

0115

**BOX:**

368

**FOLDER:**

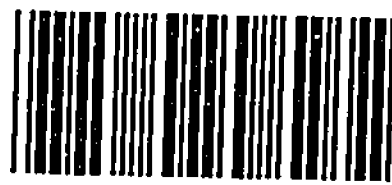
3450

**DESCRIPTION:**

Dickie, William

**DATE:**

10/09/89



3450

0116

254.  
12 Feb 90 1524  
89

Counsel,  
Filed, day of  
Pleas, 188  
Not guilty April 17 90

THE PEOPLE,  
William S. Dickie  
Comd April 17 90  
committed Jan 13 1892

Forgery in the Second Degree.  
(Sections 511 and 521, Penal Code.)

JOHN R. FELLOWS.  
District Attorney.

A True Bill  
Special Grand Jury  
Foreman.

Indictment of Dist. Atty. def.  
divided on his own record 1890

Bar filed at  
\$1500 by consent  
partially by  
1890  
Doran in credit.

That defendant was  
found and committed. Even  
July 18, 1891 was entered  
Winter Prison for 999  
and 6 mts. On appeal  
to the General Term the  
conviction was reversed. The  
attestation of the preceding  
justice upon the indictment  
in his opinion as General  
Term, under the circumstances  
of the offense and in a  
subsequent trial, in fact, the  
prisoner served a year &  
a half in prison while the  
prisoner was serving the  
prisoner is his length  
of prison term and kind. In  
the circumstances  
of the case the  
prisoner has in recognition  
of his own record 1890



SUPREME COURT . GENERAL TERM.

Nov. 1891.

Nov. 1891.

Charles H. Van Brunt, P. J.

George C. Barrett and George P. Andrews,

J. J.

THE PEOPLE,  
Respondent,  
against  
WILLIAM F. DICKIE,  
Appellant,

Appeal by the defendant from a judgment of conviction  
at the General Sessions of the Peace.

Mr. H. B. CLOSSON, for the Appellant,  
Mr. DAVID WELCH, for the Respondents.

BARRETT J.

The defendant was convicted of the crime of forgery in the second degree. The gist of the offence was the unauthorized filling in of a blank check entrusted to him by his employers. The material facts as testified to by the complainant, Oscar M. Crego, were these:

Dickie was the cashier of the firm of Russell Crego & Son. As such cashier, he had been for two or three years entrusted with twelve checks, signed by the firm and payable to his own order, but undated and blank as to amount. When one or more of these checks was used its place was supplied,

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so that Dickie always had twelve such checks on hand for immediate use. These twelve checks were detached from the checkbook and were kept by Dickie in the money-drawer.

Dickie's authority with regard to the use of these checks was peculiar. He was authorized always to pay the drafts of an agent of the firm at Elgin, Illinois, also those of a party in Chataugua county. He was also authorized to pay the freight bills of the different transportation companies in this city. For these payments he was authorized to use the checks in question without any special direction from the firm. For all other payments, however, he was limited to a special direction. He was not authorized to use any of these checks for the payment of current expenses or for the purpose of obtaining cash for current expenses or for the payment or liquidation of any claims. When money was required for the payment of employees or other cash items, the custom was, when the money in the drawer was insufficient, for Dickie to draw a special check for the requisite amount, payable to "W. F. Dickie, currency", and bring it (still in the checkbook and attached to the stub) to Mr. Crego to be signed. The custom also was, when any one of the twelve checks was used to pay drafts or other obligations of the firm, for Dickie to date such check, fill in the precise amount of the draft or other obligation, and then endorse it payable to the order of the creditor of the firm.

Upon the 28th of September, 1889, Dickie took one of these twelve checks, dated it, filled it up for two hundred

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and twenty-five dollars, inserted the word "currency" after his own name, so that in place of reading "Pay to W. F. Dickie or order", it read "Pay to W. F. Dickie, Currency, or order," "endorsed" it in blank and obtained the money therefor at the bank.

The question is, was this a forgery of the check? The rule had long been well-settled in England that an unauthorized filling up of blanks in checks, notes, acceptances and such like instruments of a commercial character amounts to forgery. In *R. vs. Hart*, 7 Car. and P. 652, the prisoner was given an acceptance, blank as to amount, with authority to fill it in for 200. He filled it in for £500. This was held to be forgery, and upon the point being reserved the conviction was sustained by all the English Judges. In *Reg vs. Bateman*, 1 Cox, C. C. 136, it was said that where a check is given with a certain limited authority, the agent is confined strictly within the limits of the authority, and that if he fills in the check with a different amount from that authorized, or if after the authority is at an end he fills it with any amount whatever, it is clearly forgery. The doctrine of *R. vs. Hart* was followed in *Reg. vs. Wilson*, 2 Car. and Kir, 527. There the prisoner was authorized to fill in the amount due on a bill for 150 and interest, then to get the check cashed and pay the bill. Instead of doing this, he filled in £250 and retained part of the proceeds, claiming that it was due him for salary. This was held to be forgery. Where the authority



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is general, a different rule prevails. Thus, in Reg. vs. Richardson, 2 Foster & Fin, 343, the clerk had authority to draw checks upon his employer's bank, but to his own order, for such sums as he deemed necessary to pay the cash disbursements of the business. Upon one occasion he drew a check to his own order for £11.10, the proceeds of which he appropriated. He was acquitted of forgery and put on trial for embezzlement, the learned Judge observing that the prisoner "could not be convicted of forgery inasmuch as having a general authority to draw, he did not necessarily exceed his authority when he drew the check; and that the criminal act, if any, was the subsequent appropriation of it." In that case, however, the distinction is observed, in the statement of facts, that the clerk was not bound always to draw the checks in favor of a particular creditor, but had authority to draw generally and pay the creditor with cash. In the case at bar the jury were authorized to credit Mr. Grego's testimony, and to find thereon that Dickie had no authority to draw generally and to pay the creditor with the proceeds of the check so drawn, but that his authority was strictly limited to drawing in favor of each particular creditor for his particular bill. That is, to pay each creditor only by check and to fill in such check only the amount of such creditor's bill. There was in reality no general authority. It is true the special authority was not limited to one creditor or to one specified amount. But there is no distinction in the principle upon

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which deviations from special authority are held to be forgeries. The special authority here extended over several subjects, but each subject stood by itself and the limitation as to each was clear and well-defined. There was no authority, either general or special, which authorized Dickie, for any purpose whatever, to fill in any one of these twelve checks with a single dollar except to pay the draft or bill of some one of the specified persons or corporations; none, certainly, to fill in a single dollar for his own purposes.

