth,

Nachad & Kuhne check went through, and also those two checks.

Q. Are you so accurate about that? A. Yes, sir.

Q. Why? A. Because $2,000 was drawn against that check.

Q. Why? A. Because Scarlett's check book and the books of the bank show it.

By the Court: Q. Look at the books that you say show it. Mr. Scarlett claims he should have been credited with $2,000, this Exhibit D-19, and you say he should not. Now, tell us why and what you are referring to? A. Check stub No. 12.

Q. In the check book S-60, being Mr. Scarlett's check book, No. 12, what do you read from that refers to this? A. (Reading.) "No. 12, November 21, 1910, cash, J. B. S., sent to Metuchen, $2,000, to make good checks of $2,000, 16/10, M. Hat Company." He said that he drew $2,000 in cash, and it was that that made it good.

Q. Where does that show, that deposit? A. On the individual ledger.

Q. Is it deposited here? A. Yes, sir (indicating).

Q. Read what you say and we can see it? A. "November 21st, Stevenson, Rye & Company, check K. N. & K., $2,000."

Q. That is on the— A. Credit side.

Q. Kanouth, Nachad & Kuhne. You have read from this check book of Mr. Scarlett a deposit of $2,000 and you have read a stub showing a check drawn for the same amount for cash? A. Yes, sir.

Q. Give us the rest of your history? A. And I say that that check was drawn—

Mr. Guild: When you say "that check" you

know what you are looking at; nobody else does.

Witness: I say that check No. 12 was drawn against the deposit of the K. N. & K., check.

Q. What was done with the proceeds of the No. 12 check? A. They were paid to Mr. Scarlett in cash.

Q. Let us see where it shows that; have you got check No. 12? A. We have a check appearing on the same day in the paying teller's book of $2,000.

By Mr. Guild: Q. His own check? A. His own check on the Roseville Trust Company.

By Mr. English: Q. What I want to know is, can you say that that check No. 12 was charged against the deposit of the K. N. & K., and the depost of the two checks of $1,000? A. Yes.

Q. Why? A. Because they were not deposited.

Q. You are showng a deposit of $2,000? A. That don't show on the records of the bank.

Q. You go by the records of the bank? A. I go by the records of the bank.

Q. Mr. Scarlett also claims credit for $4,000 which he shows in his check book S-26, under date of January 18th, Middlesex Hat Company, for $2,000, January 18th, Middlesex Hat Company, $2,000. Was he entitled to the credit of those two deposits?

Mr. Guild: This is necessarily this witness' conclusion as to what he is entitled to, and what he is not entitled to and is for the jury to settle. It seems to me the records are here.

The Court: His attention can be directed to the records and for elucidation he can refer to the records. That question asks for a conclusion.

Mr. English: I will reframe the question.

Q. Have you examined the books of the Roseville Trust Company to ascertain whether or not Mr. Scarlett was entitled to the credit of these two checks?

Mr. Guild: I object to that question, whether he was entitled to. He can say if he examined the records and what they show. My objection is that this gentleman cannot give his interpretation of the records. That is for the jury.

The Court: 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. OSBORNE,
Judge.

(Seal)

Q. Have you examined the records of the Roseville Trust Company with reference to those two deposits? A. I have, yes, sir.

Q. From that examination will you tell us whether or not they show that Mr. Scarlett was entitled to credit for those two deposits?

Mr. Guild: I object to that. That is the same thing exactly.

The Court: Objection sustained.

Q. What do the books show with reference to those two deposits or whether they were deposits? A. They show that on January 18th Mr. Scarlett's account received credit for $4,000 and that that deposit consisted of two checks of the Middlesex Hat Company, drawn on the Metuchen National Bank for $2,000 each; those checks were sent out on Jan-

uary 18th to the Fourth Street National Bank, Philadelphia, and they took a course through the North Ward Bank, Elizabeth, Perth Amboy, down to Metuchen, and were returned by the same course back to the Roseville Trust Company, unpaid, and protested on January 31st.

By the Court: Q. When were they sent out? A. January 18, 1911.

Q. Two checks of $1,000 each? A. Yes, sir.

Q. Is there any way to identify the checks from that record? A. Not from the record.

Q. Who they were drawn on or anything about them? A. Middlesex Hat Company.

Q. You have said that the books show that they came back unpaid? A. Yes, sir.

Q. First tell us whether they were credited to Mr. Scarlett's account? A. They were, yes, sir.

Q. When they came back unpaid were they charged to his account? A. One of them was charged to his account.

Q. Was his account good for one or both? A. It was good because of other uncollected funds which had been put in the account.

Q. What was done with the one that was not charged? A. The one which was not charged was held in the cash from January 31st to February 7th, when its place was taken by another check which went out.

Q. Will you let me have those two checks referred to by the witness? (Paper handed Court.) You say they were taken up by Mr. Scarlett; how, by charging his account? A. And one renewal.

Q. And the other by renewal check. What is the number of the renewal check? A. Was that put in evidence, a check dated February 7th?

Mr. English: I don't recall that. I don't think so.

Q. Can you give us a history of the renewal check? A. The renewal check was a check that Hartford sent out on February 7th and that check which was sent out on February 7th came back protested on February 14th, with fees of $2.60 added.

Q. What became of that? A. On that day that was charged to the account.

Q. So that both of those checks were taken care of by being charged to his account? A. I want to correct that. That check was held. (After examining book.) That check was returned—

Q. That is, the Hartford check? A. The Hartford check, that was returned on the 14th of February, a week after it left the bank, but it was held in the cash until March 1st, when another check of $2700 was given to take its place.

Q. Paid by that one. Was that $2700 check paid? A. That check of $2700 was a check drawn on Syracuse and that check came back on April 1st.

Q. Unpaid? A. Unpaid with protest fees of $1.30 added.

Q. Was that taken care of? A. At that time, on April 1st, there was a deposit made of $1200, but that happened to be no good, that came back with fees, that deposit came back with fees of $1.52, but on April 6th there was a deposit made of $1500, and on April 28th another deposit of $1500 which appeared to be good and which appeared to clean up the transaction.

Q. So that $4000 which we started with was taken care of, one check by being charged to the

account, which was good for it, and the other by this last step in the proceedings which you testified to? A. Yes, I want to say this, though, in explanation of that, that while you might be able to say that that paricular check was taken care of by this transaction which I have just related, yet there were other checks in this account, and at the end of this check kiting operation there was still an overdraft on the account.

Q. Have you prepared from the books an analysis of the account showing these various overdrafts and these various transactions? A. Yes, sir.

Q. Can you put them in such shape that we can all see what you are talking about in this case, on the black board, for instance? A. I can try.

The Court: Will you do that? The witness says he can make a summary of the account illustrating his testimony. I understand that he can summarize it.

Q. Can you summarize it? A. I can get down to the time he made this $5700 so-called deposit.

The Court: I will not press that request unless counsel desire it.

By Mr. Guild: Q. You started out in answer to my question by saying that he was not entitled to those two checks of $1000 each? A. He was not entitled to credit at that time.

Q. But you do say that through these various gyrations of checks he eventually did become entitled to a credit of $4000? A. I can't say as a result of all these entries, when the kiting transaction was finally terminated, that he only owed the bank about $1000.

Q. On the date when the $2700 check was taken care of? A. Yes.

Q. What date is that? A. That is about the 1st of May—April 28, 1911.

Q.. So, notwithstanding all these different transactions since the depositing of the Middlesex Hat Company checks on the 18th, as shown by his check book, there was still an overdraft about the 1st of May? A. There was still an overdraft about the 1st of May, 1911.

By Mr. English: Q. When you say the books show that, you refer to these bank letters and teller's proof books? A. Yes, sir, copies of outgoing letters of books and all the things in evidence.

Q. All the things in evidence that you have testified about? A. Yes, sir.

Q. That summary of the check book that you made doesn't show all these deposits which were set up by the bank when the book was turned in on August 14, 1913—

The Court: You are not asked whether his personal ledger account shows it; you are asked whether a summary of Mr. Scarlett's check book corresponds with his bank deposit book.

A. There are no dates in the pass book.

Q. That was fixed up by the banking department. What is the use of showing that? That book was balanced in July showing a balance of $1.30. There is no use of showing that; the banking department put those things in there without putting the dates on because it doesn't show? A. No, it does not.

Q. When you say no, it does not, you mean the

check book doesn't show these deposits? A. Not all of them.

By Mr. Guild: Q. I have forgotten the date that you gave us as the probable date of that balance of some fourteen hundred dollars? A. July 21st, do you mean that one?

Mr. English: No, he means in the check book which began opposite a check dated May 24, 1911.

Witness: Opposite a stub of the check book dated May 24, 1911.

Q. In answer to Mr. English's question you said that Mr. Scarlett's check book did not show all of the deposits shown by his pass book. Which of them are shown? A. It doesn't show the $177 deposit without date there, the check book doesn't show.

Q. Is that the only one? A. I think so.

By the Court: Q. You mean that the pass book shows more than the check book? A. The pass book shows a deposit of $177 that the check book doesn't show.

By Mr. Guild: Q. I will ask which deposit is not shown on the check book that is shown in the passbook? A. The next one following the $177 is one of $1323.

Q. That is shown in the check book? A. In the check book. It shows proceeds Stevenson, Rye Company note, $1350, but it doesn't show the discount, so that is presumably the same entry.

By Mr. English: Q. You are going back of the date of the balance. A. It is included in that balance. You are asking me are these credits included in there?

Q. I ask you if those credits are after the date of the balance? I want to know whether any of the credits on this page here are on the check book after the date of the balance which you began your statement with? You refer to two credits of a check; I ask you whether any of those that are on that pass book are there? A. Some of them are there.

Q. Which of them? A. This $300, although it is without date; there is $250—I presume it is $250.

Q. And the others are not there? A. They may be prior to and incudede in that balance of $1499.

By Mr. Guild: Q. Now I am asking you whether the other credits shown on the pass book go to make up the balance with which you started as the result of my questions some time ago, the balance of fourteen hundred and some odd dollars? A. Yes, they do.

Q. So that all of the items in the pass book are in the checks book? A. With the exception of $177.

Q. That you do not find in the check book? A. I don't find it in here.

By Mr. English: Q. The only reason you can find that is because you find some similarity in amounts? A. Yes.

CHAUNCEY F. BRIGGS, sworn in behalf of the State in rebuttal.

Direct-examination by Mr. Mott:

Q. .Where do you live? A 676 South Seventeenth Street, this city.

Q. What is you business? A. Automobile business.

Q. What car do you handle? A. Oakland.

Q. How long have you been handling the Oakland car? A. Since the fall of 1911.

Q. Did you ever have any business relations with Mr. Raymond E. Smith? A. Yes, sir.

Q. In connecton with your automobile business? A. Yes, sir.

Q. When did you commence with him in that respect? A. In the year 1911, in the month of October or November.

Q. And what were your business relations with him at that time?

Mr. English: I object to that as immaterial.

The Court: (After discussion.) I will sustain the objection.

By the Court: Q. You have already testified that your relations with Mr. Smith in the automobile business began in October or November, 1911; is that right? A. Yes, sir.

By Mr. Mott: Q. And did you at that time handle the Oakland car? A. Yes, sir, started at that time.

Not cross-examined.

State rests.

EUGENE DOTTO, sworn in behalf of defendant in surrebuttal.

Direct-examination by Mr. English:

Q. You are a lawyer? A. Yes, sir.

Q. Practicing in this city? A. Yes, sir.

Q. Where is your office? A. 185 Market Street.

Q. Do you know John B. Scarlett? A. Yes, sir.

Q. Did you ever have any business connection with him or any of the companies? A. I have for the last two and a half or three years.

Q. Were you with him or with the company interested? A. With him and the company.

Q. Were you present at the office of the banking house of the Roseville Trust Company at any time when Mr. Smith and Mr. Scarlett were there? A. I was once.

Q. And what was the date of it? A. I believe it was the beginning of July, 1913.

Q. And at that time was anything said either by Mr. Scarlett or Mr. Smith, in the presence of each other and your presence, with reference to the personal relations of Scarlett and Smith with regard to money transactions?

Mr. Guild: I object to this. It is after the date set out in the indictment.

The Court: (After discussion.) I will sustain the objection to this question at this time. It does not appear to me, on the face of the question, that it is competent.

Mr. English: I will withdraw the witness. I want to offer in evidence a deposit slip dated November 19, 1910, marked S-66 for identification, bearing the signature of Raymond E. Smith, showing a deposit. Smith says he signed it.

Marked Exhibit S-69.

JOHN B. SCARLETT, defendant, re-called in his own behalf in surrebuttal.

Direct-examination by Mr. English:

Q. Mr. Scarlett, I show you Exhibit S-20, which is the treasurer's check to the order of J. H. Long for $2475 and dated July 22, 1912, and ask you whether you ever got the money on that check? A. No, sir, I never saw the check and never got the money on the check.

Q. Did you ever send Mr. Long up to the bank with that check or a check for a similar amount? A. No, sir.

Q. Did you ever have a conversation with Mr. Smith, either over the telephone or otherwise, with reference to any shortage of that check 20? A. No, not on this check.

Q. What check did you send Mr. Long up with and what was the conversation? A. That was a check of $500 that I gave Mr. Long in a sealed envelop to go up to the Roseville Trust Company and get the money on.

Q. Not this check at all? A. No, sir.

Q. I show you D-32 and D-33, being the protests covering two checks of $1000 each, dated November 15, 1910, and ask you whether you had cashed checks that are referred to in that deposit? A. No, sir; I did not.

Q. What was done with these checks? A. These checks were deposited in the Roseville Trust Company.

Q. Were they cashed by you? A. No, sir.

Q. Did you ever get the cash for them? A. No, sir.

Q. After the checks were protested were they

taken up by you or not? A. My recollection is they were.

Q. Now, I show you Exhibit D-62, 63 and 64, which are respectively the protests, the charge slips and the check for $2000 dated December 27, 1910, charge slip of $1.58, and I ask you whether you had that check cashed? A. No, sir.

Q. What did you do with it? A. This was deposited.

Q. For credit or for collection? A. For collection.

Q. That is the check of December 27th? A. Yes, sir.

Q. And you say that check wasn't' cashed? A. No, sir.

Q. At the Roseville Trust Company? A. No, sir, it was not.

Q. I show you D-55 and D-66, which are respectively the protests and checks for $2000, the check dated January 3, 1911, which we have here talked so much about. Did you have that check cashed at the Roseville Trust Company? A. No, sir.

Q. What was done with it? A. It was deposited for collection.

Q. Not cashed by you? A. No, sir.

Mr. Guild: He says for collection.

The Court: There are two methods.

Q. I call your attention again to D-64, which is the check dated December 27, 1910, and which you say was not cashed. How was it deposited, for deposit or for collection? A. For deposit.

Q. I show you check dated January 3, 1911 for $2000, D-66, and ask you whether that was deposited for deposit or for collection? A. This check was deposited.

Q. For collection or for deposit? A. I can't distinguish between the two. I don't know what the difference is. A check is always deposited for collection, I thought.

Mr. Guild: After listening to this testimony you can't distinguish between a check deposited for collection or for credit to a man's account. In one instance you referred to a check for collection, and then when you referred to another exhibit you said it was deposited for deposit.

Q. The question is whether D-66 dated January 3d was deposited for deposit or for collection? A. I can't state offhand; it would be either one or the other.

Q. Was it cashed by you? A. No, sir.

Q. I show you the check S-107 dated January 7, 1911, for $2800. Was that cashed by you? A. No, sir, it was not.

Q. How was that deposited, do you know? A. I should say it was deposited for collection.

By the Court: Q. Do you rely upon your recollection or upon the— A. I rely upon my recollection.

Q. Or the appearance of the check? A. Or the appearance of the check, in this way; the Middlesex Hat Company were owing me $25,000 and these checks were given to me in part liquidation of that indebtedness; they were sent up to the Roseville Trust Company to be collected.

By Mr. English: Q. When you say they were sent up to be collected, you mean they were deposited for collection, is that what you undertake to say? A. Some of them, and some of them was given me direct credit for.

By the Court: Q. Can you from your recollec-

tion tell what course they pursued? A. No, that would be impossible, your Honor.

By Mr. English: Q. Some attention has been drawn to a check that went up to Syracuse for $700. Was that check cashed by you? A. No, sir, it was not.

Q. A check for $1200, which went up to any other institution, was that cashed by you? A. No, sir.

Mr. Guild: They are charged against him in the ledger because they were protested.

Q. Mr. Scarlett, there has been some testimony yesterday of some meetings held by the gentlemen who had been the directors of the trust company held after the bank had closed. You attended some of those meetings? A. Yes, sir.

Q. Under what circumstances? A. I had a telephone message from one of the other gentlemen interested that it was desired to get together, all the people that were interested in the Roseville Trust Company, and get some organization looking to rehabilitating the bank. Those meetings were never denominated in my presence, as board of directors meetings. I was very much interested in anything that would lead to the rehabilitation of the bank. There were half a dozen meetings all told, perhaps five or six. I think three of those meetings were held at Mr. Odell's house; they were very informal, and just a general discussion about the unfortunate condition of the institution. Then there was another meeting held at Mr. Munroe's office. At that meeting there were several people present who were not directors of the bank, whom I didn't know

and I was not introduced to. I have learned since that one of them was Mr. MacAvoy; I had not his acquaintance at that time. All the discussion at that meeting was relative to providing funds to rehabilitate the bank. I was present at one other meeting that was held at Mr. Munroe's office when the number of people there was large, and they adjourned to the lodge room adjoining Mr. Munroe's office, if I remember right, or upstairs, perhaps, above it. At that meeting there were a number of people present who were not directors and never had been directors and whom I didn't know. There was no discussion at that time except about raising the money to rehabilitate the bank. There was no reference that they were meetings of the board of directors, and the first time that I heard they were denominated as board of directors was when Mr. Lurich read his minutes yesterday. There was no call sent out—

Mr. Guild: I object to that. He may say what he received.

A. (Continuing.) I received in each case a telephone message that was telephoned to the office, either received them personally or the girl in the office told me that they wanted me to come up at a certain time.

By the Court: Q. You didn't receive any written notice at all? A. No, sir.

By Mr. English: Q. With reference to the entry of deposits in your check book, it already appears that when you were on the stand before that after the bank book had been sent up for balance it was never returned and you got a second or duplicate pass book. What, in connec-

tion with that, did you do with reference to making entries on the check stub of your check book of deposit? A. I don't believe I quite understand that question.

Q. Your check book is in evidence here, and after a certain date in 1911, May, 1911, shows practically no deposits made as appearing on the stub of the check book. Did you make deposits after that? A. Yes, sir.

Q. Why, if there was a reason, were they not entered on the stub check book? A. I wanted to discover this discrepancy; I thought that missing pass book would turn up; Mr. Smith claimed it hod been returned to Mr. Reynolds, and I insisted that Mr. Reynolds should find it; I thought Mr. Reynolds had lost it, and I deferred the matter until the pass book would turn up. I have always charged Mr. Reynolds with losing the bank book until after the bank closed—

Mr. Guild: I object to that as repetition.

The Court: Do not tell us what you charge Mr. Reynolds with.

Witness: I never saw the pass book—

Q. We understand that. What relation has that to the entry or lack of entry that you made on the stub of your check book? A. That was the reason no further entries were made.

Q. What was the reason? A. I was waiting for this pass book to turn up to find out where this difference was in my account.

By the Court: Q. Do I understand you to say that the reason you didn't make entries of deposits on the stub of your check book was because

you didn't have your pass book? A. There were very few deposits made—

Q. I want to know whether I understood you correctly or not. A. I didn't wish to continue the use of the check book at all until I could check up and verify—

Q. But you did continue the use of it? A. Not to any extent.

Q. You drew checks on it? A. Yes, sir.

Q. It was the only check book you had on that bank? A. Yes, sir.

Q. From the time the pass book was lost you ceased to make entries in your check book; is that correct? A. Yes, sir, that is practically so. I didn't want to proceed with that balance carried forward there until I could get my pass book and find out where the discrepancy was.

Q. And you kept no record anywhere of your deposits? A. The deposits were entered up in this second cash book, I should say.

Q. Before the loss of the pass book you were in the habit of keeping a record of your deposits, were you not? A. My bookkeeper did, but I didn't do it personally. That is what I expected Mr. Reynolds to do.

Q. After you lost your pass book you kept no record of your deposits anywhere, even in your check book? A. In the duplicate pass book.

Mr. English: At that time he got a duplicate pass book.

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

After recess.

JOHN B. SCARLETT resumes the stand.

Direct-examination (continued) by Mr. English:

Q. At the adjournment, Mr. Scarlett, we were talking about the entries or lack of entries in your check book in reference to the time when the original pass book was lost and when the second pass book was issued. Now I call your attention to your check book Exhibit S-6 and the entries which are opposite check stubs 25, 26 and 27; that appears not to be balanced up; is that correct? A. Yes, sir, that is correct.

Q. There seems to be an intermediate balance in there somewhere and then some more deposits after that? A. Yes, sir.

Q. Turning over a page I see a new entry of something there, with "B" and something else, and the figures 5430. What does that start off with? A. That starts off with a balance that was started on the duplicate pass book after the original pass book had disappeared.

Q. And that pass book you have never been able to get back from the bank? A. No.

Q. From that time on after you come to the end of that balance which appears on that page opposite check stubs 28 and 29, did you attempt to strike a balance in your book? A. No, sir, on account of this discrepancy, I was waiting for the original pass book to turn up.

By the Court: Q. You didn't use this Roseville Trust Company account as your regular banking account, did you? A. No, sir.

Q. And your use of this book was only occasional, it was not your regular— A. My principal personal account was with the Union National Bank, where I had a discount of forty or fifty thousand dollars.

Q. I see on this check book following the date of the balance when Mr. Ferguson started his balance, an entry July 22, 1912, cash $250, and under December 23, 1912, cash $300. Are those entries in your handwriting? A. That one on July 22d is in my handwriting.

Q. The amount of that? A. December 23d is in my handwriting.

Q. I ask you whether they were put in at the time or whether they were put in after the bank failed and you got back this pass book, and we are endeavoring to ascertain the state of the account. A. They were put in after the bank failed, when I got the original pass book back.