In the very able brief which Mr. Closson submits in behalf of the defendant he makes this claim:

"It is not necessary to argue that forgery can only be committed with a pen, or some similar instrument; and that, unless the prosecution can point to some writing on this check and say that that particular writing in some way added to or altered the legal effect of the check, and that the words or figures so written were words or figures Dickie's pen had no right to put there, Dickie did not forge the check, whatever he did with the proceeds."

We agree with this view of the case, but we think the prosecution had a right to go to the jury upon the proposition that the words, "two hundred and twenty-five dollars" were words which Dickie's pen had no right to put in this particular check. There was no draft or bill before him for that amount at the time he inserted those words. Their insertion was wholly outside of the authority confer-

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red. Even if a draft from the Illinois agent for \$200 had been before him, his authority was limited to that specified sum, and if he had inserted \$225 with a view to misappropriating the surplus he would have been guilty of forgery. Is he any the less guilty if he inserts the \$225 without any bill being before him and appropriates the whole amount? There was no general authority as to amount any more than there was to individuals. The amount was limited to the face of each draft or bill presented, neither more or less. And the general authority to pay drafts or bills of these particular persons was limited to payment in one particular way and in that only - namely, by filling in one of the twelve checks the exact amount called for and delivering such check properly endorsed to the creditor. Thus the authority conferred was the same in substance as a special authority to pay each of several persons a varying but liquidated amount, and to so pay it in a manner involving a purely clerical act. To fill in one of these checks, therefore, without regard either to the individuals covered by the authority of the amount of their claims - in other words, to fill in an arbitrary sum having no relation whatever to the authority conferred - was forgery if done "with intent to defraud; and the insertion of the word "currency", the blank endorsement and the drawing of the money at the bank were evidences of such intent to defraud.

The principle of the English cases seems to have been generally followed in this country. (Wharton Criminal



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Law, 8th Edition, Section 671, 672; Poople vs. Graham, 6 Park, C. R. 135; Wilson vs. Commissioners, 70 Illinois, 46; State vs. Maxwell, 47 Iowa, 454; Biles vs. Com. 32 Pa. State P. 522; State vs. Keger, 47 Mo. 552; State vs. Flanders, 38 N. H. 324.) The only case where a doubt is expressed as to the rule are Putnam vs. Sullivan, 8 Mass. 45, and Van Duser vs. Howe, 21 N. Y. 531. These, however, were civil actions upon paper which was fraudulently used, or in which the blank amount was fraudulently increased beyond the sum authorized. They were properly decided upon the estoppel principle, and the doubts which were expressed upon the point in question proceeded upon the mistaken idea that if the paper was forged in the sense of the criminal law, it would be illogical in a civil action to hold the persons who signed it. But there is nothing incongruous between a definition of forgery upon which the guilty agent may be punished, criminally, and a civil rule that, notwithstanding the forgery, one who signed the paper in blank, entrusted it to such guilty agent and conferred upon the latter the power of defrauding the innocent, shall suffer rather than the victim. We think, therefore, that the appellant's main proposition is untenable, and if the case stood upon that alone, we should feel constrained to affirm the judgment.

But we think there was error prejudicial to the defendant in permitting Mr. Grego upon his evidence in chief to testify to the discovery of shortage in Dickie's accounts

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generally to the amount of about \$2,775. This was doubtless admitted upon the question of fraudulent intent, but it had no just bearing upon that question. It simply tended to show that Dickie was a faithless cashier and that for an indefinite period he had been robbing his employers. But under this indictment the fraudulent intent was confined to the particular forgery charged, and that depended not at all upon Dickie's past misconduct in other matters, but largely upon the purpose with which he obtained the two hundred and twenty-five dollars in question. The methods resorted to by Dickie to procure these two hundred and twenty-five dollars, the insertion of the word "currency" in the check, the fact that no entry of it appeared in the check-book or in the cash-book, that it was not used in whole or in part for the business, that it was not accounted for in the cash entries of the day when the money was obtained, and his flight almost immediately after the transaction, were all admissible upon the question of intent. But past larcenies by means of false entries or fraudulent misappropriation of other moneys entrusted to his keeping were surely not admissible. The proof was not even of offences of the same nature committed at the same time tending to show a general purpose to misappropriate the employer's moneys by similar means. Indeed this particular check seems to have been the only one which Dickie used contrary to his instruction. For the following question was put to Mr. Crego and the following answer given:

"Q. The question of the juror is, taking the check

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0125

book and adding together all the checks and comparing them with the vouchers, including those that have not been returned how does your bank account stand?

"A. There was a difference of this check of \$225, and that only."

Other points are made by the appellant which we need not consider. But as the case will probably be tried again, we ought to say that the observation made by the learned Judge to the defendant with regard to a certain book was one which was likely to affect the minds of the jury. The observation was as follows:

"You know that you kept that book, you know perfectly well what you kept it for, you know perfectly well what it represents, probably not absolutely and definitely - you could give such information if you meant to - there is no doubt in my mind."

This was in effect a judicial expression against the candor of the defendant, which in a balanced case might turn the scale against him. Standing alone, and in view of all the facts in this case, we do not think it would be sufficient to justify the granting of a new trial, but it would certainly have been better had the observation been turned into a question and the defendant asked why, if he kept the book and was necessarily familiar with its contents, he could not give the information called for.

Upon the point secondly considered, however, the conviction and judgment should be reversed and a new trial granted.



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It seems to me from an examination of this record, that the defendant was convicted really because of a larceny although indicted for forgery, and as there must be a new trial, it may not be without profits to consider one point in the case. I think that the defendant's story that he had authority to fill out the check in question and that it is not true that the only authority to fill out these checks was to pay the bills of two consignees and those of transportation companies, is very strongly supported by the fact that the check for \$100 has never appeared, and does not appear to have ever been used, and that the check for \$225 in question was really filled out for the purposes testified to by the defendant. The complainant admits that the necessary disbursements paid by the defendant on that day were greater than the amount of the \$100 check, and the only money that he had to pay them with so far as appears by the evidence was the proceeds of the \$225. check. It is true it is stated that the defendant had access to the money drawer but there is no evidence that on this day it contained one cent of money. It is not by any means a clear case and the story of the complainant is to say the least, in some of its aspects somewhat extraordinary.

I concur in result, C. H. V. B.

I concur in the opinion of Mr. Justice  
Barrett, G. P. A.

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SUPREME COURT, GENERAL TERM.

THE PEOPLE

against

WILLIAM T. BLOOM.

OPINION.

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**Grand Jury Room.**

PEOPLE *NA*

vs.

William F. Dickie

This defendant is now  
in custody in Montreal.

This extradition has  
been ordered, and the delay  
is only due to the laws  
of Canada giving him an  
opportunity to review by  
habeas Corpus etc.

Officer Jacob of the  
Central Office has been  
appointed the President's  
agent and will probably  
bring Dickie back within  
a few days.

apt 5/20 *fruitsunday*

*McCartai*  
*Chit & Clerk*



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*Court of General Sessions  
Clerk's Office*

PEOPLE

vs.

*Wm F Dickin  
Stenographer Transcriber  
Filed in Box No (1)*

0130

POOR QUALITY  
ORIGINAL

Rainy day 7/10

9/25/89-

225-

Ed. and R. Chapel -

0131

Form No. 1.

## THE WESTERN UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid therefor in any case where the claim is not presented in writing within sixty days after sending the message.

This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

NORVIN GREEN, President.

THOS. T. ECKERT, General Manager.

NUMBER	SENT BY	REC'D BY	CHECK
BIN	EP	22	pd

Received at 314 GREENWICH ST. (Direct Wires)

3/13 1890

Dated Montreal Que 13  
To Oscar M. Prego

Let Mr Lindsay despatch me <sup>that</sup> papers are  
coming for me to show at trial  
in morning to get adjournment have written  
you  
Charles Jacob

Form No. 1.

## THE WESTERN UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid therefor in any case where the claim is not presented in writing within sixty days after sending the message.

This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT, General Manager.

NORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
21	mo	48	paid

Received at the WESTERN UNION BUILDING, 195 Broadway, N. Y.

Feb 14 1890

Dated Montreal Que 14

To Mr Lindsay Dist Atty's Office  
Chambers St

Letter received hearing postponed until Monday at 10  
AM question of defence not raised in court must have  
corroboration of forgery by affidavit of Prego and Bookkeeper and copy of  
Indictment until Monday at 10 AM sure answer by telegraph if papers are  
being got up  
Charles Jacob

FIFTYTHREE PAIDT. GOVT. WASHINGTON DC. MAR. XXTH. JNO. R. FELLO



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No. 1.

District Attorney's Office.

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PEOPLE

vs.

*Nickie*

*Sent letter to  
Mr. Ferguson re-  
questing him  
to call Friday AM*

*Jan 7/92*



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**District Attorney's Office,**  
City and County of New York.

City and County } ss.  
of New York,

of No. 165 Chambers Street, aged 22 years,  
occupation cashier being duly sworn, deposes and says,  
that on the 22 day of October 1889, at the City of New  
York, in the County of New York, me William T. Davis, Clerk

James in the employ of the Bank of Russell Craig  
& Son, carried on deposit, as cashier, did  
deliberately forge the Bank of Russell Craig  
checks, and utter the same as true, he well  
knowing the same to be forged, the sum  
in the amount of said checks under the  
authority of James.

Seen to before me this 22 day of October, 1889

Henry Herzbach } Dean M. Craig  
Notary Public  
Ct. Y. Co.

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DISTRICT ATTORNEY'S OFFICE,  
City and County of New York.

THE PEOPLE, &c.,  
ON THE COMPLAINT OF

Oscar M. Grege  
165 Chambers St.  
vs.

Wm. F. Dierke

Offence

Dated October 8, 1889

Witnesses, Oscar M. Grege

No. 165 Chambers Street,

Officer Jacobs

No. C. O. Street,

Rudolph Kraut

with No. Duparcquet, Huott Street,

Yellowman Co

43 Wooster St.

Walter Noice, 428 W. 34 St.

Otto E. Hoehn, 165 Chambers St.

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JAMES DICKIE,  
SOLICITOR.

Chambers, Burgh Buildings.

*Twines 10<sup>th</sup> Nov 1891.*

*Messrs Parsons, Shepherd & Ogden  
Solicitors 111 Broadway New York.*

*Dear Sirs,*

*I understand you are  
taking an interest in the case of  
William Dickie with the view of  
having the judgment against him set  
aside on appeal. You will no  
doubt be fully informed as to the  
circumstances of this execution. You can  
make on the part of the unfortunate  
Young man will be greatly valued  
and where no effort will be spared  
to win success in the appeal. I  
shall be very glad to know that your  
efforts in his favour have been  
successful. Pray excuse my thus intruding  
on you. - I am,*

*Yours faithfully,  
James Dickie*

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Department of State,  
Washington, March 7, 1890.

John R. Illoway, Esquire.

District Attorney,

New York City, New York.

Sir,

I enclose herewith for your information  
a copy of a note to this Department from the British  
Minister at this Capital relative to the application  
for the extradition of one M. J. Beckie.

I am, Sir,

Your obedient servant,

~~William F. Thacker~~  
Assistant Secretary.

Enclosure



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Enclosure.

From the British Museum, March 5;

1890, - copy.