Q. When you say the original pass book, you refer to this book in evidence here as D-23? A. Yes, sir.

Q. So it doesn't pretend to cover current entries made at the time? A. No, sir.

Q. How many typewriters did you have in your office in February 1913, typewriting machines— more than one? A. Four or five.

Q. Were they all the same identical make or different makes? A. There was some Underwood, there was some Remington, some of one model and some of another.

Q. The reason I ask you is that I notice the typewriting on Exhibit D-37, which is dated February 3, 1913, and Exhibit S-14, dated February 3, 1913, seems to be different apparently,

different machines? A. One is an original and one is a carbon copy.

Q. Yes, but they are different machines anyway, or aren't they? A. I couldn't tell at this time by looking at them. We had altogether five machines in the office. If a machine is filed with stuff from the ribbon—

Q. You mean if the lead is not clear? A. If the ribbon has come in to the type it makes a clear copy, and if you clean it up the first thing in the morning it makes a clean copy.

Q. I understood you to say at the time it was put in evidence that S-114, signed by John B. Scarlett, is not your signature? A. No, it is not my signature.

Q. Do you know how the letter came to be written at all? A. I had always given the stenographer instructions to enclose a letter in sending out papers stating what they enclosed. I presume it was done in the ordinary course of business.

Q. There has been some testimony about those two checks, $1700, and $1000, which were sent up in connection with duplicate deposit slip of $5700, dated February 8, 1911. Did you receive back those checks the day they were sent up? A. No, sir.

Q. Mr. Smith says he has a faint recollection of having sent them to you. What is the fact—were they sent to you? A. No, sir.

Q. I want to direct your attention to the time when you and Smith were together, in October, 1912, at the time he drew and gave you his personal check for $4200. What time of day was it? A. That was just the forenoon.

Q. Not late in the afternoon? A. No, sir, just before noon.

Q. Did he at that time say to you that the treasurer's check book was locked up? A. No, sir.

Q. Did he say anything about a treasurer's check book at all? A. Nothing at all. It had nothing to do with that transaction at all.

Q. With the exception of the time when your attention was called to some check, following which you sent up your bank book for balance in February, 1911, about which you have already testified, did you ever have your attention directed by Smith to any alleged overdrafts in your account? A. No, sir, never.

Q. Referring to the check which Mr. Long had, $2475, I think you said this morning that you did not receive that money? A. No.

Q. Did you ever so understand that, that you had received credit for the proceeds of that note? A. Yes, sir.

Q. And do you remember the circumstances of it at all? A. Yes, sir.

Q. You remember them? A. Mr. Long, after taking this note up to Mr. Smith, came back to the office and he told me—

Mr. Mott: One minute. What foundation has here been laid for a conversation with Mr. Long?

The Court: How can a conversation with Mr. Long contradict Mr. Smith?

Mr. English: I don't know as it can.

Q. At any rate, Mr. Long never brought you back that cash, you said, to the amount of $2475? A. No, Mr. Long told me—

Q. You can't say what Mr. Long told you. The question is whether Long did bring you back in fact $2475? A. No, sir.

Q. You knew, of course, that you had sent that note up? A. Yes, sir.

Q. You caused that note to be sent up? A. Yes, sir.

Q. And you knew that the note had been discounted or purchased by the bank? A. No, I thought Mr. Smith took it himself. It was a personal transaction with Mr. Smith.

Q. Did you believe, having done that, that he had given you the credit for it or the benefit of it on your account? A. Yes, sir.

By the Court: Q. You say you thought it was a personal transaction with Mr. Smith and you thought he had given you credit on your account? A. That includes the explanation that your Honor stopped me on, that I started to make regarding the conversation with Mr. Long.

By Mr. English: Q. I want to put this check book S-26 before you and to show you again Exhibit D-32 and D-33 which referred to those two checks of November 15, 1910, each for $1000. Looking at the check book in connection with the exhibits, can you say whether those checks were deposited for credit or for collection? A. They were deposited for credit.

Q. I show you Exhibit D-20 and D-21, dated November 19, 1910, each for $1000, and I ask you whether your check book shows how they were deposited?

Mr. Guild: I have no desire to prevent the putting in of anything that ought to be put in, but it seems to me that Mr. Scar-

lett has testified about this on his direct-examination several days ago.

The Court: Yes, he testified that he sent D-20 and D-21 for deposit. He testified that he sent checks represented by notices of protest, D-32 and D-33, for deposit.

Q. Can you refer to your check book or any other record and say whether the check D-64, which is the check dated December 27, 1910, for $2000, was deposited for either credit or collection?

Mr. Mott: I object to the form of that question.

The Court: He is asked to state what the check book says with regard to the purpose of this deposit. If it says nothing he cannot find anything to read from.

By the Court: Q. What does the check book say in regard to that check, Mr. Scarlett? A. It says nothing.

Q. What does that indicate to you? A. It was deposited for collection.

Q. There is no entry in your check book about it? A. No, sir.

By Mr. English: Q. Did you put them in your check book when they were for deposit? A. No, sir.

By the Court: Q. For collection? A. No, sir. they would simply be entered in the check book until the money was collected.

By Mr. English: Q. I show you Exhibit D-66 and ask you what the check book shows about it? A. It shows nothing about it.

Q. What do you say about that then? A. That check was deposited for collection.

Q. I show you the check S-107 dated January 7, 1911, for $2800 and ask you what the check book says about that? A. It shows nothing about this.

Q. And what does that mean? A. It was deposited for collection.

Q. I thought I asked you, but I will ask you again, whether you cashed any of these three checks at the Roseville Trust Company? A. No, sir.

Q. Or whether you cashed the checks represented by the Exhibits D-32 and D-33 of November 15th? A. No, sir; I did not.

Q. I call your attention to check No. 11 and I ask you to read it, S-26? A. (Reading:) "November 16, 1910, deposited in Scarlett's account, Essex County Bank, $2000."

Q. Now, I show you Exhibit S-108, which is a deposit slip on the Essex County National Bank, which was proved here by Mr. Cobb, as I remember it, and shows that $2000 was deposited on November 16, 1910, and I ask you what relation, if any, the check represented by check stub No. 11 which you just read bears to that deposit slip? A. That is the same item. The money was drawn on this check to make this deposit in the Essex County National Bank.

Q. I ask you if the two checks, of the Middlesex Hat Company, for $4000, produced the cash which went on that deposit slip or whether it was the cash represented by this stub No. 11? A. It was a check represented by stub No. 11 sent up there for that purpose.

CROSS-EXAMINATION by Mr. Guild:

Q. How much money did you have, according

to your check book, on the date you drew the check for $2000, which you say you deposited in the Essex County Bank? A. $61.50—No, I beg pardon. That is the balance on the whole sheet opposite the page. The balance was $2051.

Q. Where did you get it from? A. A deposit of these two checks of the Middlesex Hat Company.

Q. In order to get that balance you had to deposit those two checks of the Middlesex Hat Company? A. That is correct.

By the Court: Q. Which two checks are you referring to? A. The checks of November 16th.

By Mr. Guild: Q. The ones represented by the protest? A. Yes, sir.

Q. And they were protested for nonpayment, were they not? A. Yes, sir, so it seems. They were paid. You have got the checks.

Q. You have answered the question. You started to say that they were paid? A. Yes, sir; we have got the checks that were paid.

Q. I think we haven't got the checks; those are two checks we were not able to find. A. That is right. I am in error.

Q. Where did you pay those two checks? A. My recollection was that they were paid at the notary's, some notary.

Q. Your recollection is that they were paid to some notary. What notary? A. I can't recall that. The checks were taken up by me and put through again for collection.

Q. They were put through three times, were they not? A. Yes, sir, two or three times for collection.

Q. And did you get any money on them the second time? A. No, sir.

Q. When you testified here some days ago about how and where you paid these checks you did testify that you took the money out of the Roseville Trust Company, for $2000, and went down to Metuchen and took them up in the hands of the notary? A. I didn't state that positively, that I took the money to Metuchen and that I got the checks at the notary.

Q. Now, you are not certain where they were paid, are you? A. My recollection is they were.

Q. I ask you if you are certain now whether they were paid or not paid? A. I have no other recollection but that I took the checks up with the money that I drew for the purpose and put them through the bank again.

Q. Where did you take up those checks? A. Well, I can't tell you that.

Q. When you first testified about them you said you took them up either in the hands of the notary of the bank, though they were returned to Newark. Now you are willing to say they went back twice after that in an effort to collect them. Now, can you say where you eventually did take them up? A. You didn't quote my testimony correctly.

Q. You testified a few days ago that you took the money out of the Roseville Trust Company in cash and that you went to Metuchen and took the checks up either in the hands of the notary or the bank, you didn't know which; is that so or isn't it?

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

The Court: Objection overruled.

A. I testified to the best of my recollection—

Q. No, I ask you whether you did so testify? A. Not exactly.

Q. Now, you have testified that the checks were protested and came back to the Roseville Trust Company and later represented by these two protest wrappers which you had before you; is that true? A. Yes, sir.

Q. And the checks were sent out the second time and came back? A. I say the notary—

Q. I say, were they sent out the second time? A. I sent them through a second time.

Q. You did? A. Yes, sir.

Q. Did you see them after they came back from Metuchen? A. I got those checks, yes, sir, and I asked Mr. Smith to put them through again and try to get the money on them from Metuchen.

Q. How often did you ask him to do that? A. I think every time they were put through, they were put through at my request, and I requested that the words "no protest" be put upon the check.

Q. And the third time they came back "Not paid"? A. Yes, they did; they did come back not paid three times.

Q. I would like to know, if you can tell us, when and where you eventually paid those two checks? You say you paid them? A. I paid them when they came back the first time and then they were put through for collection for me.

Q. How did you pay them—you say you paid them? A. I got them at the bank or the notary or somewhere.

Q. If you had taken them up the first time or the second time there was no necessity of going down the third time, was there? A. I wanted to get the money. That didn't mean I had the money on them; I wanted to get these checks paid; it was money the Middlesex Hat Company owed me, and I wanted to get that money.

By the Court: Q. Were they subsequently paid by the Middlesex Hat Company? A. Yes, sir; they were subsequently paid by the Middlesex Hat Company. I got the money represented by those checks from the Middlesex Hat Company subsequently.

By Mr. Guild: Q. You say you paid the checks when they came back the first time? A. Yes, sir.

Q. Where did you pay them? A. I couldn't tell you that; it may be that I got them up at the Roseville Trust Company, paid them there; I was under the impression that I paid them in Metuchen. It is four or five years ago.

Q. Where did you get the money to pay for them? A. I drew the money out of the Roseville Trust Company to pay those checks.

Q. Show me in your check book where you got the money? On the 21st of November, 1910, didn't you deposit at the Metuchen National Bank $2000 to the credit of the Middlesex Hat Company? A. I can't tell you—I didn't deposit it.

Q. Well, sent it there for deposit? A. I can't tell you without referring to the books of the Middlesex Hat Company, if I could find them.

Q. You heard what Mr. Litterst said the other day? A. Mr. Litterst said there was $2000 deposited but he didn't say that I deposited it.

Q. I am asking you whether you didn't send that money down or take it down for that purpose? A. No, sir.

Q. I call your attention to a memorandum on stub check No. 12 and I ask you in whose handwriting that is? A. That is my handwriting.

Q. I will read it for you. (Reading: "Cash, J. B. S., sent to Metuchen to make good check of November 16th, M. Hat Co." Do you still say that that isn't what that money was used for? A. That is not what that money was used for; the money was used to take up those—

Q. I didn't ask you what else it was used for; I asked you if it was used for that purpose and you said no. I call your attention to a check of $2800, Middlesex Hat Company, being marked Exhibit S-101. Do I understand you put that in for collection? A. I think I testified to this before, to the best of my recollection.

Q. You can see the check again? A. Yes, that is my belief, that check was put in for collection.

Q. Do you remember it coming back not good? A. I can't recall that offhand, now.

Q. Don't the endorsements on the back tell you that it was sent out at least twice? A. No, they don't.

Q. Went out only once? A. That is what it shows on the back.

Q. And there is nothing about the check to indicate it was ever paid, was there? A. They are not stamped paid, but we have the check.

Q. How did you get it back? A. It was settled for, put through for collection, and if there was no charge for it made, no credit for it, I suppose there wouldn't be any charge against the account either.

Q. What was it charged in your account? A. I can't tell you.

Q. I show you D-64, which is a check of the Hat Company for $2000 dated December 29th, and ask you whether that was deposited or sent for collection? A. It was sent for collection.

Q. Was it paid on presentation? A. Evidently not.

Q. Was it sent out more than once? A. Yes, sir.

Q. Anything about it to indicate that it was ever paid? A. Settled it, or I wouldn't have the check.

Q. You say it was sent for collection?

The Court: He said it was settled or he would not have the check.

Witness: Settled or I wouldn't have the voucher.

Q. I ask you if it was ever paid by the maker? A. I can't tell you about that.

Q. By the check itself? A. No, sir.

By the Court: Q. If a check is settled it is usually held by the— A. By the man who settles it.

By Mr. Guild: Q. When it is made by the maker isn't it settled by the maker? A. Yes, naturally it would be returned to the maker. That was a long running account of the Middlesex Hat Company.

By the Court: Q. My question was prompted by your answer to the effect that it must have have been settled? A. If I hadn't settled the check I wouldn't have the check, yes, sir, absolutely.

By Mr. Guild: Q. This check of December 29th

was sent out several times, was it not? A. I think the date is wrong. It is December 27th.

Q. A very serious error on my part. A. Exhibit D-64.

Q. It doesn't make a check any worse because I make a mistake of two days. We will call it the 27th. A. Yes, sir, it shows it was sent out for collection two or three times.

Q. And came back no good each time; it has never been paid by the Hat Company? A. I can't tell you that; it was settled by me.

By the Court: Q. What do you mean by saying it was settled by you? A. It was put through for collection by me, and when it came back it was returned to me. If there was no charge then there would be no credit.

Q. If it was put through for collection and not paid what do you mean when you say it was settled by you? A. When they returned me the check I don't know how the bank treated the item; when they returned it to me it was through as far as the bank was concerned.

Q. It was put through for collection and not paid; you didn't have to settle anything. A. The transaction was settled when the bank returned me the check.

Q. When you speak of the word "settled," you mean closed and not paid? A. No, sir.

Q. You do not use the word settle in the sense of anybody having paid anything on the check? A. Not necessarily, no, sir.

By Mr. Guild: Q. I show you D-66, January 3, 1911, $2000, of the Hat Company, and ask you whether that was deposited or sent through for collection? A. I said lodged with the bank for collection.

Q. Was it paid on presentation? A. No, sir.

Q. Protested, was it not? A. Yes, sir.

Q. And is there anything on the check to indicate how many times it went out? A. It went out two or three times.

Q. And has never been paid by the Hat Company? A. I can't tell you that.

Q. Is there anything on the face of the check to indicate it was paid at the bank where it was drawn? A. No, sir

By the Court: Q. If it had been paid by the Hat Company you wouldn't have it, would you, in the ordinary course of business? A. In the ordinary course of business I wouldn't have it, no, sir.

By Mr. Guild: Q. You knew these various checks to which I have called your attention were not paid and were sent out repeatedly? A. For collection, yes, sir.

Q. It doesn't make any difference what for, but they were sent out in an endeavor to collect them? A. For me to collect the money, yes, sir.

Q. And you knew that they were no good, did you not? A. No, I expected they would be paid.

Q. You knew they hadn't been paid, didn't you? A. When?

Q. Each time when they came back. A. When they came back I guess I knew they had not been paid.

Q. Does your check book show a deposit on January 8, 1911, of $2000, Middlesex Hat Company checks? A. Yes, sir.

Q. And you got credit for those, did you not? A. Yes, sir.

Q. Having had this experience with these checks

going back and forth and not being good, why did you ask the Roseville Trust Company to give you credit for $4000 of the same character and quality of paper? A. I expected they would be paid.

Q. Were they paid? A. Eventually.

Q. Were they paid by the Middlesex Hat Company when they were presented? A. Not when they were presented.

Q. Is there anything to show about those checks that were ever paid by the Middlesex Hat Company? A. Not that I can see—it looks as if this one had been paid by somebody. It is not cut on a spindle.

Q. If they had been paid at the Metuchen National Bank they would have returned them to that company in the ordinary course of business, would they not? A They might have given them for me to check up my book.

Q. Why do you say you got them to check up your book? A. I had had large transactions with the Middlesex Hat Company, loaned them a lot of money.

Q. There is nothing about these checks to indicate that they had been paid and charged to the Middlesex Hat Company, is there? A. Not on the face of the checks.

Q. You say you didn't receive the proceeds of the Reynold's note for $2500 endorsed by John H. Long? A. I didn't receive the proceeds of that note.

Q. You have said that you did not? A. That is what I said, yes, sir.

Q. You claim now that you did not? A. I did not.

Q. The original note was made by Reynold's? A. Yes, sir.

Q. And after his death Mr. Sica took his place ? A. Yes, sir.

Q. Do you know the date of the original note? A. I can't recall, no. I think I have heard it spoken of at the trial being in July, 1912.

Q. You knew that the note wasn't paid when it fell due the first time? A. Yes, sir.

Q. And the note was renewed from time to time? A. By Mr. Smith personally, yes, sir.

Q. I didn't ask you that and I move that that be stricken out.

The Court: Strike it out. Answer the question.

A. I knew the note was renewed once, perhaps twice; I can't recall exactly.

Q. It was all put through your office? A. Yes, sir.

Q. Mr. Sica was in your office? A. Yes, sir.

Q. And you knew each time that the notes were renewed? A. If they were renewed I knew it.

Q. If it was once or twice or three times you knew about it at the time? A. Yes, sir.

Q. I show you Exhibit S-21 and ask you if that is the last renewal of the original Reynold's note? A. I think it was.

Q. And you saw this note that you have in your hand when it was drawn? A. Yes, sir.

Q. This note transaction was for your benefit, was it not? Intended for your benefit—I will put it that way. A. Well, it was actually for the benefit—

Q. I ask you whether it was intended for your benefit, made so you got no benefit from it, but I ask you if it was intended for your benefit? A. I can hardly answer that yes or no.

Q. Then you say you can't answer it yes or no.

The Court: Did he say he got no benefit from this note? In his testimony a few moments ago he said, "I didn't receive the long check, but" he says, "I thought Smith took the note personally and gave me credit for it on my account." That is what he said.

Q. Do you say that you didn't get the proceeds of this note directly or indirectly? A. Well, the credit does not appear in the ledger.

Q. I didn't ask you that; I asked whether you got the benefit directly or indirectly from the sale of the original Reynold's note for $2500? A. I can't answer that yes or no.

Q. Answer it in your own way then. A. I supposed this money was put to my credit, and supposing that, I drew checks against the balance which I presumed was there.

Q. Well, then this check of $2475 Mr. Smith has testified was the proceeds of the original note? A. I heard him testify.

Q. And you have seen this check? A. One moment.

Q. You have seen this check here? A. In Court here.

Q. Just answer, and you have seen Mr. Long's endorsement? A. Yes, sir.

Q. And the check is marked paid? A. Rubber stamp paid.

Q. Which on the face of it means that Mr. Long got the money? A. I can't consent to that.

Q. On the face of it it indicates that Mr Long got the money? A. It don't indicate that to me, no, sir.

Q. What does it indicate to you? A. It indicates to me that Mr. Long left the check up there with Mr. Smith to be placed to my credit, as Mr. Long told me.

Q. Is there anything about the check to indicate that? A. No, that is what Mr. Long told me.

Q. I didn't ask you that; I asked you if there is anything about the check to indicate it? A. Nothing to indicate the contrary.

Q. Mr. Scarlett, why won't you answer questions without arguing the matter?

Mr. English: I object to that.

Q. I ask you if there is anything about that check that indicates it was left to be deposited to your credit in the Roseville Trust Company? A. Might very well be; I don't see anything contrary to do it.

Q. When did you find that it had not been deposited to your account? A. Only when I got the duplicate transcript of the ledger from Mr. Vredenburgh after the bank closed.

Q. Well, that was a whole year, was it? A. Several months.

Q. The check is dated July 22, 1912, and the bank failed in August, 1913; is that right? A. I believe so.

Q. So it went a whole year and you didn't know that you didn't have that money to your credit, and do you want us to believe that—S-20? A. That is correct. I would like to correct that statement—

Q. No.

The Court: He may correct any statement.

A. It is correct that I didn't have credit on the

ledger, but it is absolutely correct that I presumed I did have credit on the ledger.

By the Court: Q. When did you presume that? A. When Mr. Long came back and told me that he had endorsed the check—

Q. He came back and told you something? A. Yes, sir.

Q. When was that? A. On this same date, July 22, the date of this check.

Q. On that date he told you something from which you presumed you had credit for the amount of that check? A. Yes, sir.

Q. $2475. What did you mean by saying a moment ago that you didn't know for a year that you had that credit? A. That is what I desired to correct, I didn't know that I didn't have the credit. I presumed I did have the creit.

Q. So that you thought then, you had credit not only for the proceeds of the Long note, S-21 which you say you thought had been credited to your account because you drew against it, but you also thought you had credit for his check S-20; you thought then that you had a credit for both? A. Oh, no, your Honor.

Q. That is what you just said? A. I beg pardon! No. I said that I assumed that I had credit for the proceeds of the Long note represented by this check of $2475 which I presumed was Mr. Smith's personal check.

By Mr. Guild: Q. Then you mean to say you never saw his check until you saw it in Court? A. Never.

Q. I objected to your saying what you say that Mr. Long said to you; I am perfectly willing for you to state it. A. Mr. Long came down and said

"I left that note with Mr. Smith; Mr. Smith drew a check and asked me to endorse it," and he said was that alright?" and I said "That is right; Mr. Smith agreed to discount that note for me and he will undoubtedly put it to my credit."

Q. Which pass book did you have at that time? A. The second one, the duplicate.

Q. Was that deposit entered in your pass book? A. I can't remember as to that.

Q. Is it entered in your check book? A. No, sir; I struck no balance in my check book.

Q. You say that Mr. Long came back the same day, which was the 22d of July, 1912—I assume that, because that is the date of the check and I presume the note is the same date—and told you that he had left the check up there? A. With Mr. Smith.

WILFRED C. ROSZEL sworn in behalf of defendant in rebuttal.

Direct-examination by Mr. English:

Q. Mr. Roszel, are you a member of the bar? A. I am.

Q. And your office is here in Newark? A. In the Firemen's building.

Q. I think you were the trustee in bankruptcy appointed by the Court for Raymond E. Smith? A. I am.

Q. When were you appointed such trustee?

Mr. Guild: We will admit it.

Q. When were you appointed trustee? A. I

will have to refresh my memory. I think it was December 19, 1913.

Q. Did you, pursuant to your authority as trustee, endeavor to collect the various books and papers of the bankrupt? A. Yes, sir.

Q. Where did you get any papers belonging to the estate of Raymond E. Smith? A. I searched the rooms of Mr. Smith on Central avenue—I don't remember the exact number—also I secured certain papers from the Roseville Trust Company, and also endeavored to search the records and papers and securities, whatever I thought was of value, at the garage, 92 Central avenue, East Orange.

Q. The Oakland? A. The Oakland Motor Sales Company at the store in Newark, on William street.

Q. What store was that? A. That was also the Oakland Motor Sales Company.

Q. When you went through the papers in the trust company were you there with any representative of the banking department? A. Mr. Mayham was present and Mr. Vredenburgh.

Q. Was any list made of the papers found there? A. Yes, a list was made.

Q. By whom? A. By Mr. Mayham.

Q. The banking man? A. He was one of the assistants connected with Mr. Vredenburgh.

Q. Since the noon adjournment have you tried to locate that list? A. I tried to locate my copy of the list.

Q. What did you find about it? A. I was unable to find a copy; I am not sure about the list.

Q. What is that? A. It is a list of the contents of a box that was opened in the Roseville Trust

Company containing papers, I suppose, which belonged to Mr. Raymond E. Smith.

Q. What was the number of the box? A. I am not sure. It was the first box that was opened.

By Mr. English: Q. You found some papers in the apartment where he lived? A. Yes, sir.

Q. I show you Exhibit D-27, which is a letter proved to be in the handwriting of Raymond E. Smith and signed by John B. Scarlett, and I also show you Exhibit S-12, and S-16, which are certain letters addressed to Mr. Smith and signed by John B. Scarlett, and I ask you where, to the best of your recollection—I will ask you first when you first saw those papers? A. According to my recollection, the first time I saw these was when I searched the apartment of Mr. Smith on Central avenue.

Q. That is where you found it, as you recollect it? A. As I recollect it, now; I am not positive of that unless I should see the other list That is the best of my recollection at this time.

Q. Since you came back from lunch have you tried to get that list? A. I spoke to Mr. Vredenburgh about it.

Q. Did he have it? A. Mr. Vredenburgh, he has not got it in his possession at the present time in this building.

Q. Has he got it under his custody? A. Yes.

Mr. English: I ask the State to produce it.

Witness: I may say that Mr. Vredenburgh stated he would be willing to produce it.

Q. Your recollection is that you found this in Mr. Smith's apartment? A. According to the best of my recollection.

CROSS-EXAMINATION by Mr. Guild:

Q. You may be mistaken about it? A. I may be.

Q. I show you another paper marked D-34. Have you ever seen that before? A. I have.

Q. Where did you find that? A. According to my recollection, this I received from the bank.

Q. That being so may you not have received also the other papers from the bank? A. I am pretty sure I did not. I think those letters, according to the best of my recollection, came from the apartment.

Q. But this declaration of trust was in the bank building? A. According to my recollection.

RE-DIRECT-EXAMINATION by Mr. English:

Q. When you examined the box in the trust company, as you said, of Smith, why did you open up a box not belonging to the trust company—you were not representing the banking department? A. I didn't personally open the box.

Q. You were present when it was opened? A. I wasn't present when it was opened. Under my appointment as receiver I went to the bank and made formal demand upon Mr. Vredenburgh for the possession of all papers in the bank belonging to Mr. Smith, and after some trouble they finally agreed to turn over all of the papers, and when they did turn them over they took a list of all the papers they turned over to me that day.

Q. Those papers were taken out of one of the boxes in the trust company? A. Yes, sir.

Q. Do you remember the number of the box? A. No, sir.

By Mr. Guild: Q. How do you know where they were taken from? Did you see them taken out of the box? A. I think they had the box there at the time, yes.

Q. Did you see them taken out, that is the question? A. I think they had the box—

By the Court: Q. Don't you understand the question? A. I don't know as I understand the question.

Q. You were asked whether you saw them take these papers out of the box; you have on recollection answer yes or no. A. I thought I could qualify that slightly, that my recollection is that they had a box from which they took that out; whether it was the original box—

Q. You are only asked whether you saw them taken out of a box? A. I am not positive as to that.

Q. Then you don't know whether they took them out of a box or not, and you don't know, if they did, whether it was the original box? A. No, I don't.

Q. All you know is you got them from Mr. Vredenburgh? A. That is all I am positive about.

By Mr. English: Q. Was this copy of the declaration of trust which Judge Guild showed you handed you by the banking department as among the papers which you received on that occasion? A. According to my recollection it was.

Q. In other words the banking department gave you this as a part of Smith's papers? A. I believe so.

Q. I refer to Exhibit S-34. A. I believe so.

Q. And they also gave you these letters which I showed you, or did you keep those as letters you found in his apartment? A. As I stated before, according to my recollection, I got them from Mr. Smith's desk in his apartment.

Q. They came in your possession either from the department where you found them or as being handed to you by the banking department as papers belonging to Mr. Smith? A. Yes, sir.

Q. And the same is also true of a letter in Smith's handwriting, D-27? A. Yes, sir.

Defendant Rests.

JOHN H. LONG recalled in behalf of the State in sur-rebuttal.

Direct-examination by Mr. Mott:

Q. Mr. Long, Mr. Scarlett said that when you came back from the Roseville Trust Company on the occasion when you went up there that you have described you said to him, "I left that note with Mr. Smith, Mr. Smith drew a check and asked me to endorse it." Did you say that to him? A. Not one word.

Q. He further says that you asked him if that was all right and that he replied, "That is right"? A. I did not.

Q. Did you further say to him that Mr. Smith "agreed to discount that note" for Mr. Scarlett, "and that he would undoubtedly put it to his credit"? A. No, sir.

Q. Nothing of that kind? A. No, sir, no conversation whatever.

CROSS-EXAMINATION by Mr. English:

Q. Did you sign the check at all? A. I signed nothing

By Mr. Mott. Q. You mean at the bank? A. At the bank.

By Mr. English: Q. You don't know whether this is your signature or not—is that your signature or not? A. I think it is my signature.

Q. This is the paper I showed you yesterday? A. It looks like it.

Q. That is the paper you said you didn't know whether you signed it or where you signed it?

Objected to.

A. I did not.

Q. I thought you did say that you didn't know the size of the check you endorsed, if you endorsed one? A. I didn't say so.

Q. Do you say so now? A. I don't recollect.

Q. Do you say now that you knew how much money you brought back? A. No, sir.

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

State rests.

Defendant rests.

Mr. English: My motion now is for the direction of a verdict of acquittal upon the reasons which I urged at the close of the State's case, and further, in addition to that, for the following reasons: That the evidence of the State's witnesses is that the

check for $350 which is mentioned in the indictment was not charged to the defendant's account; and, that the evidence further shows that it was not paid by the funds of the bank; and, further, there is no creditable evidence that the defendant's check for $350 was paid by the funds of the bank; further if the check for $350 was paid by the funds of the bank it was unpaid on the date charged in the indictment, namely, March 17, 1910, but at some later date, and in amplification of that, I say that the check was not paid by the funds of the bank at all; the check is certified on its face, and there is a question of law, whether. in the ordinary case, a check being certified, that does or does not apply to the funds of the bank; but the situation is that this check was certified by Mr. Smith without the knowledge of any other officer of the bank, or of any other person in the bank, so far as it appears, that the certification book was not written up, and that no record of any character was made to indicate that the check was certified in the usual course of business as a bank transaction. Now, Mr. Smith has admitted in his testimony that he was engaged in a series of frauds on the bank, and I envoke the rule that where an agent is engaged in a fraud it is not binding on his principal. If this was a certification upon the bank itself, it was some individual act of Smith's. If it was, there is nothing in

this case from which you can say that the funds of this bank paid the check. There is some evidence tending to show that at a later date the check was included in the check of $50,000 sent to the Union Bank, but the trouble with that, from the standpoint of the State's case, is that that check was not paid until the next day, and the indictment here is that we overdrew and consequently the bank paid this money on the 17th, whereas, if my contention is correct the fraudulent certification did not withdraw the funds of the bank on the 17th, and it is relied upon that the Union National Bank included these funds. That check was not paid until the 18th, and there is no evidence that on the 17th of March this defendant overdrew his account—there is no evidence to that effect.

The Court: The motion is 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. OSBORNE,
Judge.

(Seal)

Mr. English sums up for defendant.

Adjourned until Tuesday, March 31, 1915, at ten o'clock, a. m.

Charge

THIRTEENTH DAY

ESSEX COUNTY OYER & TERMINER,

Wednesday, March 31, 1915.

Met pursuant to adjournment.
Present, counsel as before stated.

Mr. English continues summing up in behalf of defendant.

Mr. Mott sums up for the State.

The Court charged the jury as follows:

Charge

OSBORNE, J.

Gentlemen of the Jury: The indictment found by the Grand Inquest of this county charges the defendant at the bar with knowingly overdrawing his account in the Roseville Trust Company while a director of that institution. The indictment, which you will have before you, reads as follows:

> "That John B. Scarlett, of the City of Newark, County of Essex aforesaid, on the 17th day of March, 1913, with force and arms at the city aforesaid, in the county aforesaid, and within the jurisdiction of this Court, being then and there a director of the Roseville Trust Company, a trust Company organized and existing under

the laws of the State of New Jersey, and a depositor in and having an account with said Roseville Trust Company, unlawfully, willfully and knowingly, for his own profit, use and benefit, did overdraw his said account with Roseville Trust Company in the sum of $350, by then and there willfully and knowingly withdraw from said trust company by means of a bank check dated March 17, 1913, drawn upon said Roseville Trust Company, payable to the order of John B. Scarlett for the sum of $350, signed by him, the said John B. Scarlett, and the said John B. Scarlett then and there well knowing that he did not have to his credit with said trust company moneys to the amount of $350, with intent to defraud said trust company, 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.'

The statute upon which this charge is founded, in so far as the same is applicable to this case, is substantially as follows: "Any director of any trust company who shall knowingly overdraw his account with the corporation of which he shall be a director, for his own private use and benefit, or convert to his own use any money or property of said corporation with intent to defraud the said corporation or wrongfully to make use of the same, shall be guilty of high misdemeanor."

The specific item upon which the indictment is based is a certified check for $350 under date of

March 17, 1913, made by the defendant, John B. Scarlett, and marked Exhibit S-5.

It will be observed that the material features of the State's case are stated substantially in the indictment; that is to say, the State charges that the defendant, being a director of the Roseville Trust Company an incorporated bank doing business under the authority of the State, knowingly overdrew his account in the sum of $350 by means of a certified check for the sum of $350 for his own private use and benefit, with unlawful intent. That the defendant, being a director, knowingly overdrew his account.

There are certain facts in this case upon which the proof is undisputed. There is no question but that the Roseville Trust Company was duly incorporated and authorized to do business by the Commissioner of Banking & Insurance of this state. There is no question but that the defendant drew the check for $350, dated March 17, 1913, which is the foundation of this charge, and that he procured Raymond E. Smith, who was the secretary and treasurer of the trust company, to certify this check.

At this point I desire to point out to you that the effect of such a certification is to create an obligation on the part of the bank certifying it. On this subject the Supreme Court of the United States has said:

> "By the law merchant of this country the certification of the bank that a check is good is equivalent to acceptance. It implies that the check is drawn upon sufficient funds in the hands of the drawee,

that they have been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment. It is an undertaking that the check is good then and shall continue good and this agreement is as binding on the bank as its notes of circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume. The object of certifying a check, as regards both parties, is to enable the holder to use it as the money. The transferee takes it with the same readiness and sense of security that he would take the notes of the bank. It is available also to him for all the purposes of money. Thus it continues to perform its important functions until in course of business it goes back to the bank for redemption and is extinguished by payment. It cannot be doubted that the certifying bank intended these consequences, and it is liable accordingly. To hold otherwise would render these important securities only a snare and a delusion."

A bona fide holder of such a check, though fraudulently issued, can collect, and there is evidence in this case indicating that the check was paid by the Roseville Trust Company. The fact that the check of $50,654.23 was paid by the Roseville Trust Company to the Union National Bank March 18, 1913, does not, standing alone, necessarily establish such payment, but there is evidence in this case that it was paid by that check—that is to say, the check of $350 was paid by this check of $50,654.23. Nor is there any

question but that the defendant drew certain other checks for $500 dated March 4, 1913, and for $400, dated February 19, 1913, and procured these checks to be certified by Raymond E. Smith, secretary and treasurer of the Roseville Trust Company.

Now I wish to call your attention, however, to the fact that these last two checks referred to by me are not made the basis of the State's charge, but are received in evidence solely for the purpose of proving knowledge on the part of the defendant of the condition of his account leading up to the time when the overdraft charged in the indictment is alleged to have occurred. Upon the trial of a person for one crime, evidence of other offenses is not ordinarily admissible; but when the act charged to be criminal may reasonably be innocent and is criminal only when performed with a certain intent or with knowledge of a certain fact, in such case, other acts of the defendant, though criminal, may be adduced to prove that he had such specific intent or knowledge. So that you will bear in mind that the evidence regarding these two checks just referred to by me, with accompanying letters, have been admitted in evidence, not to prove or to permit the inference to be drawn by you that the defendant, because he may have overdrawn his account on other occasions, is guilty of overdrawing it on this occasion, but solely for the purpose of proving knowledge on his part of the condition of his account on the 17th day of March, 1913.

The mere overdrawing of his account, even by a director, is not, under the law, a criminal offense unless it is done with knowledge of that fact on his part.

Charge

It will be observed that the State charges that the defendant unlawfully, willfully and knowingly overdrew his account with intent to defraud the trust company. That is the charge which the defendant is called upon to meet. The State, having undertaken to prove it, will be held to it. Intent is a state of mind. It is the quality of mind with which an act is done, and can be best proved by the conduct of the defendant and must be determined by the jury from all of the facts in the case. If you are satisfied from the evidence that the State has sustained the burden it has assumed, of proving beyond a reasonable doubt, as I shall hereafter charge it to you, from all the evidence before you that the defendant not only overdrew his account, but that he did so willfully and knowingly and with intent to defraud the trust company, you should so declare by your verdict. You may gather such intent from all the affirmative proof offered on the part of the State, as well as from the contradictory and explanatory circumstances shown on the part of the defense.

The certification by Smith of the $350 check was at the request of the defendant. The check was accompanied by this letter to 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?" Now, it is claimed by the State that Scarlett was a director of the bank. This the defendant denies. If he was a director, he was Smith's superior, and, as such director, he was, by law, charged with certain duties and responsibilities. The law

concerning trust companies provides that each director, when elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administrate the affairs of such trust company, and will not knowingly violate, or knowingly permit to be violated, any of the provisions of the act under which trust companies are organized.

One of the important and, in fact, essential questions in this case is whether he was in fact a director, for if he was not, the charge of the State necessarily falls. He executed the oath of a director in which he declared himself to be such on the 3d of February, 1913. It is true that he apparently attended no meetings from then on until the closing of the bank, but he did attend meetings of the Board of Directors after the close of the bank, held for the purpose of reorganization, or, as one witness has put it, of rehabilitating the bank. He testifies that he resigned, and produces a carbon copy of a letter of resignation which he says was sent with his oath of office. There is, however no evidence that this letter was ever received by the Board of Directors. There is evidence that he discussed the question of his continuing as a director with certain members of the board at one of their meetings, but, in the face of his oath of office, and the fact that he did subsequently attend meetings of the board after the company closed its doors, can he now, when charged with the responsibilities of the office and the consequences of his acts as such director, be heard to say that he was not, at the time in question, a director in fact? As a

matter of law, I charge you that a person eligible to act as director, who was duly elected to such office, and qualified by subscribing the oath of office thereby accepts the office, becomes a director, and is charged with the responsibilities of the office. The question whether he subsequently resigned and was thereby relieved of such responsibility is a disputed question of fact in this case to be determined by from the evidence before you.

The suspension of the business of the trust company through its failure did not thereby vacate the offices of the directors.

The defendant insists that he did not knowingly overdraw his account on the 17th day of March 1913, as charged in the indictment; that in fact he supposed he had a substantial balance to his credit, or at least in his account, with the trust company amounting to several thousand dollars; and, further, he says, not only did he suppose he had a balance, but that he did in fact have a balance more than sufficient to meet the check certified for $350 on March 17, 1913, because he had an agreement with Smith by which Smith was to loan him money personally, to be applied by Smith to his, Scarlett's account, which he supposed had been done; and further, because he, Scarlett, had made certain deposits which should have been credited to his account and which he supposed, at the time of the alleged overdraft, had in fact been credited to his acount, but which he later learned had not been credited.

In brief, he says that no overdraft in fact occurred. An ovedraft arises when a customer of

a bank draws from that bank more money than he has to his credit in the bank. It is not material whether the account was actually overdrawn for $350 if, in fact, it was overdrawn by the defendant on the day in question knowingly. The essence of the offence is the overdraft, and not the amount.

Mr. Scarlett claims that two checks of $1000 each of the Middlesex Hat Company, dated November 19, 1910, and marked D-20 and D-21 respectively, were sent by him to the bank for deposit and that he received no credit for them. The explanation of the State, as I understand it, with regard to these checks, is that they were not deposited for credit to his account, but were sent through for collection on three different occasions and returned not good and were finally taken up and paid by two other checks of like amount represented here by two protests marked D-32 and D-33. It is claimed by the State, and admitted by the defendant, that the two checks represented by these protests were returned not good. The defendant claims, however, that the two checks represented by these protests should have been credited to his account and when they were returned the account debited with them. He further claims that on November 21, 1910, he deposited a check for $2000 marked D-19. On the other hand, the State says that the proceeds of this check were immediately drawn out by him. It will thus be seen that Mr. Scarlett's contention is that in this series of transactions he deposited two checks for $1,000 each, D-20 and D-21, one check for $2000, D-19, and two checks represent-

ed by the protests D-32 and D-33 of a thousand dollars each, making total deposits of $6000. He admits that checks represented by protests D-32 and D-33 were had and therefore should be deducted from the $6000, leaving a credit balance as claimed by him, of $4000. You have heard the explanation of the State's witnesses Smith and Ferguson of the history of these checks, and they have undertaken to show you by a reference to the books of the institution and various other exhibits just what the real situation was with regard to those checks. You must determine whether Mr. Scarlett had, or was justified in believing that he was entitled to this credit. In January following he claims certain other deposits of $2,000 each when explained by him by reference to his check book in which he points out certain erroneous deduction of $2,000, the correction of which, he says would have left him with a very substantial balance.

You have heard the explanation of this transaction by the State's witnesses; the books and other exhibits to which reference has been made you will have before you. The defendant also claims that on February 8, 1911, he made a deposit aggregating $5,700 as represented by the deposit slip marked D-17, and that the reason this was not entered into his pass book at the time was because the pass book had been lost. He says that this deposit consisted of a certain check of $3,000 marked D-18, and two other items of $1,000 and $1,700 respectively, regarding which he has no recollection. He says that he should have received

credit for these items. In explanation of this $5,-700 deposit slip Smith says that the $3,000 check was applied by him to take care of a then existing indebtedness of Scarlett's to the bank and that the other two items of $1,000 and $1,700 were returned to Mr. Scarlett for the reason that he, Smith, was unable to use them in connection with Scarlett's account with the bank or in liquidation of his obligations to the bank, Smith is corroborated in his testimony regarding the application made by him of the $3000 check by Mr. Ferguson. It is the failure of the bank to give him credit for these items as claimed by him, as well, possibly, as some others mentioned in the testimony, which the defendant says created the very serious situation in which he now finds himself. He further says that he believed that he was being credited with certain items advanced by Smith personally for his accomodation. Smith, on the other hand, denies this, and claims that in all the transactions arising out of the triplicate agreement D-28, D-29, and D-23, he was in fact acting for the bank. This becomes largely a question of veracity between Smith and Scarlett, supplemented by such other evidence as you may find in the case bearing upon the disputed question. It is for you to say wherein the truth lies. Was his account good on the 17th of March, 1913, and if not, did he know it?

If you find that by a correct statement of the account, regardless of the inaccuracies in the records of the bank, the defendant actually had a balance in his favor on the 17th of March, 1913, sufficient to meet the check of that date for $350, there was no overdraft, knowingly, by him.

If you find that Scarlett was reasonably entitled to suppose that he had actually deposited funds in the bank to which he was entitled to credit, sufficient to meet the check for $350 of March 17, 1913, there was no overdraft of the account, knowingly, by him.

If you find that Scarlett was reasonably entitled to suppose that Smith, individually, would advance him sufficient money to take care of any discrepancies in his account, and had in fact done so, there ws no overdraft of the account by the defendant knowingly.

You may ask yourselves whether it is possible that all this manipulation of checks for deposit for the defendant could have been carried on by Smith for Scarlett's benefit without Scarlett having some knowledge of the real situation. That is the question which you must answer. I cannot answer it for you.

In weighing the testimony you may consider the interest of the defendant in the outcome of this case, and in determining what weight you will attach to the testimony of Smith, Jennings and Thompson, you have a right to consider the fact that they have been convicted of a crime. This is a fact for your consideration in determining the weight you will attach to their evidence and to what extent it affects their credibility. Our statute provides:

> "No person offered as a witness in any action or proceeding of a civil or criminal nature shall be excluded by reason of his having been convicted of crime, but such conviction may be shown on the cross-examination of the witness, or, by the produc-

tion of the record thereof, for the purpose of affecting his credibility."

I have been requested to charge you specifically that you must consider certain evidence in the case. I charge you that you must take all of the evidence into consideration, weighing it carefully, and rejecting that which you think unworthy of credence.