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Copy

Washington

March 5 1890

Sir:

Immediately on the receipt of your note of 6 days date relative to the extradition of one W. J. Dickie I communicated its tenor by telegraph to the Governor General of Canada and I have now the honor to inform you that I have received a telegraphic reply to the following effect:

"The Minister of Justice reports that the matter has not yet reached that stage at which it can be dealt with by the executive, the prisoner not having been judicially committed for extradition."

The Hon. James G. Blaine

xc

xc

xc

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"Copy of your message has however  
been unofficially communicated to  
the Extradition Commissioner at  
Montreal."

I have the honor to be, with  
the highest consideration, Sir - vc -  
Julian Poncefote.

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JOHN E. PARSONS.  
DAVID B. OGDEN.  
EDWARD M. SHEPARD.  
HENRY B. CLOSSON.

*Replies*

*Dickie*

*Parsons, Shepard & Ogden,  
Trinity Building,*

*1211 Broadway,*

*New York, Jan'y. 19, 1892.*

Hon. DeLancey Nicoll, District Attorney,

Dear Sir:-

In support of the application of Wm. F. Dickie for your assent to his discharge on his own recognizance, I wish to submit herewith pages 1-18 of my brief at the General Term, dealing with the merits of the case, and a copy of Judge Van Brunt's opinion. Judge Barrett deals only with the questions of law raised by the exceptions.

We interested ourselves in Dickie at the request of Mrs. Courtlandt De P. Field, who has a Sunday School class at Sing Sing, and who in her acquaintance with him there became convinced of his innocence. He has likewise impressed so favorably Mr. Mc. Caffery, whom we understand to be the contractor for whom Dickie has been working in the shops at the prison, that Mc. Caffery has offered to give him, as soon as he can obtain his discharge, a position at a good salary.

I think that there can be little doubt that, as Judge Van Brunt implies, Grego's story is, in its essential features false, and his prosecution of Dickie inspired by malice; and fear lest Dickie should successfully expose his Wall Street speculations to his father, his peculiar methods of getting his notes discounted



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De L. N. 2.

to the bank; and his system of "kiting checks" to his customers. It was necessary for Crego that Dickie should be as completely discredited as possible;~ hence the trial. You can easily assure yourself what sort of people the Cregos are, by turning to the case of Smith v. Crego, 54 Hun. 22; where you will see that the father gave a note to the plaintiff for an amount which another son had embezzled from his employers; and then tried to defeat recovery on the note by the plea that it given to compound a felony.

That Crego was using the firm's money in Wall St., and, to conceal the fact from his father, directed the series of false entries which he used so effectually against Dickie, I am assured could be effectually established in the new trial.

Dickie's <sup>bad</sup> showing on the former one was due to the advice of his counsel Mr. Mo~~ss~~, that he could not be convicted for forgery, and that he had consequently best reserve as much as he could of his defence for the indictment for larceny which it was expected would then follow his acquittal. The apparent "flight" to Montreal, was a most damaging feature of the case, but really innocent in its purpose. Dickie had been trying to get employment at Seattle through a cousin there, ~~he~~ unexpectedly received a telegram from his cousin from Montreal, asking him to meet him there; where he (the cousin, was waiting to take the Allan line Steamer on his way to Scotland for a visit for the Summer. Dickie went, and found that his cousin had procured a place in Seattle ready for him to take. His subsequent delay there was occasioned by the

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De L. N. 3.

serious illness of his wife, who was confined in one of the hospitals there for months. All this could have been established by the testimony of the cousin himself, since returned to Seattle.

Dickie is a Scotchman, with very good connections in the old Country, (I enclose a letter received from his uncle) but no friends here, who can go bail for him.

He has now been very nearly two years in prison, for eighteen months of that time at hard labor at Sing Sing. Putting aside his own asseverations, the probabilities seem to me that he is the victim of a malicious prosecution by Crego. And I am entirely satisfied that even if not wholly guiltless in his relations with the Cregos, he has been very adequately ~~punished~~ punished already for any participation by him in the peculiar transactions of that firm.

I trust that you will agree with me that justice will be done by now allowing Dickie to be discharged on his own recognizance, and to go to work for his <sup>firm</sup> Mc. Caffery for the benefit of himself and his family, instead of the State.

Yours truly,

*N. B. Gordon*

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C. G. Burgoyne's Printing Business, 146-150 Centre St., N. E.

# Supreme Court,

FIRST DEPARTMENT.

THE PEOPLE,  
Respondents,

AGAINST

WILLIAM F. DICKIE,  
Appellant.

Points for  
Appellant.

*Appeal by defendant from a judgment of the Court of General Sessions sentencing the defendant to imprisonment in the State Prison at hard labor for the term of nine years and six months, entered upon his conviction on a trial before Judge Martine and a jury of the crime of forgery in the second degree.*

The following are the chief points urged by the defendant on this appeal :

1. That to secure his conviction of forgery in the second degree the People were allowed to attempt to prove him guilty of petty larceny.

2. That he is innocent either of larceny or forgery.

3. That accepting the People's evidence as true, the facts testified to do not constitute the crime of forgery.

4. That if the facts testified to did constitute the



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crime of forgery, it is a forgery for which he was not indicted.

5. That he did not have a fair trial.

The defendant was indicted in the first count for forging, and in the second for uttering a check, set out in the indictment as follows :

"No. 5934. New York, Sept. 28th, 1889.  
The Importers' and Traders National Bank of New York, through the New York Clearing House Association, pay to W. F. Dickie, currency, or order, two hundred and twenty-five and  $\frac{00}{100}$  dollars.  
\$225 RUSSEL CREGO & SON.

The defendant was *not* indicted for forging the endorsement of this check. *There is no allegation in the indictment that the check ever was endorsed.*

The evidence in chief for the People was brief. It was to the following effect :

For the last six or seven years the prisoner had been the cashier of the firm of Russel Crego & Son, butter merchants of this City. The firm had consisted of Russel Crego and his son Oscar M. ; but, how shortly before the events in question was not disclosed, the father had withdrawn (fol. 20).

It was O. M. Crego's custom to keep Dickie supplied with ten checks signed by the firm with "W. F. Dickie" written in the blank for the payee's name—the amount of the check and the date only being left blank.