You will rely upon your own recollection of the evidence, and will not take the recollection of counsel or of the Court, whose memory may be at fault, as to what the witness testified to. No remarks of the Court, called forth by the conduct of counsel during the progress of the trial, nor remarks of counsel to each other, should be construed to the prejudice of the defendant.

The defendant has produced certain witnesses who testified to his reputation. Evidence of good character of an accused is always competent on the trial of an issue such as this, and is entitled to consideration by you in making up your verdict, and if, on such consideration, there exists a reasonable doubt of his guilt, even though that doubt shall be engendered merely by his previous good repute, he is entitled to an acquittal. This principle of law is well settled.

The defendant is entitled to the benefit of any reasonable doubt arising upon the evidence. The burden of proof is on the State, and if, upon such proof, there be a reasonable doubt with regard either to the guilt of the accused or to the degree of criminality, he is entitled to the benefit of that doubt. Such burden of proof remains upon the State throughout the whole case and such burden never shifts. Reasonable doubt is defined in an

opinion of the highest court of this state, in these words,

> "It is a term often used, probably well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending upon 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 the jurors in that condition that they cannot say that they feel an abiding conviction, to a moral certainty, of the truth of the charge. The evidence must establish the truth of the fact to a moral certainty, 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, giving the accused the benefit of this reasonable doubt, you are led to the conclusion that he is guilty, you should so declare by your verdict. If you are not so satisfied then you should acquit."

The defendant is presumed to be innocent until he is proven guilty, and that presumption of innocence continues throughout the case and until his guilt is established beyond a reasonable doubt.

I decline to charge as requested, other than as I have already charged.

(The jury retires.)

Charge

Mr. English: I pray an exception to the refusal of the Court to charge specifically as requested.

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

H. V. OSBORNE.

(Seal.) Judge.

Mr. English: I pray a general exception to the charge of the Court.

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

H. V. OSBORNE.

(Seal.) Judge.

Mr. English: I also pray an exception as to what your Honor said about the effect of certification creating an obligation on the bank.

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

H. V. OSBORNE.

(Seal.) Judge.

Mr. English: Also as to what your Honor said that there was evidence indicating that the check of $350 was paid by the Roseville Trust Company.

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

H. V. OSBORNE.

(Seal.) Judge.

Mr English: Also as to what your Honor said that the defendant had attended

meetings of the Board of Directors after the bank was closed, and the particular point of my exception is that your Honor characterized it as a meeting of the Board of Directors.

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

H. V. OSBORNE.

(Seal.) Judge.

Mr. English: Also to the form of question which your Honor put to the jury with reference to the resignation of the defendant as a director, and could he now be heard to say that he was not a director—whatever your Honor said on that subject.

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

H. V. OSBORNE.

(Seal.) Judge.

Mr. English: I also pray an exception where your Honor said that the essence of an overdraft is withdrawal without regard to the amount, and if there was in fact an overdraft of something other than this $350 it was an overdraft and the defendant could be convicted—whatever your Honor said about that.

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

H. V. OSBORNE.

(Seal.) Judge.

Mr. English: I also pray an exception to what your Honor said, that Smith was corroborated in his statement of the application of the $3000 check by the State's witness Ferguson.

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

H. V. OSBORNE.

(Seal.) Judge.

Defendant's Requests to Charge

Defendant's counsel requests the Court to charge the jury as follows:

1. There should be a verdict of acquittal for the defendant.

2. The defendant is presumed to be innocent and such presumption of innocence continues until his guilt is established beyond a reasonable doubt.

3. The defendant is entitled to be acquitted unless the jury are satisfied beyond a reasonable doubt that he is guilty of the crime charged in the indictment

4. Reasonable doubt is such doubt as makes the jury hesitate as to the correctness of its conclusions.

5. The burden of proof is on the prosecution to show the guilt of the defendant beyond a reasonable doubt, and such burden of proof remains with the prosecution throughout its case and throughout the defendant's case, and the burden of proof never shifts.

6. The defendant is charged with having wilfully and knowingly overdrawn his account with the Roseville Trust Company in the sum of $350 by means of a bank check dated March 17, 1913, and unless the jury are satisfied beyond a reasonable doubt that he did both wilfully and knowingly overdraw his account for that amount, the verdict must be for the defendant.

7. The defendant is charged with having wilfully and knowingly overdrawn his account with the Roseville Trust Company in the sum of $350 by means of a bank check dated March 17, 1913, and unless the jury are satisfied beyond a reasonable doubt that he knowingly overdrew his account for that amount, the verdict must be for the defendant.

8. If the jury find that he overdrew his account knowingly but not wilfully, the verdict must be for the defendant. The jury must find beyond a reasonable doubt that the account was overdrawn both wilfully and knowingly before there can be a conviction.

9. The statute makes it a high misdemeanor for a director of a trust company to knowingly overdraw his account, and unless the jury are satisfied beyond a reasonable doubt that the defendant did in fact overdraw his account to the amount stated in the indictment, the verdict must be for the defendant.

10. Any overdraft of a sum less than $350 will not satisfy the burden of proof which the law casts upon the prosecution, and if the jury find that there was in fact a balance in the account

of March 17, 1913, in favor of the defendant, the verdict must be for an acquittal.

11. The evidence shows that the check stated in the indictment was not in fact charged to the defendant's account on the books of the trust company, and unless the jury are satisfied by credible evidence beyond a reasonable doubt that the account was in fact overdrawn, to the amount of $350 on March 17, 1913, there must be a verdict for acquittal.

12. The evidence of the defaulting treasurer, Mr. Smith, is not sufficiently credible upon which to found a conviction.

13. The evidence contained in the records of the bank, standing by themselves, are not sufficiently credible upon which to found a conviction.

14. The evidence of the former teller, Thompson, standing by itself, is not sufficiently credible upon which to found a conviction.

15. The jury are not entitled to find a verdict of guilty upon the evidence contained in the books and records of the bank as supported by the evidence of Messrs. Smith and Thompson.

16. Unless the evidence contained in the records of the bank is corroborated by some credible evidence beyond the testimony of Messrs. Smith and Thompson which satisfies the jury beyond a reasonable doubt that the defendant is guilty as charged, there must be a verdict of acquittal.

Defendant's Requests to Charge

17. Unless the jury are satisfied by other credible evidence beyond a reasonable doubt that the defendant is guilty as charged, the defendant ought not to be convicted upon the evidence contained in the records of the bank, as explained by the State's witnesses Smith and Thompson.

18. In weighing the evidence in the case, the jury will take into consideration the fact that the State's witness Smith is a self-confessed criminal and that the State's witness Thompson is also a self-confessed criminal, and that the evidence of those two witnesses is not entitled to full faith and credit.

19. In weighing the evidence contained in the records of the bank, the jury will take into consideration that those records or some of them are admitted by the State's witnesses to be inaccurrate.

20. In weighing the evidence contained in the records of the bank, the jury will take into consideration that the entries were made under the general direction of the treasurer, Smith, who is a self-confessed criminal, and that the entries were made by clerks who were under the domination of Smith, and subordinate to his will and direction.

21. In weighing the evidence contained in the records of the bank, the jury will also take into consideration that some of the entries were made by the witness Thompson, who is a self-confessed criminal, and by the witness Mindnich, who refused to answer proper questions for fear the answers would incriminate him.

Defendant's Requests to Charge

22. Unless the jury find beyond a reasonable doubt that the trust company paid the check mentioned in the indictment, there was no overdraft of the account by the said check.

23. The evidence is that the check mentioned in the indictment was paid either by the treasurer, Smith, personally, or by some other person's cash, or by being charged to the account of some depositor or other bank, and unless the jury find from credible evidence in the case, beyond a reasonable doubt, that the check was in fact paid by the Roseville Trust company, the charge in the indictment has not been made out, and there must be a verdict for acquittal.

25. The entries which were ordinarily made in the records of the bank in connection with the certification of a check were not made in connection with the certification of the check mentioned in the indictment, and there is no credible evidence that the trust company as such knew of the certification of the check.

26. Any knowledge which the treasurer, Smith, may have had as to the certification of the check was not the knowledge of the trust company.

27. In any conflict of evidence between the State's witness, Smith, and the defendant, the defendant is entitled to be believed as being the more credible of the two.

28. In considering whether or not the defendant knowingly overdrew his account, the jury will take into consideration the evidence of a personal arrangement between the defendant and

Smith individually, with reference to the loaning of moneys to the defendant by Smith individually.

29. If the jury find that the defendant was reasonably entitled to suppose that Smith individually would alvance to him sufficient moneys to take care of any discrepancies in his account, there was no overdraft of the account by the defendant knowingly, and the verdict must be for acquittal.

30. If the jury find that the defendant was reasonably entitled to suppose that he had actually deposited funds in the bank to which he was entitled to credit sufficient to meet the check for $350 dated March 17, 1913, there was no overdraft of the account by the defendant knowingly, and the verdict must be for acquittal.

31. If the jury find that by an accurate stating of the account, regardless of the entries in the records of the bank, the defendant did actually have any balance in his favor, there was no overdraft of the account to the amount of the check stated in the indictment by the defendant knowingly, and the verdict must be for acquittal.

32. If the jury find that by an accurate stating of the acocunt, regardless of the entries in the records of the bank, the defendant did actually have a balance in his favor to the amount of or more than the amount of the check stated in the indictment, there was no overdraft of the account by the defendant knowingly, and the verdict must be for acquittal.

33. Any overdrafts by the defendant on any day previous to March 17, 1913, have no bearing on this case and are to be excluded by the jury.

34. The fact that the Roseville Trust Company paid to the Union National Bank on March 18, 1913, a check for $50,654.23 does not necessarily establish the fact that the money of the Roseville Trust Company paid the check stated in the indictment.

35. Any evidence tending to show that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the amount of the check stated in the indictment, comes from the records of the bank, supplemented by the testimony of Messrs. Smith and Thompson, and the jury must be satisfied by other credible and corroborating evidence beyond a reasonable doubt that said check paid to the Union National Bank did in fact include the amount of the check stated in the indictment before the jury can find that the amount of said check was so in fact included.

36. The records of the bank which were admitted in evidence for the purpose of showing that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the amount of the check stated in the indictment, nowhere specifically referred to said check, and said records are meaningless without the explanation given in the testimony of Messrs. Smith and Thompson, who are self-confessed criminals and whose testimony is not entitled to full faith and credit.

37. The records of the bank which were admitted in evidence for the purpose of showing that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the amount of the check stated in the indictment, nowhere specifically referred to said check, and unless the jury find that the evidence of Messrs. Smith and Thompson, interpreting said records, is corroborated by some credible evidence, so as to establish beyond a reasonable doubt that said check so paid to the Union National Bank did in fact include the amount of the check stated in the indictment, the jury are not entitled to conclude that said check paid to the Union National Bank did in fact include the amount of the check stated in the indictment.

38. Unless the jury find by some credible evidence other than that of the records of the bank, as supplemented by the testimony of Smith and Thompson, that the money of the Roseville Trust Company, paid to the Union National Bank by the check for $50,654.23 dated March 18, 1913, included the amount of the check stated in the indictment, there must be a verdict of acquittal.

39. There is no credible evidence tending to prove that the check dated March 18, 1913, for $50,654,23 paid by the Roseville Trust Company to the Union National Bank included the amount of the check stated in the indictment.

40. The evidence contained in the records of the bank, as supplemented by the testimony of Messrs. Smith and Thompson, tending to show that the check for $50,654.23 dated March 18, 1913,

paid by the Roseville Trust Company to the Union National Bank, is not corroborated by any credible evidence, and the charge of an overdraft has not been proved and there must be a verdict of acquittal.

41. If the jury have a reasonable doubt and are not morally certain that the defendant knowingly overdrew his account, they must bring in a verdict of acquittal.

42. Evidence of good character may of itself create a reasonable doubt where otherwise no reasonable doubt would exist, and should the jury conclude from the evidence that the defendant has borne a reputation for good character, they must require a greater degree of certainty in the proof that he knowingly overdrew his account than would be required if there was no such evidence of good character.

43. The good character of the defendant is by itself a sufficient fact from which a reasonable doubt of guilt may arise, and which will entitle the defendant to an acquittal.

44. If on the consideration of the evidence of the good repute of the defendant, there exists a reasonable doubt of his guilt, even though that doubt be engendered by his previous good reputation, he is entitled to an acquittal.

45. The charge in the indictment is that the defendant was a director of the Roseville Trust Company on the 17th day of March, 1913, and unless the jury are satisfied beyond a reasonable doubt that he was a director of said trust company on said date, there must be a verdict of acquittal.

46. The resignation of the defendant as a director of the Roseville Trust Company by the terms of the letter of February 3, 1913, (D-37), addressed to the directors by him, stated that he signed the report referred to in said letter with the understanding that his resignation take effect immediately after, and if the jury find as a fact that he did sign the report mentioned in the said letter, then his resignation did take effect and he was not a director at the time charged in the indictment, and there must be a verdict for acquittal.

47. Under the terms of the letter of February 3, 1913, addressed by the defendant to the directors of the Roseville Trust Company, D-37 in evidence, it is immaterial whether the resignation therein referred to was accepted by the directors or not if the jury find that the defendant did in fact sign the report mentioned in the said letter.

48. It is absolutely essential to the State's case that they satisfy the jury beyond a reasonable doubt that the defendant was a director of the Roseville Trust Company on the 17th day of March, 1913.

49. If the jury find that the paper referred to as a report in the letter addressed by the defendant on February 3, 1913, to the directors of the Roseville Trust Company (D-37 in evidence), was in fact the oath of the defendant as director (Exhibit S-3), and that the word "report" in said letter refers to said oath, and that the oath was in fact signed by the defendant, then his resignation

did take effect and he was not a director at the time charged in the indictment and there must be a verdict for acquittal.

50. The remarks of the Court to the effect that the defendant's counsel is young yet and his experience may not be of much value to the Court, must not be construed by the jury to the prejudice of the defendant.

51. The fact that the youth and limited experience of the defendant's counsel are such as to call forth comment from the Court, must not be allowed to militate against the defendant in the minds of the jury to his disadvantage.

52. Any overdrafts by the defendant on any day after March 17, 1913, have no bearing on this case and are to be excluded by the jury.

53. If the jury find that the money of the trust company did in fact pay the check for $350 mentioned in the indictment, such payment must have been made on March 17, 1913, in order to have any bearing on this case.

54. There is no evidence in the case that the money of the trust company paid the check for $350 mentioned in the indictment, on March 17, 1913.

55. The indictment alleges an overdraft on March 17, 1913, and unless the jury are satisfied beyond a reasonable doubt that the trust company paid out its money on that date, the verdict must be for acquittal.

Exhibit S-1

Certified copy of authority from the Banking Commissioner for the Roseville Trust Co. to do business.

Exhibit S-2

Copy of certificate of incorporation of the Roseville Trust Co.

Exhibit S-3

(Copy)

Oath of director

(Required by Sec. 12 of Chap. 174, Laws of 1899, as amended by Chap. 191, Laws of 1906.)

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

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.

JOHN B. SCARLETT.

Subscribed and sworn to this
3d day of Feby. A. D. 1913, before me
at Newark, N. J.
Hannah Knowles,
Commissioner of Deeds of N. J.
(Official title)

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.)

GEORGE M. La MONTE,
Commissioner of Banking and Insurance.

Exhibit S-4

Minutes of Roseville Trust Co., dated January 13, 1913 (minute book pages 426-427).

Exhibit S-5

055

Newark, N. J. Mar. 17th, 1913. No. 54

ROSEVILLE TRUST COMPANY

Pay to the order of JOHN B. SCARLETT $350.00

Three Hundred and Fifty Dollars 118 John B. Scarlett.

Certified March 17, 1913.
Roseville Trust Co.
Newark, N. J.

John B. Scarlett

(*Endorsed*) JOHN B. SCARLETT,
Greylock Land Co.,
John B. Scarlett,
Treas.

Exhibit S-6

Individual ledger account of John B. Scarlett in the Roseville Trust Co.

Exhibit S-7

Second page of side book of credits dated December 26, 1910. Showing entry as follows:

"Scarlett J. R. 300."

Exhibit S-8

Side book of debits relating to $450 item.

ROSEVILLE TRU

		DR.	CR.	BALANCE	DAYS	RATE	AGGREGATE
				6 54			
				4 96			
				3 28			
				1 60			
				1 60			
				9 92			
				98 24			
				98 24			
				96 56			
				96 18			
				96 50			
				96 50			
				98 98			
				98 26			
				98 66			
				98 66			
				96 66			
				122			
				122			
				122

Wm. F. CONE
207 MARKET ST., NEWARK, N. J.

EXCHANGES

NATIONAL NEWARK BANKING CO.	3804 11
UNION NATIONAL BANK.	859 40
NATIONAL STATE BANK	13 66
ESSEX CO. NATIONAL BANK	208 83
MERCHANTS NATIONAL BANK	27 73
NORTH WARD NATIONAL BANK.	104 57
MANUFACTURERS NATIONAL BANK	21 -
FIDELITY TRUST CO.	31 50
CITY TRUST CO.	1332 07
FEDERAL TRUST CO.	1857 85
WEST SIDE TRUST CO.	266 71
IRON BOUND TRUST CO.	143 78
POST OFFICE.	66 90
NEWARK TRUST CO.	33 25
AMERICAN NATIONAL BANK	228 83
CLINTON TRUST CO.	6 -
BROAD AND MARKET	3 50
SPRINGFIELD TRUST CO.	10 50
Liberty Trust	150 75

12.00
18.00
406.93
539.22
3.00
100.00
350.00
3.00
4.03
3.00
7.35
2.10
19.80
9.45
6.53
4.28
200.00

1,688.69

TOTAL 8 67094

IND. LEDGERS

	Debits	Credits
	459 43 46	1992 16
	76 10 70	873 48
	2079 84	190 11 38
	1015 77	1840
	671 72	16877 7
13		
	703 21 49	40404 79

RECEIVING TELLER'S PROOF

DEBITS		CREDITS
703 21 49	Individual Deposits	40404 79
1500	" "	
60 841 93 (25)	Paying Teller	12 319 54
1 68869	General Ledger	592 43 16
25 -	Spec. Dep't Credits	2085 50
111 60		
37 83		
913 2 -		
369 35		

Individual Checks
Paying Teller
General Ledger
Sundries
Gold
Silver
Nickels an Pennies
Bills
Spec. Dep't Debits

Special Department

Debits	Credits
100	789 38
169 35	1296 12
100	
369 35	2085 50

Cash variation short this day } 10

Cash variation over this day }

14405 99 14405 99

Wm. F. CONE

Page Return Item Book

Ex S-10

3/18	Para & Mag.	200
	Home Ice	4 28
		6 53
		9 45
		1 80
		2 10
		735
		0 –
		4 03
	Ford	10 –
	Drug	0
	Fresh Cks	2 03
	Nat Cert	23 96
		2 –
		100 –
		43 –
		504
		350
		100

Wm. F. CONE

Exhibits S-9 and S-10

Receiving teller's proof books.

Exhibit S-11

Newark, N. J. Mar. 18, 1913 No. 1375

ROSEVILLE TRUST COMPANY

Pay to the order of UNION NATL. BANK $50654.23 Fifty Thousand Six Hundred Fifty-four and 23/100 Dollars.

R. E. SMITH,
Treasurer.

To the UNION NATIONAL BANK NEWARK, N. J.

Exhibit S-12

Newark, N. J. Mch. 17, 1913.

Dear Mr. Smith,

I find it impossible to get by with out 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.

New Jersey State Library

Exhibit S-13

)55
Newark, N. J. Mch. 4, 1913. No. 51
ROSEVILLE TRUST COMPANY
Pay to the order of JOHN B. SCARLETT $500.00
Five Hundred and 00/100 Dollars.
115
JOHN B. SCARLETT.
Certified Mar. 4, 1913.
Roseville Trust Co.
Newark, N. J.

(*Endorsed*)
John B. Scarlett,
Greylock Land Co.
John B. Scarlett,
Treas.
Pay ESSEX COUNTY NATL. BANK
of Newark, N. J. Or Order
Greylock Land Company,
John B. Scarlett,
Treasurer.

John B. Scarlett

Exhibit S-14

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.

Exhibit S-16

I can scarcely hope to repay your repeated courtesies.

Yours very truly,
JOHN B. SCARLETT.

Exhibit S-15

)55.

John B. Scarlett.

Newark, N. J. Febry. 19, 1913 No. 49
ROSEVILLE TRUST COMPANY
Pay to the order of JOHN B. SCARLETT $400.00
Four Hundred and 00/100 Dollars.
113
JOHN B. SCARLETT.
Certified Feb. 19, 1913.
Roseville Trust Co.
Newark, N. J.

(*Endorsed*)
Pay FIRST NATL. BANK
of E. Newark
or order
John B. Scarlett.

Exhibit S-16

Newark, N. J. Febry. 19th, 1913.

Dear Mr. Smith:
I enc. Zucarelli note $750 also S. R. & C. note $1100.

Exhibit S-17

I will send up J. H. Long note tomorrow with my Statement.

I also enclose check $400 which please be good enough to certify.

I will start in shortly after March 1st to liquidate all these items 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.

Exhibit S-17

000

ewark, N. J. Sept. 13, 19— No. 38

ROSEVILLE TRUST COMPANY

Pay to the Order of H. J. Stanley Tax Collector, $1247.76. Twelve hundred Forty-seven 76/100 Dollars.

103

JOHN B. SCARLETT.

Certified Sept. 13, 1912.
Roseville Trust Co.
Newark, N. J.

John B. Scarlett.

(*Endorsed*)
Pay IRVINGTON NATIONAL BANK
Irvington, N. J. Or order
H. J. Stanley, Collector.

Exhibit S-18

Page 228 of the Bills Purchase book of the Roseville Trust Co., showing entry as follows:
6771 N. R. Sica/Andy Spioza/N. R. Sica/Sept. 1
23/1247.76.

Exhibit S-19

General cash book of the Roseville Trust Co.

Exhibit S-20

Treasurer's check of Roseville Trust Co. to John H. Long for $2475, dated December 22, 1912.

Exhibit S-21

Note of Sica to Long dated February 29, 1913.

Exhibit S-22

Note of Spinoza to Sica for $1247.76.

Exhibit S-23

Smith's duplicate of trust agreement.

Exhibit S-24

Check of Bras D'Or Land Co. to Roseville Trust Co., dated Hartford, Conn. September 19, 1911, for $150.

Exhibit S-25

Check dated Hartford, Conn. September 19, 1911, #1941.

Exhibit S-26

Check book of John B. Scarlett.

Exhibit S-27

(Copy)

Statement of John B. Scarlett

March 15/1913.

Insurance Surrender Value		$ 25000.00
Residence Value $35000		
Less Mtges.	16000	
	19000	
Less Taxes		18400.00

Exhibit S-29

West Orange Lands		
92 Acres Mt. Pleasant Ave.	25000	
10 Acres Cedar Ave.	1500	
1/4 interest in 60 Acres	2000	
Stock on Hand	2000	
	30500	
Less Mtges	8000	22500.00
Sundry Small Real Estate Holdings		10000.00
Middlesex Hat Company Investment		65000.00
Stevenson, Rye & Co. Loans & Investment		60000.00
Nutley Manor J. B. S. 2/3 interest		50000.00
Greylock Manor J. B. S. 2/3 interest		60000.00
Hedden Tract J. B. S. 2/3 "		40000.00
		$350900.00

JOHN B. SCARLETT.

Exhibit S-28

Check of John B. Scarlett to his own order for $500, dated July 23, 1912.

Exhibit S-29

Check dated July 21, 1913, for $82 on Roseville Trust Co.

Exhibit S-30

Check #43 dated January 21, 1913, payable to K. of P. B. & L. Assoc. for $26.

Exhibit S-31

Check #46, dated January 29, 1913, for $50 to the order of T. A. Webb.

Exhibit S-32

Check dated January 29, 1913, #45, for $89.95, to L. V. R. R. Co.

Exhibit S-33

Check dated February 13, 1913, #47, for $125 to N. R. Sica.

Exhibit S-34

Check dated February 15, 1915, #48, for $86.92, to the order of L. V. R. R. Co.

Exhibit S-35

Check dated February 21, 1913, for $400, #50, to the order of John B. Scarlett.

Exhibit S-36

Check dated March 11, 1913, #52, for $100 to the order of John B. Scarlett.

Exhibit S-37

Check dated March 13, 1913, #53, to the order of John B. Scarlett, for $90.

Exhibit S-38

Check dated March 17, 1913, #55, to John B. Scarlett, for $100.

Exhibit S-39

Check of Middlesex Hat Co. drawn on Metuchen National Bank to the order of John B. Scarlett, for $350, dated August 15, 1912.

Exhibit S-40 for Identification

Check drawn on Brooks National Bank, Torrington, Conn., October 23, 1911, to the order of John B. Scarlett, for $650.

Exhibit S-41 for Identification

Check dated Fall River, Mass. October 3, 1911, on B. M. C. Durfee Safe Deposit & Trust Co., for $650, to the order of John B. Scarlett.

Exhibit S-42

Check dated March 21, 1912, on Broad & Market National Bank, to John B. Scarlett for $150.

Exhibit S-43

Check dated December 20, 1912 on Roseville Trust Co. to the order of Cash, signed John B. Scarlett, for $500.

Exhibits S-44 to S-46

Bank letters to Union National Bank.

Exhibit S-47

Outgoing bank letter November 23, 1910.

Exhibit S-48

Outgoing bank letter dated December 10, 1910.

Exhibit S-49

Outgoing letter to Irving National Bank dated December 12, 1910.

Exhibit S-50

Bank letter dated December 13, 1910.

Exhibit S-51

Bank letter dated December 19, 1910.

Exhibit S-52

Bank letter dated December 21, 1910.

Exhibit S-53

Bank letter dated December 22, 1910.

Exhibit S-54

Bank letter dated December 27, 1910.

Exhibit S-55

Bank letter dated December 29, 1910.

Exhibit S-56

Bank lettter dated December 31, 1910.

Exhibit S-57

Bank letter dated January 3, 1911.

Exhibit S-58

Bank letter dated January 4, 1910. (1911).

Exhibit S-59

Bank letter to Union National Bank dated January 9, 1911.

Exhibit S-60

Bank letter to Union National Bank dated January 10, 1911.

Exhibit S-61

Bank letter to Union National Bank dated January 11, 1911.

Exhibit S-62

Bank letter to Union National Bank dated January 16, 1911.

Exhibit S-63

Bank letter to Union National Bank dated January 17, 1911.

Exhibit S-64

Bank letter to Philadelphia, dated January 18, 1911.

Exhibit S-65

Bank letter to Philadelphia, dated January 23, 1911.

Exhibit S-66

Bank letter to Philadelphia, dated January 24, 1911.

Exhibit S-67

Bank letter to Philadelphia, dated March 1, 1911.

Exhibit S-68

Bank letter dated February 7, 1911.

Exhibit S-69

Bank letter dated April 1, 1911.

Exhibit S-70

Return item book of Roseville Trust Co.

Exhibit S-71

Return item book of Roseville Trust Co.

Exhibit S-72

Printed return item slip.

Exhibit S-73

Letter of Fourth Street National Bank of Philadelphia, to Roseville Trust Co., dated January 19, 1911.

Exhibit S-74 for Identification

Letter of Roseville Trust Co. to Fourth Street National Bank, dated January 18, 1911.

Exhibit S-75

Letter of Fourth Street National Bank to Roseville Trust Co., dated January 19, 1911.

Exhibit S-76

General ledger of the Roseville Trust Co.

Exhibit S-77

Individual ledger account of the Middlesex Hat Co. in the Roseville Trust Co.

Exhibits S-78 and S-79

Two bank letters, part of the records of the New York State National Bank. S-79 is the original of which S-65 is the copy.

Exhibit S-80 for Identification

Bank letter, part of the records of the New York State National Bank.

Exhibit S-81

General ledger of the National Bank of New Jersey, at New Brunswick.

Exhibit S-82

Return item book of the Roseville Trust Co., dated April 1, 1911.

Exhibit S-83

Return item book of the Roseville Trust Co., dated April 28, 1911.

Exhibit S-84

Return item book of the Roseville Trust Co., Dated January 31, 1911.

Exhibit S-85

Package of papers containing exchanges between Union National Bank and Roseville Trust Co.

Exhibit S-86

ROSEVILLE TRUST CO.
from
UNION NATIONAL BANK

Jan. 25, 1911.

41.40	13.65	21.75	2700.00	
594.80	20.00	6.08	2000.00	
827.66	12.00	2.00	25.00	
5209.32	5.00	64.34	350.00	
371.80	23.08		5.00	
8.00	122.08	94.17*	19.50	
813.00	.72		40.00	
24.09		30.00		
559.46	181.31	33.00	5139.50*	
	200.00	36.68		
		15.40	1.12	
	577.84*	3.41	8.00	
8449.53*		8.40	18.90	
	40.00	25.00	27.90	
	4.75	2.50	13.90	
	2.52	123.24		
	49.60			
	12.02		5209.32*	
	3.18	371.80*		
	2.10			
	2.75			
	23.03			
	63.16			
	25.25			
	16.80			
	4.66			
	827.66*			

Exhibit S-87

Paying teller's proof book from November 29, 1909, to December 3, 1910 (refer to same items as in S. 84).

Exhibit S-88

No such exhibit found in the record.

Exhibit S-89

Two letters of November 16, 1910, addressed to the Union National Bank.

Exhibit S-90

Paying teller's proof book under date of December 27, 1910.

Exhibit S-91

Package of Roseville Trust Co. letters to different correspondents, all dated December 27, 1910.

Exhibit S-92

Paying teller's proof book of January 3, 1911.

Exhibit S-93

Paying teller's proof book of January 9, 1911.

Exhibits S-94 to S-98 Inclusive

Returned letter books of the Roseville Trust Co.

Exhibit S-99

Charge slip of Roseville Trust Co. dated January 17, 1911.

Exhibit S-100

Charge Slip of Roseville Trust Co. dated January 24, 1911, for $1.68.

Exhibit S-101

Check of Middlesex Hat Co. to the order of Scarlett, dated January 7, 1911, for $2800.

Exhibit S-102

Check of Middlesex Hat Co. to the order of Scarlett, $2,000, dated January 17, 1911.

Exhibit S-103

Check of Middlesex Hat Co. to the order of Scarlett, dated January 17, 1911, for $2000.

Exhibit S-104

Charge slip January 11, 1911.

Exhibit S-105

Charge slip January 4, 1911, for $1.68.

Exhibit S-106

Charge slip for $3.38.

Exhibit S-107

No such exhibit found in the record.

Exhibit S-108

Essex County National Bank deposit slip for $2,000 to the credit of John B. Scarlett.

Exhibit S-109

Slip bearing name National Shawmut Bank, Boston, Mass. March 4, 1911.

Exhibit S-110

Slip bearing name National Shawmut Bank, Boston, Mass. March 6, 1911.

Exhibit S-111

Letter of Roseville Trust Co. to New Jersey State National Bank, dated March 13, 1911.

Exhibit S-112

Telegram dated March 15, 1911, Syracuse, N. Y.

Exhibit S-113

Paper bearing name New York State National Bank, Albany, March 17, 1911.

Exhibit S-114

Letter accompanying oath as director of John B. Scarlett.

Exhibit S-115

Minutes of alleged meeting of directors August 23, 1913.

Exhibit S-116

Minutes of alleged meeting of directors August 25, 1913.

Exhibit S-117

Minutes of alleged meeting of directors August 27, 1913.

Exhibit S-118

Letter of John B. Scarlett, dated August 26, 1911.

Exhibit S-119

Minutes of alleged directors meeting of August 30, 1913.

Exhibits D-1 to D-16 Inclusive

Bunch of deposit slips of John B. Scarlett.

Exhibit D-17

Duplicate deposit slip dated February 8th, 1911, credit John B. Scarlett for $5700.

Exhibit D-18

Check dated February 8, 1911, to the order of John B. Scarlett for $3,000, certified by National State Bank of Newark.

Exhibit D-19

Check of Knauth, Nachod & Kuhn for $2000 to the order of Scarlett, dated November 21, 1910.

Exhibit D-20

Check of Middlesex Hat Co. to the order of Stevenson, Rye & Co. for $1,000, dated November 19, 1910.

Exhibit D-21

Check of Middlesex Hat Co. to the order of Stevenson, Rye & Co. for $1,000 dated November 19, 1910.

Exhibit D-22

Duplicate deposit slip to the credit of Scarlett $525, dated July 21, 1911.

Exhibit D-23

Pass book of John B. Scarlett.

Exhibit D-24

Half dozen pages in the A-L ledger.

Exhibit D-25

About five pages in the M-Z ledger.

Exhibit D-26

055

Newark, N. J. Oct. 25, 1912 No.

ROSEVILLE TRUST COMPANY

Pay to the order of JOHN B. SCARLETT $4200 00

Forty two Hundred and 00/100 Dollars

104

R E. SMITH.

Exhibit D-27

Certified Oct. 25, 1912.
Roseville Trust Co.
Newark, N. J.

(*Endorsed*) John B. Scarlett.
Bras D'Or Land Co.
John B. Scarlett,
Treas.

Exhibit D-27

Wm. P. Odell, President
Wm. Fairlie, 1st Vice Pres.
H. W. Foster, 2d Vice Pres.
Raymond E. Smith, Secy-Treas.

ROSEVILLE TRUST COMPANY

Newark, N. J. Oct. 25, 1912.

In consideration of certain sums of money amounting to ninety-seven hundred & 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 Benefit B. & L. Ass'n of Newark, N. J. and the Central B. & L. Ass'n of Belleville, N. J. from loans on properties owned by the Ridgewood Land Company and part of the Grey Lock Manor.

(Signed) JOHN B. SCARLETT.

Witness:
W. J. Thompson.

Exhibit D-28

Trust agreement, signed by Scarlett, Sica an and Smith.

Exhibit 29

(*Duplicate of trust agreement*)

To all to whom these presents shall come:

I, Nicholas R. Sica, of the City of Newark, County of Essex and State of New Jersey, sends Greeting:

WHEREAS, on the 4th day of October, 1912, John B. Scarlett personally conveyed to the said Nicholas R. Sica, a certain tract of land, situated in the City of Newark, County of Essex and State of New Jersey, more particularly described as follows:

Beginning at a point in the Westerly line of Johnson Avenue distant Southerly Five Hundred Twenty-two feet and Seventy-five Hundredths of a foot (522 75/100) from the intersection of the same with the Southerly line of Clinton Avenue. Thence (1) along the Westerly line of Johnson Avenue South 22° 40′ West Ninety-eight feet (98); thence (2) North 76° 55′ West One Hundred Fifty feet (150); thence (3) North 22° 40′ East Ninety-eight feet (98); thence (4) South 76° 55′ East One Hundred Fifty feet (150) to the point and place of beginning.

Now, Know Ye, that I, the said Nicholas R. Sica, in consideration of One Dollar ($1) to me in hand paid by Raymond E. Smith and John B. Scarlett,

both of the City of Newark, County of Essex and State of New Jersey, hereby make known, admit and declare that the said premises were so conveyed to me and that I now hold and will continue to hold the same in trust only for the uses and benefits of the said Raymond E. Smith and John B. Scarlett, under the terms and conditions which appear below and that I, Nicholas R. Sica, have no beneficial interest therein.

The conditions under which this declaration of trust is given are as follows: That the said Raymond E. Smith has advanced to John B. Scarlett the sum of Ninety-seven Hundred Dollars ($9700) and this conveyance is made to the said Nicholas R. Sica, in trust, as security for the said Raymond E. Smith, and upon the payment, by the said John B. Scarlett to Raymond E. Smith of the amount of money so advanced together with the interest thereon, the said Nicholas R. Sica hereby agrees to convey the said property back to the said John B. Scarlett or to any other party that he may name.

It is understood between all the parties of this agreement that the said property is subject to a first mortgage, held by the Franklin Savings Bank, for $12000 and a second mortgage, held by David Goldsmith, for $4000.

In Witness Whereof, the said Nicholas R. Sica, Raymond E. Smith and John B. Scarlett have signed, sealed and delivered these presents this 25th day of October, 1912.

NICHOLAS R. SICA.
JOHN B. SCARLETT.
RAYMOND E. SMITH.

Exhibit D-30

Same as Exhibit S-21.

Exhibit D-31

Same as Exhibit S-22.

Exhibit D-32

Notice of protest for $1.68.

Exhibit D-33

Notice of protest for $3.16.

Exhibit D-34

No such exhibit found in the record.

Exhibit D-35

No such exhibit found in the record.

Exhibit D-36

Paper signed by Caroline L. Scarlett, transferring her interest in Johnson Ave property to N. R. Sica.

Exhibit D-37

Letter dated February 3, 1913, which accompanied Scarlett's oath as director (S. 3).

Exhibit D-38

Minutes of executive committee of Roseville Trust Co., dated December 30, 1912.

Exhibit D-39 for Identification

Proof of claim by the Roseville Trust Co. against the estate of Raymond E. Smith, in bankruptcy.

Exhibit D-40

Minute book of the Roseville Trust Co.

Exhibit D-41

Minutes of the executive committee of the Roseville Trust Co.

Exhibit D-42

Letter of the banking department to Scarlett, dated January 29th, 1914.

Exhibits D-43 to D-59 Inclusive

Reports of the Roseville Trust Co. to the Commissioner of Banking and Insurance.

Exhibit D-60

Slip dated November 23, 1910, showing charge against Scarlett for two items of $1.58 and $3.16 each.

Exhibit D-61

Charge slip December 31, 1910, against Scarlett for $801.58.

Exhibit D-62

Protest dated December 30, 1910, referring to check of December 27, 1910, for $2,000 made by Middlesex Hat Co.

Exhibit D-63

Charge slip dated January 24, 1910, for $1.58 stamped "paid".

Exhibit D-64

Check of December 27th, 1910, for $2,000 made by Middlesex Hat Co. to Scarlett.

Exhibit D-65

Protest dated January 6, 1911, referring to check of $2,000 dated January 3, 1911, made by Middlesex Hat Co.

Exhibit D-66

Check of Middlesex Hat Co., dated January 3, 1911, for $2,000, to the order of Scarlett.

Exhibit D-67

Note of Zucarelli, dated February 13, 1913, for $500, to order of N. R. Sica.

Exhibit D-68

Note of Zucarelli, dated February 13, 1913, for $750, to order of N. R. Sica.

Assignments of Error

(*Filed*)

NEW JERSEY SUPREME COURT

STATE, vs. JOHN B. SCARLETT,	On error to Essex County Oyer and Terminer. On Indictment for Overdraft.

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 County Oyer and Terminer, and the 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 at the close of the state's case, although requested so to do, refused to direct a verdict in favor of the defendant

2. Because the trial judge, at the close of the whole case, although requested so to do, refused to direct a verdict in favor of the defendant.

3. Because the trial judge permitted the state, over the objection of the defendant's attorney, to ask the witness Smith the following question: "Would you eventually check it up?"

4. Because the trial judge permitted the state, over the objection of the defendant's attorney, to ask the witness Mindnich the following question: "Mr. Smith ran that bank?".

5. Because the trial judge refused to permit the defendant's attorney to ask the witness Mindnich the following question: "Isn't it a fact that Mr. Smith manipulated the account of the trust company by sometimes crediting to one man's account moneys which had really been deposited to another's account?".

6. Because the trial judge, over the objection of the defendant's attorney, admitted in evidence the ledger account, Exhibit S-6.

7. Because the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "My question is whether this debit book is not written up in the ledger, and if the two ought not to balance?".

8. Because the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "In the interval, what was the condition of his account as to his balance?".

9. Because the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "How much?".

10. Because the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "What was the condition of the account on the 14th?".

11. Because the trial judge permitted the state to ask the witness Mindnich, over the objection of

defendant's attorney, the following question: "Come on down to the 15th and 16th, and on down to the 19th."

12. Because the trial judge denied the defendant's motion to strike out the answer "Yes, sir," to the following question asked the witness Mindnich: "In case Scarlett's account was credited with the proceeds of a note, would that usually be entered on the deposit slip?".

13. Because the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "Then standing by itself it is not an unusual thing in banking for an account to be overdrawn some time, is it?".

14. Because the trial judge denied the motion of the defendant's attorney to strike out the evidence of the witness Mindnich, who testified from certain books with reference to a $450 cross extry, and a $300 item of December, 1912.

15. Because the trial judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "The question is whether that check was paid by the Roseville Trust Company."

16. Because the trial judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "The total of sundries here is considerably in excess of the amount of this particular check, S-5, is it not?".

17. Because the trial judge permitted the state

of the defendant's attorney, admitted in evidence Exhibits S-9 and S-10.

18. Because the trial judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "I want to know whether that check was paid by the Roseville Trust Company, and if so, in what way, and on what day?"

19. Because the trial judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "What do the books show?".

20. Because the trial judge refused to strike out the answer of the witness Thompson: "Yes; the check has been paid," to the question asked by the Court: "Has it been paid, or not."

21. Because the trial judge permitted the state to ask the witness Thompson, over the objection of defendant's attorney, the following question: "That does not pay it."

22. Because the trial court refused to permit the defendant's attorney to ask the witness Thompson the following question, on cross-examination: "Presumably if a charge slip is not made out, and an entry is made in the certified check book, the check was never certified, is not that right? ".

23. Because the trial court refused to permit the defendant's attorney to ask the witness Thompson the following question, on cross-examination: "As a matter of fact the check was put in some private drawer of which Mr. Smith had the key, was not it?".

24. Because the trial judge refused to strike out the testimony of the witness Thompson, that the check for $350, mentioned in the indictment, had been paid at the request of the defendant's attorney, on the ground that it was his conclusion.

25. Because the trial judge refused to permit the defendant's attorney to ask the witness Thompson on cross-examination the following question: "And when a depositor receives his book balanced in an ordinary case, he has a right to think that that contains all the vouchers charged against him, does he not?".

26. Because the trial judge refused to permit the defendant's attorney to ask the witness Thompson on cross-examination the following question: "And it is also true, is it not, that the records of the bank are inaccurate?".

27. Because the trial judge refused to permit the defendant's attorney to ask the witness Thompson on cross-examination the following question: "As a matter of fact were not checks held in the sundries by order of Mr. Smith?".

28. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-11.

29. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-5.

30. Because the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "What items had you taken care of, what do you mean by that?".

31. Because the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "Why not?".

32. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-13.

33. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-14.

34. Because the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "Did you certify the check which accompanied that letter?".

35. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-15.

36. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-16.

37. Because the trial judge refused to permit the defendant's attorney, on cross-examination, to ask the witness Smith the following question: "More than several—were you in the habit, as treasurer of this trust company, of certifying checks on the accounts of various individuals, and which accounts did not have sufficient funds, and having them go through this process of being kept in the teller's cash, and that sort of thing?".

38. Because the trial judge refused to permit the defendant's attorney, on cross-examination,

to ask the witness Smith the following question: "If you paid the money yourself, that was not the first time you had done that, was that?".

39. Because the trial judge refused to strike out the answer of the witness Smith, "It came into my possession as treasurer of the institution, some time in July or August 1912," in answer to the question of the defendant's attorney on cross-examination: "I don't care whether it is personal or impersonal; when it came to your physical possession?".

40. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination: "And is not it true that the amount of that note was one of the items which went to make up the total stated in the paper D-28."?.

41. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination: "That is a continuation of an earlier note of series of notes, is it not?"

42. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination, the following question: "Where did you keep that note Mr. Smith, the one that you have identified?".

43. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination, the following question: "Where did you keep this note after it was delivered to you, or the predecessor note which began the series?".

44. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination, the following question: "You said the first day that you were on the stand, that you were serving a sentence in State's prison, growing out of an indictment in connection with your conduct as treasurer of the Roseville Trust Company. How long is that sentence?".

45. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination, the following question: "Is not it a fact that the total which is stated in the paper, D-28 for identification which you identified yesterday, includes the amount of that note?"

46. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination, the following question: "And is not it a fact that the total mentioned in the letter in your handwriting signed by Mr. Scarlett and marked D-27 for identification, includes the same amount of that note?".

47. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination, the following question: "And isn't it a fact that the $2,500 note, D-30 for identification, or rather the amount of that note, is included in the total just stated in those two exhibits for identification, D-27 and D-28?"

48. Because the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross-examination, the following question:

"Now I ask you if it was paid in one of the ways in which you said the Exhibit S-5 was paid, which was either by your personal money, or by the money of some other depositor or by being charged to the account of some other depositor or to some other bank?".

49. Because the trial judge admitted in evidence, over the objection of defendant's attorney, the Exhibit S-17.

50. Because the trial judge permitted the state, over the objection of defendant's attorney, to ask the witness Smith the following question: "On September 13, 1912, what was Mr. Scarlett's balance in the Roseville Trust Company, as shown by his ledger account?".

51. Because the trial judge permitted the state, over the objection of defendant's attorney, to ask the witness Stanley the following question: "I show you a check marked S-17, being a check for $1,247.76, bearing the name of John B. Scarlett, payable to H. J. Stanley, Tax Collector, and ask you whether you have seen that check before."

52. Because the trial judge permitted the state, over the objection of defendant's attorney, to ask the witness Stanley the following question: "Was the check deposited by you?".

53. Because the trial judge refused to permit the defendant's attorney to ask him the following question: "I call your attention to the ledger entries in November, 1910, being S-6, and I ask you if there are any figures there amounting to $4,000?".

54. Because the trial judge refused to permit the defendant's attorney to ask him the following question: "What did you say to him and what did he say to you about it when that book was handed over?".

55. Because the trial judge refused to permit the defendant's attorney to ask the witness Southerland the following question: "Has this claim to which you have been referred been allowed by the Referee?".

56. Because the trial judge refused to admit in evidence the defendant's Exhibit D-39 for identification, setting forth the amount of the claim of the Roseville Trust Company against Raymond D. Smith.

57. Because the court permitted the state, on cross-examination of the defendant Scarlett, to ask him the following question, over the objection of defendant's attorney: "Look under date of January 31, 1911, and see if it shows a charge of $2,001.60."

58. Because the trial judge denied the motion of the defendant's attorney to permit the defendant on cross-examination to make answer to the following question: "And those are the same figures that appear as a balance in your check book stub, opposite the date May 17, 1911, are they not?".

59. Because the trial judge permitted the State's attorney to ask the defendant, on cross-examination, the following question: "Now at that time did you make any complaint to him about this alleged discrepancy?".

60. Because the trial judge permitted the State's attorney to ask the defendant, on cross-examination, the following question: "Have they been paid by you individually?".

61. Because the trial judge permitted the State's attorney to ask the defendant, on cross-examination, the following question: "Had you been keeping up your notes on your $10,000, loan at that time, July, 1912?".

62. Because the trial judge permitted the State's attorney to ask the defendant, on cross-examination, the following question: "Up to the time the $350 check, which is the check in the indictment, was certified and paid, had you paid the note of $10,000, held by the Trust Company?".

63. Because the trial judge permitted the State's attorney to ask the defendant, on cross-examination, the following question: "Did you use it?"

64. Because the trial judge permitted the State's attorney to ask the defendant, on cross-examination, the following question: "Drawn against your account in the Roseville Trust Company?".

65. Because the trial judge permitted the State's attorney to ask the defendant, on cross-examination, the following question: "And whether it is a check drawn against your account in the Roseville Trust Company?".

66. Because the trial judge refused to permit the defendant's attorney to ask him the following question: "What was your object in calling up-

on Mr. Fraser with this letter?", referring to Exhibit D-42.

67. Because the trial judge admitted in evidence over the objection of defendant's attorney, Exhibit S-44.

68. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-45.

69. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-46.

70. Because the Court permitted the state to ask the witness Hicks, over the objection of defendant's attorney, the following question: "I desire to ask you a further question about the collection of checks. I want to know whether it is not a fact that you did use this form of letter in sending out collection items, and whether you did not write on the bottom of the letter 'for collection'?".

71. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-47.

72. Because the trial judge permitted the state to ask the witness Hicks, over the objection of defendant's attorney, the following question: "I ask you to explain that?".

73. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-48.

74. Because the trial judge permitted the State to ask the witness Hicks, over the objection of

defendant's attorney, the following question: "I call your attention to the last two items in Exhibit S-48, what are they?".

75. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-49.

76. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-50.

77. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-50.

78. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-52.

79. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-54.

80. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-55.

81. Because the trial judge admitted in evidence over the objection of defendant's attorney, Exhibit S-56.

82. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-57.

83. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-58.

84. Because the trial judge admitted in evi-

dence, over the objection of defendant's attorney, Exhibit S-59.

85. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-60.

86. Because the trial judge admitted in evidence over the objection of defendant's attorney, Exhibit S-61.

87. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-62.

88. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-63.

89. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-64.

90. Because the trial judge refused to permit the defendant's attorney to ask the witness Hicks, on cross-examination, the following question: "How do you explain your bank's sending up to Albany a check drawn on a Metuchen Bank, and not through the Union National Bank?"

91. Because the trial judge refused to permit the defendant's attorney to ask the witness Hicks, on cross-examination, the following question: "Can you give the location of any bank in New Jersey that clears through the New York State Bank at Albany?".

92. Because the trial judge admitted in evidence Exhibit S-66 over the objection of defendant's attorney.

93. Because the trial judge admitted in evidence Exhibit S-68, over the objection of defendant's attorney.

94. Because the trial judge admitted in evidence Exhibit S-69 over the objection of defendant's attorney.

95. Because the trial judge admitted in evidence Exhibit S-70 over the objection of defendant's attorney.

96. Because the trial judge admitted in evidence Exhibit S-71 over the objection of defendant's attorney.

97. Because the trial judge admitted in evidence Exhibit S-72 over the objection of defendant's attorney.

98. Because the trial judge admitted in evidence Exhibit S-75 over the objection of defendant's attorney.

99. Because the trial judge refused to permit the defendant's attorney to ask the witness Mindnich, upon cross-examination, the following question: "And the only reason why you can take it and point out a similarity is because you find a similarity in figures, is that it?".

100. Because the trial judge refused to permit the defendant's attorney to ask the witness Mindnich, upon cross-examination, the following question: "Are the entries in the individual ledger made by you about John B. Scarlett accurate?".

101. Because the trial judge admitted in evi-

dence, over the objection of defendant's attorney, Exhibit S-76.

102. Because the trial judge permitted the witness Litterst to use a memorandum, made Monday or Tuesday previous, while testifying.

103. Because the trial judge refused the defendant's motion to strike out the answer of the witness Litterst—"I refreshed my mind from the memorandum," in answer to the question—"You are now reading from the memorandum."

104. Because the trial judge permitted the state to ask the witness Litterst, over the objection of the defendant's attorney, the following question: "Now I ask you whether out of that deposit the two checks which I now present to you of the Middlesex Hat Company of $1,000 each, both of them dated November 21, 1910, being Exhibits D-20 and D-21, were not paid out of that deposit made on November 21, 1910?".

105. Because the trial judge permitted the state to ask the witness Litterst, over the objection of defendant's attorney, the following question: "I ask you if there were any other funds except this deposit of November 21, 1910, out of which those two checks could have been paid?".

106. Because the trial judge permitted the witness Litterst to testify from a memorandum not kept by himself, but by the bookkeeper.

107. Because the trial judge admitted in evidence Exhibit S-77, over the objection of defendant's attorney.

108. Because the trial judge refused to permit

defendant's attorney to ask the witness Litterst, on cross-examination, the following question: "And did that statement show the cash in banks?".

109. Because the trial judge admitted in evidence Exhibit S-82, over the objection of defendant's attorney.

110. Because the trial judge admitted in evidence Exhibit S-83, over the objection of defendant's attorney.

111. Because the trial judge admitted in evidence Exhibit S-84, over the objection of defendant's attorney.

112. Because the trial judge admitted in evidence Exhibit S-85, over the objection of defendant's attorney.

113. Because the trial judge admitted in evidence Exhibit S-86, over the objection of defendant's attorney.

114. Because the trial judge denied the motion of defendant's attorney to strike out the evidence of the witness Badger.

115. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-87.

116. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-89.

117. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-90.

118. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-91.

119. Because the trial judge permitted the state to ask the witness Jennings, over the objection of defendant's attorney, the following question: "Why not?".

120. Because the trial judge permitted the state to ask witness Jennings, over the objection of defendant's attorney, the following question: "Were they paid, or either of them, by the bank upon which they were drawn?".

121. Because the trial judge admitted in evidence Exhibit S-108, over the objection of defendant's attorney.

122. Because the trial judge permitted the witness Smith to testify from certain machine lists not made by him.

123. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-109 and Exhibit S-110.

124. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-111.

125. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-112.

126. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-113.

127. Because the trial judge permitted the state

to ask the witness Smith, over the objection of defendant's attorney, the following question: "In view of your official connection with the bank, the Roseville Trust Company, and your familiarity with Mr. Scarlett's account, and by referring to the books of the bank, will you tell us whether or not it is true, as claimed by Mr. Scarlett, that on or about February 4, 1911, he was entitled to a credit balance of from $4,000 to $6,000?".

128. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-114.

129. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-27.

130. Because the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "There has been reference to a Stevenson Rye Company note which the bank had purchased Had that note been paid at the time the bank failed?".

131. Because the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "Now, each time that they came back, if they hadn't been sent out again and had been charged up to his account, what would his account have shown as to his balance?".

132. Because the trial judge permitted the state to ask the witness Lurich, over the objection of defendant's attorney, the following question: "After the failure of the Trust Company were there any meetings of directors of the Trust Company?".

133. Because the trial judge permitted the state to ask the witness Lurich, over the objection of defendant's attorney, the following question: "And you sent a notice to Mr. Scarlett?".

134. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-115.

135. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-116.

136. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-117.

137. Because the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-119.

138. Because the trial judge permitted the state to ask the witness Ferguson, over the objection of defendant's attorney, the following question: "I show you check of John B. Scarlett, dated March 4, 1913, $500 being Exhibit S-13, and ask you what the books and records of the Roseville Trust Company show was the condition of his account on the date of the certification of that check?".

139. Because the trial judge permitted the state to ask the witness Ferguson, over the objection of defendant's attorney, the following question: "I show you check dated February 19, 1913, made by John B. Scarlett, check for $400 certified February 19, 1913, being Exhibit S-15, and ask you what was the condition of his account the day that check was certified?".

140. Becaues the trial judge permitted the state to ask the witness Ferguson, over the objection of defendant's attorney, the following question: "Are you able to say whether it was paid?".

141. Because the trial judge refused to permit the defendant's attorney to ask the witness Ferguson, on cross-examination, the following question: "Have you examined the books of the Roseville Trust Company to ascertain whether or not Mr. Scarlett was entitled to the credit of these two checks?".

142. Because the trial judge erred in his charge to the jury, in charging them as follows:

> "At this point I desire to point out to you that the effect of such certification is to create an obligation on the part of the bank certifying it. On this subject the Supreme Court of the United States has said: 'By the law merchant of this country the certificate of the bank that a check is good is equivalent to acceptance. It implies that the check is drawn upon sufficient funds in the hands of the drawee, that they have been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment. It is an undertaking that the check is good then and shall continue good and this agreement is as binding on the bank as its notes of circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume. The object of certifying a check, as regards both parties, is to

enable the holder to use it as money. The transferee takes it with the same readiness and sense of security that he would take the notes of the bank. It is available also to him for all the purposes of money. Thus it continues to perform its important functions until in course of business it goes back to the bank for redemption and is extinguished by payment. It cannot be doubted that the certifying bank intended these consequences, and it is liable accordingly. To hold otherwise would render these important securities only a snare and a delusion.'

"A bona fide holder of such a check, though fraudulently issued, can collect, and there is evidence in this case indicating that the check paid by the Roseville Trust Company. The fact that the check of $50,654.23 was paid by the Roseville Trust Company to the Union National Bank March 18, 1913, does not, standing alone, necessarily establish such payment, but there is evidence in this case that it was paid by that check—that is to say, the check of $350 was paid by this check of $50,654.23."

143. Because the trial judge erred in his charge to the jury in charging them as follows:

"One of the important and, in fact, essential questions in this case is whether he was in fact a director, for if he was not, the charge of the State necessarily falls. He executed the oath of a director in which he declared himself to be such on the 3d day of

February, 1913. It is true that he apparently attended no meetings from then on until the closing of the bank, but he did attend meetings of the Board of Directors after the close of the bank, held for the purpose of reorganization, or, as one witness has put it, of rehabilitating the bank. He testifies that he resigned, and produces a carbon copy of a letter of resignation which he says was sent with his oath of office. There is, however, no evidence that this letter was ever received by the Board of Directors. There is evidence that he discussed the question of his continuing as a director with certain members of the board at one of their meetings, but, in the face of his oath of office, and the fact that he did subsequently attend meetings of the board after the company closed its doors, can he now, when charged with the responsibilities of the office and the consequences of his acts as such director, be heard to say that he was not, at the time in question, a director in fact? As a matter of law, I charge you that a person eligible to act as a director, who was duly elected to such office and qualified by subscribing the oath of office, thereby accepts the office, becomes a director, and is charged with the responsibilities of the office. The question whether he subsequently resigned and thereby relieved of such responsibility is a disputed question of fact in this case to be determined by you from the evidence before you.

The suspension of the business of the trust company through its failure did not thereby vacate the offices of the directors."

144. Because the trial judge erred in his charge to the jury as follows:

"In brief, he says that no overdraft in fact occurred. An overdraft arises when a customer of a bank draws from that bank more money than he has to his credit in the bank. It is not material whether the account was actually overdrawn for $350 if, in fact, it was overdrawn by the defendant on the day in question knowingly. The essence of the offense is the overdraft, and not the amount."

145. Because the trial judge refused to charge the defendant's request as follows:

"(1) There should be a verdict of acquittal for the defendant."

146. Because the trial judge refused to charge the defendant's request to charge as follows:

"(4) Reasonable doubt is such doubt as makes the jury hesitate as to the correctness of its conclusions."

147. Because the trial judge refused to charge the defendant's request as follows:

"(5) The burden of proof is on the prosecution to show the guilt of the defendant beyond a reasonable doubt, and such burden remains with the prosecution throughout its case and throughout the defendant's case, and the burden of proof never shifts."

148. Because the trial judge refused to charge the defendant's request as follows:

"(8) If the jury find that he overdrew his account knowingly but not wilfully, the verdict must be for the defendant. The jury must find beyond a reasonable doubt that the account was overdrawn both wilfully and knowingly before there can be a conviction."

149. Because the trial judge refused to charge the defendant's request as follows:

"(9) The statute makes it a high misdemeanor for a director of a trust company to knowingly overdraw his account, and unless the jury are satisfied beyond a reasonable doubt that the defendant did in fact overdraw his account to the amount stated in the indictment, the verdict must be for the defendant."

150. Because the trial judge refused to charge the defendant's request as follows:

"(10) Any overdraft of a sum less than $350 will not satisfy the burden of proof which the law casts upon the prosecution, and if the jury find that there was in fact a balance in the account of March 17, 1913, in favor of the defendant, the verdict must be for an acquittal."

151. Because the trial judge refused to charge the defendant's request as follows:

"(11) The evidence shows that the check stated in the indictment was not in fact charged to the defendant's account on the books of the trust company, and unless the

jury are satisfied by credible evidence beyond a reasonable doubt that the account was in fact overdrawn, to the amount of $350 on March 17, 1913, there must be a verdict for acquittal."

152. Because the trial judge refused to charge the defendant's request as follows:

"(12) The evidence of the defaulting treasurer, Mr. Smith, is not sufficiently credible upon which to found a conviction."

153. Because the trial judge refused to charge the defendant's request as follows:

"(13) The evidence contained in the records of the bank, standing by themselves, are not sufficiently credible upon which to found a conviction."

154. Because the trial judge refused to charge the defendant's request as follows:

"(14) The evidence of the former teller, Thompson, standing by itself, is not sufficiently credible upon which to found a conviction."

155. Because the trial judge refused to charge the defendant's request as follows:

"(15) The jury are not entitled to find a verdict of guilty upon the evidence contained in the books and records of the bank as supported by the evidence of Messrs. Smith and Thompson."

156. Because the trial judge refused to charge the defendant's request as follows:

"(16) Unless the evidence contained in the records of the bank is corroborated by

some credible evidence beyond the testimony of Messrs. Smith and Thompson which satisfies the jury beyond a reasonable doubt that the defendant is guilty as charged, there must be a verdict of acquittal."

157. Because the trial judge refused to charge the defendant's request as follows:

"(17) Unless the jury are satisfied by other credible evidence beyond a reasonable doubt that the defendant is guilty as charged, the defendant ought not to be convicted upon the evidence contained in the records of the bank, as explained by the State's witnesses Smith and Thompson."

158. Because the trial judge refused to charge the defendant's request as follows:

"(19) In weighing the evidence contained in the records of the bank, the jury will take into consideration that those records or some of them are admitted by the State's witnesses to be inaccurate."

159. Because the trial judge refused to charge the defendant's request as follows:

"(20) In weighing the evidence contained in the records of the bank, the jury will take into consideration that the entries were made under the general direction of the treasurer, Smith, who is a self-confessed criminal, and that the entries were made by clerks who were under the domination of Smith, and subordinate to his will and direction."

160. Because the trial judge refused to charge the defendant's request as follows:

> "(21) In weighing the evidence contained in the records of the bank, the jury will also take into consideration that some of the entries were made by the witness Thompson, who is a self-confessed criminal, and by the witness Mindnich, who refused to answer proper questions for fear the answers would incriminate him."

161. Because the trial judge refused to charge the defendant's request as follows:

> "(22) Unless the jury find beyond a reasonable doubt that the trust company paid the check mentioned in the indictment, there was no overdraft of the account by the said check."

162. Because the trial judge refused to charge the defendant's request as follows:

> "(23) The evidence is that the check mentioned in the indictment was paid either by the treasurer, Smith, personally, or by some other person's cash, or by being charged to the account of some depositor or other bank, and unless the jury find from credible evidence in the case, beyond a reasonable doubt, that the check was in fact paid by the Roseville Trust Company, the charge of the indictment has not been made out, and there must be a verdict for acquittal."

163. Because the trial judge refused to charge the defendant's request as follows:

"(25) The entries which were ordinarily made in the records of the bank in connection with the certification of a check were not made in connection with the certification of the check mentioned in the indictment, and there is no credible evidence that the trust company as such knew of the certification of the check."

164. Because the trial judge refused to charge the defendant's request as follows:

"(26) Any knowledge which the treasurer, Smith, may have had as to the certification of the check was not the knowledge of the trust company."

165. Because the trial judge refused to charge the defendant's request as follows:

"(27) In any conflict of evidence between the State's witness Smith and the defendant, the defendant is entitled to be believed as being the more credible of the two."

166. Because the trial judge refused to charge the defendant's request as follows:

"(33) Any overdrafts by the defendant on any day previous to March 17, 1913, have no bearing on this case and are to be excluded by the jury."

167. Because the trial judge refused to charge the defendant's request as follows:

"(35) Any evidence tending to show that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the

amount of the check stated in the indictment, comes from the records of the bank, supplemented by the testimony of Messrs. Smith and Thompson, and the jury must be satisfied by other credible and corroborating evidence beyond a reasonable doubt that said check paid to the Union National Bank did in fact include the amount of the check stated in the indictment before the jury can find that the amount of said check was so in fact included."

168. Because the trial judge refused to charge the defendant's request as follows:

"(36) The records of the bank which were admitted in evidence for the purpose of showing that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the amount of the check stated in the indictment, nowhere specifically referred to said check, and said records are meaningless without the explanation given in the testimony of Messrs. Smith and Thompson, who are self-confessed criminals and whose testimony is not entitled to full faith and credit."

169. Because the trial judge refused to charge the defendant's request as follows:

"(37) The records of the bank which were admitted in evidence for the purpose of showing that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18,

1913, included the amount of the check stated in the indictment nowhere specifically referred to said check, and unless the jury find that the evidence of Messrs. Smith and Thompson, interpreting said records, is corroborated by some credible evidence, so as to establish beyond a reasonable doubt that said check so paid to the Union Nation Bank did in fact include the amount of the check stated in the indictment, the jury are not entitled to conclude that said check paid to the Union National Bank did in fact include the amount of the check stated in the indictment."

170. Because the trial judge refused to charge the defendant's request as follows:

"(38) Unless the jury find by some credible evidence other than that of the records of the bank, as supplemented by the testimony of Smith and Thompson, that the money of the Roseville Trust Company, paid to the Union National Bank by the check for $50,654.23 dated March 18, 1913, included the amount of the check stated in the indictment, there must be a verdict of acquittal."

171. Because the trial judge refused to charge the defendant's request as follows:

"(39) There is no credible evidence tending to prove that the check dated March 18, 1913, for $50,654.23 paid by the Roseville Trust Company to the Union Nation Bank included the amount of the check stated in the indictment."

172. Because the trial judge refused to charge the defendant's request as follows:

"(40) The evidence contained in the records of the bank, as supplemented by the testimony of Messrs. Smith and Thompson, tending to show that the check for $50,654.23 dated March 18, 1913, paid by the Roseville Trust Company to the Union Nation Bank, is not corroborated by any credible evidence, and the charge of an overdraft has not been proved and there must be a verdict of acquittal."

173. Because the trial judge refused to charge the defendant's request as follows:

"(42) Evidence of good character may of itself create a reasonable doubt where otherwise no reasonable doubt would exist, and should the jury conclude from the evidence that the defendant has borne a reputation for good character, they must rquire a greater degree of certainty in the proof that he knowingly overdrew his account than would be required if there was no such evidence of good character."

174. Because the trial judge refused to charge the defendant's request as follows:

"(46) The resignation of the defendant as a director of the Roseville Trust Company by the terms of the letter of February 3, 1913 (D-37) addressed to the directors by him, stated that he signed the report referred to in said letter with the understanding that his resignation take effect immediately after, and if the jury find

as a fact that he did sign the report mentioned in the said letter, then his resignation did take effect and he was not a director at the time charged in the indictment, and there must be a verdict for acquittal."