The complainant, O. M. Crego, testified that Dickie had authority, without consulting him, to use these checks in paying freight bills and the drafts of certain consignees (fol. 25), but for no other purpose without special instructions ; and that in every case his duty was to endorse the check over to the creditor (fol. 28), and not to obtain cash on the check and pay in cash (fol. 29).

There was no evidence that there was any limit



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to the amount for which Dickie was authorized to fill in these checks.

Whenever Dickie used one of these checks he would enter it on the stub of the first unused check in the check book, fill out the check opposite to his own order for a blank amount, take it in the book to O. M. Crego, who would sign it. It would then be detached and given to Dickie, and thus the number of signed blank checks in his possession was kept constantly at ten. Consequently the numbers of Dickie's checks never corresponded with the numbers of the stubs on which they were entered (fols. 32, 33).

According to O. M. Crego's testimony, whenever currency was wanted in the business, it was obtained always by a check in the check-book, which would be filled out to the order of "W. F. Dickie, currency," and then signed by Crego. The numbers of these checks accordingly would correspond to those of the stubs on which they were entered (fols. 35, 36). Sometimes it happened that after the check had been drawn in the morning, it would turn out to be for an insufficient amount, in which case, if O. M. Crego was accessible, Dickie would take a check from another book, fill it in for the necessary amount and take it with the first check to Mr. Crego who would sign the new check, and he or Dickie would destroy the first one (fols. 51-54, 82, 85-87).

What was done in such instances, when he was not accessible, Crego did not attempt to explain in his testimony.

On the other hand, according to Dickie's testimony (and, as will be seen, the case was so submitted to the jury that it may well be that they believed Dickie's and not Crego's testimony on this point), though when Crego was at the shop and not too much absorbed in other matters to sign a check it was only for the payment of these out of town drafts and of freight bills and cartage bills that he would use one of his own checks; yet whenever Crego was out of the shop, or too much engaged to be disturbed, and it became necessary either to give a check for a bill, or to get one cashed to meet

a demand for currency, Dickie used his checks indiscriminately.

To this Dickie testified repeatedly in natural, straightforward language that bears the stamp of truth on its face.

(Fol. 77) "My duty there was as cashier *to pay the men* and pay any bills of drafts and goods consigned, of freight, or anything appertaining to the office, when Mr. Crego was out or when he was engaged shipping goods or seeing to goods to be shipped."

(Fol. 82) (Describing how he would get his currency check, say for \$100, the amount he supposed would be needed, signed in the morning; and then, when later unexpected calls for cash would be made upon him, by O. M. Crego perhaps, or his father Russel Crego): "Seeing he (O. M. Crego) was busy, I would use one of my own checks. \* \* \* In the afternoon I would take the check made out for the \$100 in the morning to Mr. Crego along with another check for \$100 or \$200 more, or \$125 more, taken out of another book, without any numbers on it at all; he would sign that without asking any questions. 'It is all right, Dickie;' he would tear up the check signed for a \$100 and throw it in the waste basket, or I would tear it up, as long as I could use the new check, and that was done repeatedly" (instancing two occasions, not disproved by prosecution).

(Fol. 89). I had full authority "to use the checks any way I thought right: full authority, and not to trouble him; not to bother him when he was busy, as long as I had those checks signed in blank.

(Fol. 151). "When he (O. M. Crego, on Sept. 28, 1889) told me he wanted some money, I did not have him draw another check for the reason that Mr. Crego had told me repeatedly that when he was busy seeing after the goods, 'What did I sign those checks to you for, Dickie? Have you no blank checks signed?'"

Not only was *no attempt made to contradict this testimony* in rebuttal when O. M. Crego was recalled, but all the circumstances of the case indicated its truthfulness. Crego was away a great deal of the time. No other proof of that was necessary than his own statement that he found it convenient to keep Dickie constantly supplied with ten checks signed in blank, for no possible reason than that it was often inconven-

ient or impossible for him to sign the checks himself. If so, it was just as necessary to provide for cash payments in his absence as for those by check. The cash receipts of the business did not average more than \$10 a week. Yet there was at least always the weekly pay roll to be met of \$98 (fol. 43, 63, 64), small freighting and cartage bills (fol. 275), besides the demands for cash not only of O. M. Crego himself (fol. 47), but of his father, Russel Crego (fol. 82, 92, 178), and of one B. S. Smith, for whom they were in the habit of cashing checks (fol. 102, 145). Nor would there have been anything gained in the way of security by forbidding Dickie to use his checks to obtain cash. There was no danger unless he was disposed to be dishonest, and if he were Crego was helpless. Dickie could get his checks cashed at the bank or through third persons.

None of these facts are denied; and in the face of them it is not to be believed that if there had been no other circumstances in the case it would ever have occurred to Crego to question Dickie's action in getting cash on this particular check; still less that Dickie did not have "fair grounds" for considering that he had authority to do so, which of course was the one vital point in the case.

*Parmlee vs. People*, 8 Hun, 623.

Yet the case was so submitted to the jury that it is impossible to say what their finding would have been on either of these points; and it may well be that it would have been in Dickie's favor on both.

On Saturday, September 28th, 1889, Crego was at the office in the morning and, according to custom, at about nine o'clock signed a check to "W. F. Dickie, currency," for the estimated amount of cash required during the day, \$100 (fols. 43, 49, 141).

Dickie testified that later in the day, at about eleven o'clock, before he had cashed this check, Crego told him that he wanted some money, \$50 or \$100 (fols. 148-150).



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Crego did not deny this, either when first put on the stand, or when recalled in rebuttal.

Dickie then testified that this additional demand for cash, together perhaps with some small freight bills, made it necessary to draw an additional amount from the bank; that as Crego was, as usual on Saturday, in the market much of the morning buying goods, he filled out one of his own checks for the amount he needed—\$225—and took it to the bank at a little before noon and got the cash for it; having left the first check for \$100 at the office (fols. 91, 142, 150-151). On return to the office Dickie gave Crego the amount required by him (fols. 139, 140), whether \$50 or \$75, he did not remember, and it was not made to appear (fol. 93).