175. Because the trial judge refused to charge the defendant's request as follows:

"(47) Under the terms of the letter of February 3, 1913, addressed by the defendant to the directors of the Roseville Trust Company, D-37 in evidence, it is immaterial whether the resignation therein referred to was accepted by the directors or not if the jury find that the defendant did in fact sign the report mentioned in the said letter."

176. Because the trial judge refused to charge the defendant's request as follows:

"(48) It is absolutely essential to the State's case that they satisfy the jury beyond a reasonable doubt that the defendant was a director of the Roseville Trust Company on the 17th day of March, 1913."

177. Because the trial judge refused to charge the defendant's request as follows:

"(49) If the jury find that the paper referred to as a report in the letter addressed by the defendant on February 3, 1913, to the directors of the Roseville Trust Company, (D-37 in evidence) was in fact the oath of the defendant as director (Exhibit S-3) and that the word 'report' in said letter refers to said oath, and that the oath

was in fact signed by the defendant, then his resignation did take effect and he was not a director at the time charged in the indictment and there must be a verdict for acquittal."

178. Because the trial judge refused to charge the defendant's request as follows:

"(53) If the jury find that the money of the trust company did in fact pay the check for $350 mentioned in the indictment, such payment must have been made on March 17, 1913, in order to have any bearing on this case."

179. Because the trial judge refused to charge the defendant's request as follows:

"(54) There is no evidence in the case that the money of the trust company paid the check for $350 mentioned in the indictment, on March 17, 1913."

180. Because the trial judge refused to charge the defendant's request as follows:

"(55) The indictment alleges an overdraft on March 17, 1913, and unless the jury are satisfied beyond a reasonable doubt that the trust company paid out its money on that date, the verdict must be for acquittal."

McCARTER & ENGLISH,
Attorneys and of Counsel
with Plaintiff in Error.

Judge's Certificate

ESSEX COUNTY OYER AND TERMINER

THE STATE, vs. JOHN B. SCARLETT.	On Indictment for Overdrawing Account as Director.

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. Scarlett, on indictment for overdrawing account as Director.

H. V. OSBORNE.
J.

Causes of Reversal.

Filed April 15, 1916.

New Jersey Supreme Court.

THE STATE, *Defendant in Error,* *vs.* JOHN B. SCARLETT, *Plaintiff in Error.*	*On Indictment for Overdraft.* *On Writ of Error to the Essex Oyer and Terminer.* *Causes of Reversal.*

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:

1. Because the trial judge refused to charge the following request submitted by the defendant:

> "31. If the jury find that by an accurate stating of the account, regardless of the entries in the records of the bank, the defendant did actually have any balance in his favor, there was no overdraft of the account to the amount of the check stated in the indictment by the defendant knowingly, and the verdict must be for acquittal."

2. Because the plaintiff in error suffered manifest wrong and injury in the charge of the trial judge and particularly as follows:

> "The defendant also claims that on February 8, 1911, he made a deposit aggregating $5,700 as represented by the deposit slip marked D. 17, and that the reason this was not entered into his pass-book at the time was because the pass-book had been lost. He says that this deposit consisted of

a certain check of $3,000 marked D. 18, and two other items of $1,000 and $1,700 respectively, regarding which he has no recollection. He says that he should have received credit for these items. In explanation of this $5,700 deposit slip Smith says that the $3,000 check was applied by him to take care of a then existing indebtedness of Scarlett's to the bank and that the other two items of $1,000 and $1,700 were returned to Mr. Scarlett for the reason that he, Smith, was unable to use them in connection with Scarlett's account with the bank or in liquidation of his obligations to the bank. Smith is corroborated in his testimony regarding the application made by him of the $3,000 check by Mr. Ferguson."

3. Because the plaintiff in error suffered manifest wrong and injury in the charge of the trial judge and particularly as follows:

"He testifies that he resigned, and produces a carbon copy of a letter of resignation which he says was sent with his oath of office. There is, however, no evidence that this letter was ever received by the Board of Directors. There is evidence that he discussed the question of his continuing as a director with certain members of the board at one of their meetings, but, in the face of his oath of office, and the fact that he did subsequently attend meetings of the board after the company closed its doors, can he now, when charged with the responsibilities of the office and the consequences of his acts as such director, be heard to say that he was not, at the time in question, a director in fact?"

4. Because the plaintiff in error suffered manifest wrong and injury in that the trial judge permitted the State's witness, Litterst, to testify from a memorandum made the week previous, and refused to strike out the testimony given while testifying from said memorandum.

McCARTER & ENGLISH,
Attorneys of Plaintiff in Error.

Exhibit S. 114.

OFFICE OF
JOHN B. SCARLETT
CIVIL ENGINEER REAL ESTATE
No. 764 Broad Street
Third Floor

Newark, N. J., Feb. 3rd, 1913.

Mr. Raymond E. Smith,
Roseville Trust Co.,
Roseville, N. J.

Dear Sir:—
Enclosed, herewith, find Oath of Director.

Yours truly,
J. B. SCARLETT.

Exhibit D. 5 for Identification.

DEPOSITED IN THE
ROSEVILLE TRUST CO.
OF NEWARK, N. J.
By Jno. B. Scarlett
11/22 1910

Please list each check separately

	Dollars	Cents
Gold Coin		
Silver Coin		
Bank Notes		
Checks	1 000	
	1 000	
	2 000	

Exhibit D. 17

DEPOSITED IN THE
ROSEVILLE TRUST CO.
OF NEWARK, N. J.
By Jno. B. Scarlett
Feb. 8, 1911

Please list each check separately

	Dollars	Cents
Gold Coin		
Silver Coin		
Bank Notes		
Checks	1 000	
	1 700	
	3 000	
	5 700	

Dup
ROSEVILLE TRUST CO.
J.

Exhibit D. 18.

John B. Scarlett,
Manager Home Office Expense Account.

No. 4222 Newark, N. J., Feb. 8, 1911.

NATIONAL STATE BANK

Pay to the order of John B. Scarlett $3,000 00/100
Three thousand 00/100.....Dollars

JOHN B. SCARLETT

Certified:
W. H. THEUER, *Teller,*
National State Bank,
Newark, N. J.

Endorsed:
For deposit Roseville Trust Co.
JOHN B. SCARLETT.

Exhibits D. 18 and D. 20.

Pay to the order of any Bank, Banker or Trust Co.
Feb. 8, 1911
Restrictive endorsements guaranteed

ROSEVILLE TRUST CO.,
NEWARK, N. J.
RAYMOND E. SMITH, *Treas.*

Exhibit D. 20.

Middlesex Hat Co.
Metuchen, N. J.
No. 867

Metuchen, N. J., November 19, 1910.

THE METUCHEN NATIONAL BANK

Pay to the order of Stevenson Rye & Co. $1000 00/100 One thousand 00/100.....Dollars

MIDDLESEX HAT COMPANY
C. A. SHERWOOD
Treasurer.

Endorsed:

STEVENSON RYE & CO.
PERCIVAL F. S. RYE, *Sec'y.*
per JBS

Pay Roseville Trust Co. of Newark, N. J., or order
J. B. Scarlett
Pay to the order of any Bank, Banker or Trust Co.
Nov. 22, 1910
Restrictive endorsements guaranteed

ROSEVILLE TRUST CO.,
NEWARK, N. J.,
RAYMOND E. SMITH, *Treas.*

Exhibits D. 20 and D. 21.

Pay to the order of any Bank, Banker or Trust Co.
All prior endorsements guaranteed

NATIONAL BANK OF NEW JERSEY,
NEW BRUNSWICK, N. J.,
H. G. PARKER, *President.*

Pay any Bank or Trust Company or order Nov. 23, 1910, with full recourse to

UNION NATIONAL BANK,
NEWARK, N. J.,
A. W. CONKLIN, *Cashier.*

(Check Perforated "PAID").

Exhibit D. 21.

No. 868

Middlesex Hat Co.
Metuchen, N. J.

Metuchen, N. J., November 19, 1910.

THE METUCHEN NATIONAL BANK

Pay to the order of Stevenson Rye & Co. $1000 00/100 One thousand 00/100.....Dollars

MIDDLESEX HAT COMPANY
C. A. SHERWOOD
Treasurer

Endorsed:

STEVENSON RYE & CO.
PERCIVAL F. S. RYE, *Sec'y.*
per JBS

Pay Roseville Trust Co. of Newark, N. J., or order
J. B. Scarlett

Pay to the order of any Bank, Banker or Trust Co.
Nov. 22, 1910
Restrictive endorsements guaranteed

ROSEVILLE TRUST CO.,
NEWARK, N. J.,
RAYMOND E. SMITH, *Treas.*

Pay to the order of any Bank, Banker or Trust Co.
All prior endorsements guaranteed

NATIONAL BANK OF NEW JERSEY,
NEW BRUNSWICK, N. J.,
H. G. PARKER, *President.*

Pay any Bank or Trust Company or order Nov. 30, 1910, with full recourse to

UNION NATIONAL BANK,
NEWARK, N. J.,
A. W. CONKLIN, *Cashier.*

(Check Perforated "PAID").

Exhibit D. 37.

February 3rd.

To the Directors of the Roseville Trust Co.:

Gentlemen:—

Mr. Smith has requested me to sign a report to be sent to the State Banking Department in reference to the election of directors.

You will remember that at the meeting of the directors just previous to the election I stated that I was unable to serve as director, and gave my reasons for believing it would be better for all concerned that I should not continue in that capacity.

I understood that the same course was to be followed with reference to my election as director as

Exhibit D. 37.

was agreed to with reference to Mr. Wm. J. Banister who had stated to Mr. Odell and others that he could not serve. This was that immediately after the election, Mr. Banister's place and my own were to be filled by the board; and it was with that understanding that my name was put up for election.

Mr. Smith states to me over the phone that it was necessary to sign this report with reference to the election and that it was only a matter of form, and that the Board would fill the vacancy caused by my resignation at their convenience; Mr. Smith also stating that the Banking Department were insisting on having the report as to the election filed at once.

Under the circumstances, it seems to me I would not be justified in declining to sign the report and I will do so with the understanding that my resignation take effect immediately after.

I beg to assure you of my appreciation of the courtesies extended and trust that at some future time when my personal affairs are in better shape we can resume our former agreeable relations.

Yours respectfully,

Opinion of Supreme Court.

Filed November 13, 1916.

New Jersey Supreme Court.

June Term, 1916.

STATE OF NEW JERSEY,
Defendant in Error,

vs.

JOHN B. SCARLETT,
Plaintiff in Error.

Submitted July 6, 1916; decided November 13, 1916.

On Error to the Essex Oyer and Terminer Court.

Before Gummere, Chief Justice, and Justices Trenchard and Black.

For the plaintiff in error, McCarter & English.

For the defendant in error, Frederick F. Guild, Prosecutor of the Pleas, and Wilbur A. Mott, Asst. Prosecutor of the Pleas.

Per curiam:

The defendant was indicted as a director of the Roseville Trust Company for having overdrawn his account while such director, and was convicted.

We think the conviction must be affirmed.

1. We think the trial judge did not err in his charge to the jury with reference to the payment of the check and in refusing to charge as re-

New Jersey State Library

quested. The court said: "There is evidence that it was paid by that check; that is to say the check of $350 was paid by the check for $50,654.23." We think it was true, as stated, that there was evidence to that effect, and this is entirely aside from the legal effect of the certification of the check, which we think was in effect payment of it.

With respect to the requests to charge Nos. 35, 36 and 37, each was faulty in that each involved the proposition that the jury could not accept the testimony of Smith and Thompson unless they were corroborated. Such is not the law. The mere fact that they were convicted of crime might affect the weight of their testimony, but did not require corroboration if the jury saw fit to believe it otherwise.

Requests Nos. 22 and 23 were properly refused because they ignored the fact that the check was certified by the bank.

2. It is said that the judge erred in his charge as to the extent of the overdraft. We think the judge's charge in that respect was accurate.

3. We find no error in what the judge said in regard to Fergusen corroborating Smith.

4. We find no error in the admission of evidence. The receiving teller's books were competent, being part of the system of bookkeeping used by the bank. The teller's testimony as to whether the check was paid was proper. He testified after looking at the books. That was proper.

5. The question whether Scarlett was in fact a director of the trust company was a question for the jury and the court left it to the jury to

determine, and we find no error in the charge in that respect.

6. We think the court properly overruled the examination of Scarlett as to what he said to Vredenburg when Vredenburg handed Scarlett his pass-book.

7. The testimony given by the cashier of the Metuchen National Bank with the assistance of memorandum made by him two weeks before the trial we think was proper. The memorandum was made when he was searching the books of his bank to see whether they showed the check had been paid. It was properly used by the witness and the testimony was competent. *Meyers* v. *Weger,* 62 N. J. L., 432.

8. We think the exhibit showing the account of Scarlett with the Trust Company was properly admitted, as was also the check drawn on the trust company by Scarlett, one as showing the account which was a part of the system of bookkeeping and the other as tending to show the overdraft.

9. The refusal of the court to permit certain questions to be asked Smith on cross examination was proper because at the time when asked they were not proper cross examination.

10. The question put to Smith as to whether or not he kept up payment on his notes on his $10,000 loan we think was proper, but even if deemed improper, was harmless.

The judgment of the court below will be affirmed.

Affirmance.

Entered November 13, 1916.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* JOHN B. SCARLETT, *Plaintiff in Error.*	*On Indictment for Overdraft.*

The above stated cause having been duly argued at the June Term, Nineteen Hundred and Sixteen, in the New Jersey Supreme Court, by Wilbur A. Mott, attorney for the defendant in error, and McCarter and 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; 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.

A true copy.

WM. C. GEBHARDT,
Clerk.

Assignments of Error.

Filed.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,*	*On Error to the Supreme Court.*
vs.	*On Indictment for Misdemeanor.*
JOHN B. SCARLETT, *Plaintiff in Error.*	*Assignments of Error.*

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.

2. Because in the trial of said case the trial judge at the close of the state's case, although requested so to do, refused to direct a verdict in favor of the defendant.

3. Because in the trial of said case the trial judge, at the close of the whole case, although requested so to do, refused to direct a verdict in favor of the defendant.

4. Because in the trial of said case the trial judge permitted the state, over the objection of the defendant's attorney, to ask the witness Smith the following question: "Would you eventually check it up?"

5. Because in the trial of said case the trial judge permitted the state, over the objection of the defendant's attorney, to ask the witness Mindnich the following question: "Mr. Smith ran that bank?"

6. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Mindnich the following question: "Isn't it a fact that Mr. Smith manipulated the account of the trust company by sometimes crediting to one man's account moneys which had really been deposited to another's account?"

7. Because in the trial of said case the trial judge, over the objection of the defendant's attorney, admitted in evidence the ledger account, Exhibit S-6.

8. Because in the trial of said case the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "My question is whether this debit book is not written up in the ledger, and if the two ought not to balance?"

9. Because in the trial of said case the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "In the interval, what was the condition of his account as to his balance?"

10. Because in the trial of said case the trial judge permitted the state to ask the witness

Mindnich, over the objection of defendant's attorney, the following question: "How much?"

11. Because in the trial of said case, the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "What was the condition of the account on the 14th?"

12. Because in the trial of said case the trial judge permitted the state to ask the winess Mindnich, over the objection of defendant's attorney, the following question: "Come on down to the 15th and 16th, and on down to the 19th."

13. Because in the trial of said case the trial judge denied the defendant's motion to strike out the answer "Yes, sir," to the following question asked the witness Mindnich: "In case Scarlett's account was credited with the proceeds of a note, would that usually be entered on the deposit slip?"

14. Because in the trial of said case the trial judge permitted the state to ask the witness Mindnich, over the objection of defendant's attorney, the following question: "Then standing by itself it is not an unusual thing in banking for an account to be overdrawn some time, is it?"

15. 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 Mindnich, who testified from certain books with reference to a $450 cross extry, and a $300 item of December, 1912.

16. Because in the trial of said case the trail judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "The question

is whether that check was paid by the Roseville Trust Company."

17. Because in the trial of said case the trial judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "The total of sundries here is considerably in excess of the amount of this particular check, S-5, is it not?"

18. Because in the trial of said case the trial judge permitted the state of the defendant's attorney, admitted in evidence Exhibits S-9 and S-10.

19. Because in the trial of said case the trial judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "I want to know whether that check was paid by the Roseville Trust Company, and if so, in what way, and on what day?"

20. Because in the trial of said case the trial judge permitted the state to ask the witness Thompson, over the objection of the defendant's attorney, the following question: "What do the books show?"

21. Because in the trial of said case the trial judge refused to strike out the answer of the witness Thompson: "Yes; the check has been paid," to the question asked by the court: "Has it been paid, or not."

22. Because in the trial of said case the trial judge permitted the state to ask the witness Thompson, over the objection of defendant's attorney, the following question: "That does not pay it."

23. Because in the trial of said case the trial court refused to permit the defendant's attorney

to ask the witness Thompson the following question on cross examination: "Presumably if a charge slip is not made out, and an entry is made in the certified check book, the check was never certified, is not that right?"

24. Because in the trial of said case the trial court refused to permit the defendant's attorney to ask the witness Thompson the following question, on cross examination: "As a matter of fact the check was put in some private drawer of which Mr. Smith had the key, was not it?"

25. Because in the trial of said case the trial judge refused to strike out the testimony of the witness Thompson, that the check for $350, mentioned in the indictment, had been paid at the request of the defendant's attorney, on the ground that it was his conclusion.

26. 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: "And when a depositor receives his book balanced in an ordinary case, he has a right to think that that contains all the vouchers charged against him, does he not?"

27. 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: "And it is also true, is it not, that the records of the bank are inaccurate?"

28. 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: "As a matter of fact were not checks held in the sundries by order of Mr. Smith?"

29. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-11.

30. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-5.

31. Because in the trial of said case the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "What items had you taken care of, what do you mean by that?"

32. Because in the trial of said case the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "Why not?"

33. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-13.

34. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-14.

35. Because in the trial of said case the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "Did you certify the check which accompanied that letter?"

36. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-15.

37. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-16.

38. 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 the following question: "More than sev-

eral—were you in the habit, as treasurer of this trust company, of certifying checks on the accounts of various individuals, and which accounts did not have sufficient funds, and having them go through this process of being kept in the teller's cash, and that sort of thing?"

39. 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 the following question: "If you paid the money yourself, that was not the first time you had done that, was that?"

40. Because in the trial of said case the trial judge refused to strike out the answer of the witness Smith, "It came into my possession as treasurer of the institution, some time in July or August, 1912," in answer to the question of the defendant's attorney on cross examination: "I don't care whether it is personal or impersonal; when it came to your physical possession?"

41. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination: "And is not it true that the amount of that note was one of the items which went to make up the total stated in the paper D-28?"

42. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination: "That is a continuation of an earlier note of series of notes, is it not?"

43. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination, the following question: "Where did you

keep that note Mr. Smith, the one that you have identified?''

44. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination, the following question: ''Where did you keep this note after it was delivered to you, or the predecessor note which began the series?''

45. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination, the following question: ''You said the first day that you were on the stand, that you were serving a sentence in State's prison, growing out of an indictment in connection with your conduct as treasurer of the Roseville Trust Company. How long is that sentence?''

46. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination, the following question: ''Is not it a fact that the total which is stated in the paper, D-28 for identification which you identified yesterday, includes the amount of that note?''

47. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination, the following question: ''And is not it a fact that the total mentioned in the letter in your handwriting signed by Mr. Scarlett and marked D-27 for identification, includes the same amount of that note?''

48. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination, the following question: ''And isn't it a

fact that the $2,500 note, D-30 for identification, or rather the amount of that note, is included in the total just stated in those two exhibits for identification, D-27 and D-28?"

49. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Smith, on cross examination, the following question: "Now I ask you if it was paid in one of the ways in which you said the Exhibit S-5 was paid, which was either by your personal money, or by the money of some other depositor or by being charged to the account of some other depositor or to some other bank?"

50. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, the Exhibit S-17.

51. Because in the trial of said case the trial judge permitted the state, over the objection of defendant's attorney, to ask the witness Smith the following question: "On September 13, 1912, what was Mr. Scarlett's balance in the Roseville Trust Company, as shown by his ledger account?"

52. Because in the trial of said case the trial judge permitted the state, over the objection of defendant's attorney, to ask the witness Stanley the following question: "I show you a check marked S-17, being a check for $1,247.76, bearing the name of John B. Scarlett, payable to H. J. Stanley, Tax Collector, and ask you whether you have seen that check before."

53. Because in the trial of said case the trial judge permitted the state, over the objection of defendant's attorney, to ask the witness Stanley the following question: "Was the check deposited by you?"

54. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask him the following question: "I call your attention to the ledger entries in November, 1910, being S-6, and I ask you if there are any figures there amounting to $4,000?"

55. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask him the following question: "What did you say to him and what did he say to you about it when that book was handed over?"

56. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Southerland the following question: "Has this claim to which you have been referred been allowed by the Referee?"

57. Because in the trial of said case the trial judge refused to admit in evidence the defendant's Exhibit D-39 for identification, setting forth the amount of the claim of the Roseville Trust Company against Raymond D. Smith.

58. Because in the trial of said case the court permitted the state, on cross examination of the defendant Scarlett, to ask him the following question, over the objection of defendant's attorney: "Look under date of January 31, 1911, and see if it shows a charge of $2,001.60?"

59. Because in the trial of said case the trial judge denied the motion of the defendant's attorney to permit the defendant on cross examination to make answer to the following question: "And those are the same figures that appear as a balance in your check book stub, opposite the date May 17, 1911, are they not?"

60. Because in the trial of said case the trial judge permitted the State's attorney to ask the

defendant, on cross examination, the following question: "Now at that time did you make any complaint to him about this alleged discrepancy?"

61. Because in the trial of said case the trial judge permitted the State's attorney to ask the defendant, on cross examination, the following question: "Have they been paid by you individually?"

62. Because in the trial of said case the trial judge permitted the State's attorney to ask the defendant, on cross examination, the following question: "Had you been keeping up your notes on your $10,000 loan at that time, July, 1912?"

63. Because in the trial of said case the trial judge permitted the State's attorney to ask the defendant, on cross examination, the following question: "Up to the time the $350 check, which is the check in the indictment, was certified and paid, had you paid the note of $10,000, held by the trust company?"

64. Because in the trial of said case the trial judge permitted the State's attorney to ask the defendant, on cross examination, the following question: "Did you use it?"

65. Because in the trial of said case the trial judge permitted the State's attorney to ask the defendant, on cross examination, the following question: "Drawn against your account in the Roseville Trust Company?"

66. Because in the trial of said case the trial judge permitted the State's attorney to ask the defendant, on cross examination, the following question: "And whether it is a check drawn against your account in the Roseville Trust Company?"

67. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask him the following question: "What was your object in calling upon Mr. Fraser with this letter?", referring to Exhibit D-42.

68. Because in the trial of said case the trial judge admitted in evidence over the objection of defendant's attorney, Exhibit S-44.

69. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-45.

70. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-46.

71. Because in the trial of said case the court permitted the state to ask the witness Hicks, over the objection of defendant's attorney, the following question: "I desire to ask you a further question about the collection of checks. I want to know whether it is not a fact that you did use this form of letter in sending out collection items, and whether you did not write on the bottom of the letter 'for collection'?"

72. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-47.

73. Because in the trial of said case the trial judge permitted the state to ask the witness Hicks, over the objection of defendant's attorney, the following question: "I ask you to explain that?"

74. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-48.

75. Because in the trial of said case the trial judge permitted the state to ask the witness Hicks, over the objection of defendant's attorney, the following question: "I call your attention to the last two items in Exhibit S-48, what are they?"

76. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-49.

77. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-50.

78. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-50.

79. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-52.

80. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-54.

81. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-55.

82. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-56.

83. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-57.

84. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-58.

85. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-59.

86. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-60.

87. Because in the trial of said case the trial judge admitted in evidence over the objection of defendant's attorney, Exhibit S-61.

88. Because in the trial of said case the trial judge admitted in evidence over the objection of defendant's attorney, Exhibit S-62.

89. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-63.

90. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-64.

91. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Hicks, on cross examination, the following question: "How do you explain your bank's sending up to Albany a check drawn on a Metuchen Bank, and not through the Union National Bank?"

92. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Hicks, on cross examination, the following question: "Can you give the location of any bank in New Jersey that clears through the New York State Bank at Albany?"

93. Because in the trial of said case the trial judge admitted in evidence Exhibit S-66 over the objection of defendant's attorney.

94. Because in the trial of said case the trial judge admitted in evidence Exhibit S-68, over the objection of defendant's attorney.

95. Because in the trial of said case the trial judge admitted in evidence Exhibit S-69 over the objection of defendant's attorney.

96. Because in the trial of said case the trial judge admitted in evidence Exhibit S-70 over the objection of defendant's attorney.

97. Because in the trial of said case the trial judge admitted in evidence Exhibit S-71 over the objection of defendant's attorney.

98. Because in the trial of said case the trial judge admitted in evidence Exhibit S-72 over the objection of defendant's attorney.

99. Because in the trial of said case the trial judge admitted in evidence Exhibit S-75 over the objection of defendant's attorney.

100. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Mindnich, upon cross examination, the following question: "And the only reason why you can take it and point out a similarity is because you find a similarity in figures, is that it?".

101. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Mindnich, upon cross examination, the following question: "Are the entries in the individual ledger made by you about John B. Scarlett accurate?"

102. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-76.

103. Because in the trial of said case the trial judge permitted the witness Litterst to use a memorandum, made Monday or Tuesday previous, while testifying.

104. Because in the trial of said case the trial judge refused the defendant's motion to

strike out the answer of the witness Litterst—"I refreshed my mind from the memorandum," in answer to the question—"You are now reading from the memorandum."

105. Because in the trial of said case the trial judge permitted the state to ask the witness Litterst, over the objection of the defendant's attorney, the following question: "Now I ask you whether out of that deposit the two checks which I now present to you of the Middlesex Hat Company of $1,000 each, both of them dated November 21, 1910, being Exhibits D-20 and D-21, were not paid out of that deposit made on November 21, 1910?"

106. Because in the trial of said case the trial judge permitted the state to ask the witness Litterst, over the objection of defendant's attorney, the following question: "I ask you if there were any other funds except this deposit of November 21, 1910, out of which those two checks could have been paid?"

107. Because in the trial of said case the trial judge permitted the witness Litterst to testify from a memorandum not kept by himself, but by the bookkeeper.

108. Because in the trial of said case the trial judge admitted in evidence Exhibit S-77, over the objection of defendant's attorney.

109. Because in the trial of said case the trial judge refused to permit defendant's attorney to ask the witness Litterst, on cross examination, the following question: "And did that statement show the cash in banks?"

110. Because in the trial of said case the trial judge admitted in evidence Exhibit S-82, over the objection of defendant's attorney.

111. Because in the trial of said case the trial judge admitted in evidence Exhibit S-83, over the objection of defendant's attorney.

112. Because in the trial of said case the trial judge admitted in evidence Exhibit S-84. over the objection of defendant's attorney.

113. Because in the trial of said case the trial judge admitted in evidence Exhibit S-85, over the objection of defendant's attorney.

114. Because in the trial of said case the trial judge admitted in evidence Exhibit S-86, over the objection of defendant's attorney.

115. Because in the trial of said case the trial judge denied the motion of defendant's attorney to strike out the evidence of the witness Badger.

116. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-87.

117. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-89.

118. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-90.

119. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-91.

120. Because in the trial of said case the trial judge permitted the state to ask the witness Jennings, over the objection of defendant's attorney, the following question: "Why not?"

121. Because in the trial of said case the trial judge permitted the state to ask witness Jennings, over the objection of defendant's at-

torney, the following question: "Were they paid, or either of them, by the bank upon which they were drawn?"

122. Because in the trial of said case the trial judge admitted in evidence Exhibit S-108, over the objection of defendant's attorney.

123. Because in the trial of said case the trial judge permitted the witness Smith to testify from certain machine lists not made by him.

124. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-109 and Exhibit S-110.

125. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-111.

126. Because in the trial of said case the trial judge admitted in evidence, over the objecion of defendant's attorney, Exhibit S-112.

127. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-113.

128. Because in the trial of said case the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "In view of your official connection with the bank, the Roseville Trust Company, and your familiarity with Mr. Scarlett's account, and by referring to the books of the bank, will you tell us whether or not it is true, as claimed by Mr. Scarlett, that on or about February 4, 1911, he was entitled to a credit balance of from $4,000 to $6,000?"

129. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-114.

130. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-27.

131. Because in the trial of said case the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "There has been reference to a Stevenson Rye Company note which the bank had purchased. Had that note been paid at the time the bank failed?"

132. Because in the trial of said case the trial judge permitted the state to ask the witness Smith, over the objection of defendant's attorney, the following question: "Now, each time that they came back, if they hadn't been sent out again and had been charged up to his account, what would his account have shown as to his balance?"

133. Because in the trial of said case the trial judge permitted the state to ask the witness Lurich, over the objection of defendant's attorney, the following question: "After the failure of the Trust Company were there any meetings of directors of the Trust Company?"

134. Because in the trial of said case the trial judge permitted the state to ask the witness Lurich, over the objection of defendant's attorney, the following question: "And you sent a notice to Mr. Scarlett?"

135. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-115.

136. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-116.

137. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-117.

138. Because in the trial of said case the trial judge admitted in evidence, over the objection of defendant's attorney, Exhibit S-119.

139. Because in the trial of said case the trial judge permitted the state to ask the witness Ferguson, over the objection of defendant's attorney, the following question: "I show you check of John B. Scarlett, dated March 4, 1913, $500 being Exhibit S-13, and ask you what the books and records of the Roseville Trust Company show was the condition of his account on the date of the certification of that check?"

140. Because in the trial of said case the trial judge permitted the state to ask the witness Ferguson, over the objection of defendant's attorney, the following question: "I show you check dated February 19, 1913, made by John B. Scarlett, check for $400 certified February 19, 1913, being Exhibit S-15, and ask you what was the condition of his account the day that check was certified?"

141. Because in the trial of said case the trial judge permitted the state to ask the witness Ferguson, over the objection of defendant's attorney, the following question: "Are you able to say whether it was paid?"

142. Because in the trial of said case the trial judge refused to permit the defendant's attorney to ask the witness Ferguson, on cross-examination, the following question: "Have you examined the books of the Roseville Trust Company to ascertain whether or not Mr. Scarlett was entitled to the credit of these two checks?"

143. Because in the trial of said case the trial judge erred in his charge to the jury, in charging them as follows:

> "At this point I desire to point out to you that the effect of such certification is to create an obligation on the part of the bank certifying it. On this subject the Supreme Court of the United States has said: 'By the law merchant of this country the certificate of the bank that a check is good is equivalent to acceptance. It implies that the check is drawn upon sufficient funds in the hands of the drawee, that they have been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment. It is an undertaking that the check is good then and shall continue good and this agreement is as binding on the bank as its notes of circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume. The object of certifying a check, as regards both parties, is to enable the holder to use it as money. The transferee takes it with the same readiness and sense of security that he would take the notes of the bank. It is available also to him for all the purposes of money. Thus it continues to perform its important functions until in course of business it goes back to the bank for redemption and is extinguished by payment. It cannot be doubted that the certifying bank intended these consequences, and it is liable accordingly. To hold otherwise would render these im-

portant securities only a snare and a delusion.'

"A bona fide holder of such a check, though fraudulently issued, can collect, and there is evidence in thise case indicating that the check paid by the Roseville Trust Company. The fact that the check of $50,654.23 was paid by the Roseville Trust Company to the Union National Bank March 18, 1913, does not, standing alone, necessarily establish such payment, but there is evidence in this case that it was paid by that check—that is to say, the check of $350 was paid by this check of $50,654.23."

144. Because in the trial of said case the trial judge erred in his charge to the jury in charging them as follows:

"One of the important and, in fact, essential questions in this case is whether he was in fact a director, for if he was not, the charge of the State necessarily falls. He executed the oath of a director in which he declared himself to be such on the 3d day of February, 1913. It is true that he apparently attended no meet- Board of Directors after the close of the bank, but he did attend meetings of the Board of Directors after he close of the bank, held for the purpose of reorganization, or, as one witness has put it, of rehabilitating the bank. He testifies that he resigned, and produces a carbon copy of a letter of resignation which he says was sent with his oath of office. There is, however, no evidence that this letter was ever received by the Board of Directors.

There is evidence that he discussed the question of his continuing as a director with certain members of the board at one of their meetings, but, in the face of his oath of office, and the fact that he did subsequently attend meetings of the board after the company closed its doors, can he now, when charged with the responsibilities of the office and the consequences that he was not, at the time in question, a of his acts as such director, be heard to say that he was not, at the time in question, a director in fact? As a matter of law, I charge you that a person eligible to act as a director, who was duly elected to such office and qualified by subscribing the oath of office, thereby accepts the office, becomes a director, and is charged with the responsibilities of the office. The question whether he subsequently resigned and thereby relieved of such responsibility is a disputed question of fact in this case to be determined by you from the evidence before you.

The suspension of the business of the trust company through its failure did not thereby vacate the offices of the directors."

145. Because in the trial of said case the trial judge erred in his charge to the jury as follows:

"In brief, he says that no overdraft in fact occurred. An overdraft arises when a customer of a bank draws from that bank more money than he has to his credit in the bank. It is not material whether the account was actually overdrawn for

$350 if, in fact, it was overdrawn by the defendant on the day in question knowingly. The essence of the offense is the overdraft, and not the amount."

146. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(1) There should be a verdict of acquittal for the defendant."

147. Because in the trial of said case the trial judge refused to charge the defendant's request to charge as follows:

"(4) Reasonable doubt is such doubt as makes the jury hesitate as to the correctness of its conclusions."

148. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(5) The burden of proof is on the prosecution to show the guilt of the defendant beyond a reasonable doubt, and such burden remains with the prosecution throughout its case and throughout the defendant's case, and the burden of proof never shifts."

149. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(8) If the jury find that he overdrew his account knowingly but not wilfully, the verdict must be for the defendant. The jury must find beyond a reasonable doubt that the account was overdrawn both wilfully and knowingly before there can be a conviction."

150. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(9) The statute makes it a high misdemeanor for a director of a trust company to knowingly overdraw his account, and unless the jury are satisfied beyond a reasonable doubt that the defendant did in fact overdraw his account to the amount stated in the indictment, the verdict must be for the defendant."

151. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(10) Any overdraft of a sum less than $350 will not satisfy the burden of proof which the law casts upon the prosecution, and if the jury find that there was in fact a balance in the account of March 17, 1913, in favor of the defendant, the verdict must be for an acquittal."

152. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(11) The evidence shows that the check stated in the indictment was not in fact charged to the defendant's account on the books of the trust company, and unless the jury are satisfied by credible evidence beyond a reasonable doubt that the account was in fact overdrawn, to the amount of $350 on March 17, 1913, there must be a verdict for acquittal."

153. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(12) The evidence of the defaulting treasurer, Mr. Smith, is not sufficiently

credible upon which to found a conviction."

154. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(13) The evidence contained in the records of the bank, standing by themselves, are not sufficiently credible upon which to found a conviction."

155. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(14) The evidence of the former teller, Thompson, standing by itself, is not sufficiently credible upon which to found a conviction."

156. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(15) The jury are not entitled to find a verdict of guilty upon the evidence contained in the books and records of the bank as supported by the evidence of Messrs. Smith and Thompson."

157. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(16) Unless the evidence contained in the records of the bank is corroborated by some credible evidence beyond the testimony of Messrs. Smith and Thompson which satisfies the jury beyond a reasonable doubt that the defendant is guilty as charged, there must be a verdict of acquittal."

158. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(17) Unless the jury are satisfied by other credible evidence beyond a reasonable doubt that the defendant is guilty as charged, the defendant ought not to be convicted upon the evidence contained in the records of the bank, as explained by the State's witnesses Smith and Thompson."

159. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(19) In weighing the evidence contained in the records of the bank, the jury will take into consideration that those records or some of them are admitted by the State's witnesses to be inaccurate."

160. Because in the trial of said case the trial judge refused to charge the defendant't request as follows:

"(20) In weighing the evidence contained in the records of the bank, the jury will take into consideration that the entries were made under the general direction of the treasurer, Smith, who is a self-confessed criminal, and that the entries were made by clerks who were under the domination of Smith, and subordinate to his will and direction."

161. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(21) In weighing the evidence contained in the records of the bank, the jury will also take into consideration that some

of the entries were made by the witness Thompson, who is a self-confessed criminal, and by the witness Mindnich, who refused to answer proper questions for fear the answers would incriminate him."

162. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(22) Unless the jury find beyond a reasonable doubt that the trust company paid the check mentioned in the indictment, there was no overdraft of the account by the said check."

163. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(23) The evidence is that the check mentioned in the indictment was paid either by the treasurer, Smith, personally, or by some other person's cash, or by being charged to the account of some depositor or other bank, and unless the jury find from credible evidence in the case, beyond a reasonable doubt, that the check was in fact paid by the Roseville Trust Company, the charge of the indictment has not been made out, and there must be a verdict for acquittal."

164. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(25) The entries which were ordinarily made in the records of the bank in connection with the certification of a check were not made in connection with the certification of the check mentioned in the indictment, and there is no credible evidence

that the trust company as such knew of the certification of the check."

165. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(26) Any knowledge which the treasurer, Smith, may have had as to the certification of the check was not the knowledge of the trust company."

166. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(27) In any conflict of evidence between the State's witness Smith and the defendant, the defendant is entitled to be believed as being the more credible of the two."

167. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(33) Any overdrafts by the defendant on any day previous to March 17, 1913, have no bearing on this case and are to be excluded by the jury."

168. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(35) Any evidence tending to show that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the amount of the check stated in the indictment, comes from the records of the bank, supplemented by the testimony of Messrs. Smith and Thompson, and the jury must be satisfied by other credible and corroborating evidence be-

yond a reasonable doubt that said check paid to the Union National Bank did in fact include the amount of the check stated in the indictment before the jury can find that the amount of said check was so in fact included."

169. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(36) The records of the bank which were admitted in evidence for the purpose of showing that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the amount of the check stated in the indictment, nowhere specifically referred to said check, and said records are meaningless without the explanation given in the testimony of Messrs. Smith and Thompson, who are self-confessed criminals and whose testimony is not entitled to full faith and credit."

170. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(37) The records of the bank which were admitted in evidence for the purpose of showing that the check for $50,654.23 paid to the Union National Bank by the Roseville Trust Company on March 18, 1913, included the amount of the check stated in the indictment nowhere specifically referred to said check, and unless the jury find that the evidence of Messrs. Smith and Thompson, interpreting said records, is corroborated by some credible evidence, so as to establish beyond rea-

sonable doubt that said check so paid to the Union National Band did in fact include the amount of the check stated in the indictment, the jury are not entitled to conclude that said check paid to the Union National Bank did in fact include the amount of the check stated in the indictment."

171. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(38) Unless the jury find by some credible evidence other than that of the records of the bank, as supplemented by the testimony of Smith and Thompson, that the money of the Roseville Trust Company, paid to the Union National Bank by the check for $50,654.23 dated March 18, 1913, included the amount of the check stated in the indictment, there must be a verdict of acquittal."

172. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(39) There is no credible evidence tending to prove that the check dated March 18, 1913, for $50,654.23 paid by the Roseville Trust Company to the Union National Bank included the amount of the check stated in the indictment."

173. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(40) The evidence contained in the records of the bank, as supplemented by the testimony of Messrs. Smith and Thompson, tending to show that the check

for $50,654.23 dated March 18, 1913, paid by the Roseville Trust Company to the Union National Bank, is not corroborated by any credible evidence, and the charge of an overdraft has not been proved and there must be a verdict of acquittal."

174. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(42) Evidence of good character may of itself create a reasonable doubt where otherwise no reasonable doubt would exist, and should the jury conclude from the evidence that the defendant has borne a reputation for good character, they must require a greater degree of certainty in the proof that he knowingly overdrew his account than would be required if there was no such evidence of good character."

175. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(46) The resignation of the defendant as a director of the Roseville Trust Company by the terms of the letter of February 3, 1913 (D-37) addressed to the directors by him, stated that he signed the report referred to in said letter with the understanding that his resignation take effect immediately after, and if the jury find as a fact that he did sign the report mentioned in the said letter, then his resignation did take effect and he was not a director at the time charged in the indictment and there must be a verdict for acquittal."

176. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

> "(47) Under the terms of the letter of February 3, 1913, addressed by the defendant to the directors of the Roseville Trust Company, D-37 in evidence, it is immaterial whether the resignation therein referred to was accepted by the directors or not if the jury find that the defendant did in fact sign the report mentioned in the said letter."

177. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

> "(48) It is absolutely essential to the State's case that they satisfy the jury beyond a reasonable doubt that the defendant was a director of the Roseville Trust Company on the 17th day of March, 1913."

178. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

> "(49) If the jury find that the paper referred to as a report in the letter addressed by the defendant on February 3, 1913, to the directors of the Roseville Trust Company, (D-37 in evidence) was in fact the oath of the defendant as director (Exhibit S-3) and that the word 'report' in said letter refers to said oath, and that the oath was in fact signed by the defendant, then his resignation did take effect and he was not a director at the time charged in the indictment and there must be a verdict for acquittal."

179. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(53) If the jury find that the money of the trust company did in fact pay the check for $350 mentioned in the indictment, such payment must have been made on March 17, 1913, in order to have any bearing on this case."

180. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(54) There is no evidence in the case that the money of the trust company paid the check for $350 mentioned in the indictment, on March 17, 1913."

181. Because in the trial of said case the trial judge refused to charge the defendant's request as follows:

"(55) The indictment alleges an overdraft on March 17, 1913, and unless the jury are satisfied beyond a reasonable doubt that the trust company paid out its money on that date, the verdict must be for acquittal."

McCARTER & ENGLISH,
Attorneys and of Counsel with Plaintiff in Error.

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Causes for Reversal.

Filed.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE, *Defendant-in-Error,* *vs.* JOHN B. SCARLETT, *Plaintiff-in-Error.*	*On Error to the Supreme Court.* *On Indictment for* Misdemeanor. ~~*Conspiracy*~~. *Causes for Reversal.*

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. Because the trial judge refused to charge the following request submitted by the defendant:

> "31. If the jury find that by an accurate stating of the account, regardless of the entries in the records of the bank, the defendant did actually have any balance in his favor, there was no overdraft of the account to the amount of the check stated in the indictment by the defendant knowingly, and the verdict must be for acquittal."

2. Because the plaintiff in error suffered manifest wrong and injury in the charge of the trial judge and particularly as follows:

> "The defendant also claims that on February 8, 1911, he made a deposit aggregating

$5,700 as represented by the deposit slip marked D. 17, and that the reason this was not entered into his pass-book at the time was because the pass-book had been lost. He says that this deposit consisted of a certain check of $3,000 marked D. 18, and two other items of $1,000 and $1,700 respectively, regarding which he has no recollection. He says that he should have received credit for these items. In explanation of this $5,700 deposit slip Smith says the $3,000 check was applied by him to take care of a then existing indebtedness of Scarlett's to the bank and that the other two items of $1,000 and $1,700 were returned to Mr. Scarlett for the reason that he, Smith, was unable to use them in connection with Scarlett's account with the bank or in liquidation of his obligations to the bank. Smith is corroborated in his testimony regarding the application made by him of the $3,000 check by Mr. Ferguson."

3. Because the plaintiff in error suffered manifest wrong and injury in the charge of the trial judge and particularly as follows:

"He testifies that he resigned, and produces a carbon copy of a letter of resignation which he says was sent with his oath of office. There is, however, no evidence that this letter was ever received by the Board of Directors. There is evidence that he discussed the question of his continuing as a director with certain members of the board at one of their meetings, but, in the face of his oath of office, and the fact that he did subsequently attend meetings of the

board after the company closed its doors, can be now, when charged with the responsibilities of the office and the consequences of his acts as such director, be heard to say that he was not, at the time in question, a director in fact?''

4. Because the plaintiff in error suffered manifest wrong and injury in that the trial judge permitted the State's witness, Litterst, to testify from a memorandum made the week previous, and refused to strike out the testimony given while testifying from said memorandum.

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