None of these statements were disputed by Crego. He had admitted that he frequently did obtain from Dickie in this way sums of from \$50 to \$100 (fol. 47).

Dickie also testified that that same Saturday afternoon he took the unused check for \$100 to Crego and told him that he had had to use instead one of his own checks for \$225; whereupon either he or Crego then and there tore up the \$100 check, and Crego, according to his usual custom, signed for him a new check in blank to take the place of the one used to obtain the \$225 (fols. 148, 149).

*It was undisputed that the \$100 check was, in point of fact, never presented to the bank, and has never been seen since that day (fol. 70).*

Crego had already given this testimony on cross-examination (fol. 50).

"Q. Now, don't you know, Mr. Crego, that on the 28th of September, when this check for \$100 was drawn, that Mr. Dickie came to you and said that he required some money, and then this check for \$225 was made out on that day to be used in the business?"

"A. No, sir; I am sure it was not that way."

Precisely which of the various statements of the question Crego intended to deny by this answer it is impossible to say. He gave no further testimony on the subject, neither then nor when called in rebuttal.



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There is no other denial by him of any of this testimony of Dickie.

It would have been an easy and crushing disproof of Dickie's story for the prosecution to have shown that Crego did *not* sign that afternoon, as Dickie said he did, another blank check to take the place of the one used to get the \$225. If he did, and so made the number on hand up again to ten, it would be impossible to doubt that Crego knew the use that the last one had been put to; for his own testimony was that he signed a new one, only with the entry of the old one on the stub before him (fols. 31, 32). "I would see that the check from the safe had been used for the proper expenditure, and I would sign this new check").

If Crego did *not* sign this new check, and Dickie consequently left only nine, instead of ten, of the signed checks behind him, it was perfectly easy to prove it, and Dickie would have been detected in a deliberate falsehood.

It is believed that the above comprises all the testimony upon the question of whether Dickie had authority or had "fair grounds for considering that he had authority" to obtain cash on the check in question. It is submitted that it is a very slender basis on which to send a man to State Prison for nine and a half years. Dickie's story was not only borne out by the probabilities of the situation, but in its essential particulars was left uncontradicted where contradiction both by Crego and other witnesses would have been easy and conclusive.

Of course if Dickie was authorized to get cash on this check, and the jury had been given the opportunity to find so, and had found so, that would have been the end of the case. Dickie could not be guilty of a forgery in doing what he was fairly authorized to do, even though he did it with fraudulent intent.

But even if he had not been authorized to use the check to obtain cash, still he would not have been

guilty of forgery unless he so used it with fraudulent intent.

And the evidence falls as far short of proving such a fraudulent intent as it does of showing lack of authority on Dickie's part to do what he did.

On the morning of this September 28th, Dickie had on hand cash not to exceed \$10 (fols. 182, 71). The balance shown in the cash book was, it is true, \$143.69; but this comprised besides cash, checks, I. O. U's and "slips," on which were entered loans or payments which had not been regularly charged (fols. 138, 144, 180). Dickie testified from memory that not over \$10 of it was actual cash (fol. 183), and he was not contradicted in any way, Crego saying simply that he could not tell how much of it was cash (fol. 71). The amount of cash taken in was only \$1.99 (fol. 143); and those with Dickie's check for \$225 make up a total of but \$236.99 for the disbursements of the day. These consisted of the pay roll, \$98, and petty items, enough to make it up to about \$130 (fols. 72, 143, 181). These alone would leave but \$106.99 in Dickie's hands; of this Dickie testified (fols. 93, 139, 140, 183), and Crego do not attempt to deny that as much as \$50 was paid to O. M. Crego. This left to be accounted for at most but \$56.99; of this amount \$30.68 was left in the drawer (fol. 72), and the balance Dickie thought went either to Mr. Russel Crego, who was likewise in the habit of getting cash from him on demand, or to cash a check of the B. S. Smith, already alluded to (fols. 82, 92, 139, 1445). Although the trial lasted from Friday, July 11th (fol. 19) to Wednesday, July 16th, inclusive (fol. 297), *the prosecution did not call either Russel Crego or Smith at all, and did not prove, as it would have been so easy to do, that no check of Smith's went through Crego's bank account at that time.*

Upon this subject also, therefore—the alleged "fraudulent intent," with which the forgery must be committed—it is respectfully submitted that the prosecution not only failed to prove, but so definitely disproved their case, that here again a verdict of acquittal should have been directed. They conclusively showed that a

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large part of the proceeds of the check and, in all probability, all of it was used for the ordinary and necessary purposes of the business, after the means ordinarily provided for that purpose, the \$100 check, had proved insufficient and been discarded. As to the small balance of the proceeds, not definitely accounted for, there are several things to be said.

First, that it was for the prosecution to prove their accusation that the prisoner used it for his own purposes, not for the prisoner to disprove it.

Secondly, that his positive denial that he used a penny of it (fols. 91, 92, 94) was not met by any evidence to the contrary, except the fact that the disposition of the money did not apparently appear from the books, owing partly to the peculiar way in which they were kept, to be commented on hereafter, and partly to the fact that owing to Dickie's sudden departure, the entries first made on the temporary "slips" had not been carried into the books.

Thirdly, that there seems to have been a deliberate suppression by the prosecution of the only written evidence which would have shown conclusively the truth of the matter, *i. e.*, these slips left by the prisoner in his drawer, on which as already seen he always made the temporary entries of such disbursements as were not for any reason to be entered at once in the regular books.

These slips were called for by the prisoner on Monday (fol. 127—"I am not sure till I see the slips; the slips would show"), but although the trial was not concluded until Wednesday, they were not produced nor was any explanation given of their absence.

Fourthly, that it is simply incredible that, as the prosecution claimed, Dickie forged this check for \$225 in order to get the opportunity of stealing some \$27 of it at most, and then fled to Canada to avoid arrest for his supposed crime, when if he had had the criminal



intent, it was just as easy for him to take with him not \$50, but \$1,500—for there was more than that amount in the bank subject to his checks (fols. 62, 94).

Fifthly, that it is likewise incredible, if Dickie had been meditating a theft from his employer and a flight to Canada with the proceeds, that he should not also have cashed and taken with him the proceeds of the \$100 check which had been given him early in the day. The non-appearance of this check is inexplicable, except on the theory of the truthfulness of Dickie's story and the absence of any guilty intent on his part.

This properly brings us to the evidence of Dickie's alleged "flight," by which, as an implied confession of guilt, the prosecution attempted to bolster up the weakness of their case on the question of fraudulent intent.

It should be observed at once that this so-called flight was one of a number of unfortunate circumstances, each in itself susceptible of a perfectly innocent explanation; but which together bore hard upon Dickie, and, in conjunction with the attitude toward him of the Judge presiding at the trial, ensured a verdict of "guilty"—of something—at the hands of the jury.

The check in question was cashed on Saturday. Dickie was at the store on Monday as usual; but that night, without having given warning to his employer, went to Montreal, whence he only returned in obedience to a requisition duly obtained upon this indictment for forgery—larceny not having been at that time an extraditable offense.

In explanation of this, it appeared that for one reason or another the Cregos were not popular with their employees. Dickie, for instance, after seven years of service to them (fol. 20), in control as he was of the entire bank balance of the firm, received the princely salary of \$15 a week (fol. 100); raised even to this from what lower amount is not stated, only a year before Dickie left, and then because he had been offered

that amount elsewhere. Coolis and Crockford, two former clerks, had likewise felt impelled to leave without giving any notice (fol. 171). Another employee, Martin, was discharged on a moment's notice, because he demurred to the peculiar way Crego kept his books (fol. 175), though this Crego denied (fol. 283). Even Brandt, the bookkeeper, and Noise, another clerk in Dickie's time, had left between the time of Dickie's departure and his trial (fols. 253, 258, 274).

Dickie for some time had been dissatisfied both with the eccentric way in which Crego thought it necessary to keep his books, and in particular with a way he had (*nowhere denied by Crego*) of obtaining advances from his bank on false representations, which it was made Dickie's duty to convey, of the cost of the butter which he pledged as collateral (fols. 96-97, 166-168, 175-177, 209), and Dickie believed, with some reason, that Crego was getting his son ready to put into his place without notice (fols. 101, 170, 173).

For three months before Dickie left he had been in correspondence with a cousin of his—James Rutherford—in Seattle, about a situation there; and had determined to leave for there on October 5th (the Saturday following the one in question), and on that day only to notify Crego of his intention to do so (fols. 97, 117, 169, 174)—a foolish idea on Dickie's part, perhaps, but not an unnatural one under the circumstances.

With that idea Dickie two weeks before had notified the agent (name and address given) of his house, No. 11 Summers street, Brooklyn, that he was going to give it up (fol. 116), had moved his furniture out of it, and sent his wife to her people in Rome, N. Y., (fol. 117). At this stage, and on the Friday before he left, Dickie unexpectedly received a letter from his cousin Rutherford at Montreal (fols. 98, 117, 169), where, as the defendant would prove on the new trial, Rutherford, on his way home from Seattle to Scotland, was waiting for one of the Allan line steamers. This letter asked Dickie to meet him in Montreal, Saturday, to arrange about going on to Seattle (fol. 169). Dickie wrote back saying that he could not meet him on Saturday, but



would on Tuesday; and on Monday night went to Montreal, intending, if he could make no definite arrangement with his cousin, to come back Tuesday night so as to be gone only one day, and carry out his original intention of finishing out the week at Crego's and leaving on Saturday for the West (fol. 169). In Montreal he was joined by his wife and there detained by her serious illness; she was in a hospital there for over three months (fol. 115).

During this time, on Crego's complaint, this indictment was found against him, and extradition papers obtained. Dickie seems to have hesitated about returning, as he well might if he appreciated the difficulties that his apparent flight, and the very irregular system of book-keeping of which he had complained to Crego would throw in the way of his clearing himself. Crego at first perhaps took Dickie's departure for Montreal as a confession of past thefts from him, and was probably himself unable, from the dishonest way in which he had had his books kept, to tell at once that they did not conceal peculations by Dickie as well as the losses incurred by himself in his speculations with the firm's money (there were, for reasons to be explained hereafter, only hints of this on the first trial, but it is permissible now to advance it as a hypothesis which explains many otherwise inexplicable things); and in the first flush of his anger had made the complaint against Dickie which, of course, at once passed beyond his control. He seems soon, however, to have realized that the necessary exposure of his business methods could do him no good; with the result that Dickie shortly after he was incarcerated in the Tombs received a visit from Russel Crego, O. M. Crego's father, who offered—and urged Dickie to accept the offer—to get Dickie bailed out on condition that he would jump his bail and quit the country (fols. 106, 229, 234).

*Russel Crego was not put on the stand to contradict this testimony of Dickie's, although, as has been said, it was given Monday, and the trial not concluded until Wednesday.*

Dickie declined to accept the offer, protesting his

innocence to the old gentleman. He gave the name of a third party who heard the conversation (fol. 234). His account of his preparations for his departure was also corroborated, so far as it could be, by the book-keeper Brandt, who testified to Dickie's often express intentions to get a place, if possible, in Seattle through his cousin there; and of his intention to be away on the Tuesday (fol. 262).

It is believed that from the foregoing analysis of the evidence it clearly appears that Dickie, irrespective of any questions of law, was morally innocent of any forgery or anything remotely resembling forgery. If so, it need not be urged upon this Court that it was just as wrong to convict him of forgery, because he was thought to have been guilty of larceny, as if he had been equally clearly innocent of any crime whatever. And it was none the less so, because under a conviction for forgery he could be imprisoned, as he is, for nine and a half years, and under one for petty larceny—the most that could be claimed, for only five years at most. And it was no palliation for such an offense against law and justice, that under the extradition treaty as it then stood, it was necessary to convict him of forgery, or let him go free.

But on an appeal to this Court from the denial of a new trial, under the provisions of Section 527 of the Criminal Code (empowering the Court to grant a new trial, whether or not exceptions were taken in the Court below, whenever justice requires it), the Court is now always to determine not merely whether or not errors of law were committed on the trial, but whether, in a broad sense, the prisoner got only his just deserts. If, therefore, the prisoner was really as innocent of larceny even as he was of forgery, it is a proper subject of comment, and it is respectfully submitted that he was.

It must be freely admitted, as has been said, that there were ugly circumstances in the case on this point against Dickie. But if they are all susceptible of explanation, the fact should have made the Court below only the more solicitous that an innocent man should

not be overwhelmed by them. In point of fact, the justice presiding at the trial very early became convinced by them of the prisoner's guilt of something; and thereafter, with perhaps a pardonable zeal to prevent a fancied rogue escaping justice, so bore himself toward the prisoner as to make his acquittal impossible; and on his conviction imposed upon him the extreme penalty of the law for the crime for which he was indicted. The evidence supposed to show a fraudulent intent on Dickie's part in these transactions, including his supposed "flight," has been already examined and further comment upon it is unnecessary. There remains only the question of the false entries in the books, which according to contemporaneous testimony it was that, though they were in no way relevant to the subject matter of the indictment, convicted Dickie. Certainly the testimony concerning them makes up three-fourths of the printed case.

As a part of the People's evidence in chief to prove the prisoner guilty of forging this \$225 check, the Judge presiding had committed the outrageous injustice and error of eliciting himself from the prosecutor the statement that after Dickie's departure he found a shortage in his accounts of \$2,775 (fols. 66-67). After that, Dickie admitted that for the last four years there had been a systematic series of false entries in his books, the result of which was to show that he had received less, and disbursed more, than was the fact. Dickie's explanation of this was, in brief, that these entries were made throughout with O. M. Crego's knowledge and by his directions. In considering Dickie's evidence on this point, the unwillingness with which it was given, the apparent inconsistencies in which his half-truths at times involved him, and the obscurities which, even as it stood at the close of the case, it had failed wholly to clear up, the Court in order to do the prisoner justice must consider it under this hypothesis, viz.: that Dickie had been advised—wisely or not need not now be discussed—and was down to the close of the trial advised, that nothing that the prosecution could prove, or had attempted to prove, could, as a question

of law, constitute the crime of forgery; and that consequently it was wisest to wait for his complete vindication until his trial for larceny, which, as he had told Russel Crego, he had resolved to stand, waiving his rights under the Extradition Treaty; that this advice Dickie faithfully tried to follow throughout the trial, yielding up his story only bit by bit, as it was forced from him by the very able and relentless cross-examination of the District Attorney, and consequently prejudicing his case at each fresh admission wrung from him; that the real explanation of this peculiar system of bookkeeping was that, until very recently at least (hence Crego's unexpected denial of the fact at the very outset of the case, fol. 20), the father, Russel Crego, had been a partner in the firm, and that Crego had been speculating in Wall street, and using the firm's money to pay his losses, and had devised this system of bookkeeping to cover up the fact from his father.

Read in the light of this hypothesis, which a new trial will give the prisoner the opportunity to prove to be a fact, the evidence on this subject assumes an entirely new aspect. It is not necessary to rehearse it at length. One or two circumstances only, which bear out the hypothesis, may be briefly noted.

1. The features of the testimony on this subject were the persistent demands of the prisoner when pressed for explanations of the irregular entries, for the production of a so-called "key" or accommodation note-book; the failure of the prosecution to produce it, and Crego's final testimony given just before the close of the case that no such book existed. Certainly here was either a deliberate fabrication by the prisoner to conceal his guilt, or an equally deliberate and wicked suppression of evidence by Crego.

If there was such a book, the prisoner was innocent. If there was not, he was certainly a thief, if not a forger.

It is submitted that as the evidence on this point is read, from Dickie's first almost casual allusion to it on



Monday, to his desperate appeals for it as the end of his trial approached and he saw it was not to be forthcoming, it is impossible to believe that the man was fabricating (fols. 122, 123, 126, 133, 135, 159-160, 162-163, 183-184, 193, 205, 212-214, 222, 226-228, 238-239, 245, 250; see also Crego's testimony, fols. 290-293).

On Monday, before the subject of the irregular entries had been broached at all, this occurred (fol. 123):

"A. That is the footing up.

Q. Up to that date that amount of money received by the firm?

A. Unless what would be in the small book, that is, the accommodation note-book."

Q. And the difference between them (the credit side and the debit side) would, I suppose, show the actual balance? A. It shows the balance with the accommodation note-book" (fol. 123).

Q. Can you tell from your cash book and the bank book whether that was cash or whether it was slips that were carried along?

A. I might and I might not.

Q. Well, suppose you try (showing books)?

A. Have you got the small book, the accommodation note book? That will show it better if you can give me that.

Q. I have not it here."

Later, in answer to an unwarranted outburst of rebuke from the Judge presiding (fol. 131):

"I will give you the right information if you will give me the books, and I will show my balance."

A. That is the way I was told to keep them. In fact, they are kept in a way, the books, that I defy any expert to understand it unless having a key, which is what we call the accommodation note book" (fol. 133).

(Tuesday morning.) Q. I hand you a book and ask you if that is the accommodation note book (book shown)?

A. No, it is not. Mr. Crego knows very well it is not." (fol. 198.)

A. I always called it the key, the key book kept

by Russel Crego; you cannot find out the balance unless you have that book; and Mr. Crego knows that, and that is the reason it is not here" (fol. 204).

"If I could get this accommodation note-book Mr. Crego knows very well it would throw light on it" (fol. 228).

"Mr. Crego has got four or five (accommodation note-books) in his drawer in his desk that was finished up. The one that I left was along with the other books in my cash drawer or in the safe drawer (fol. 228).

2. It should also be observed that it appeared without contradiction that when Crego's friend Dowie, called upon Dickie at the Tombs before his trial, Dickie then told him (fol. 104):

"I was innocent of the charge, *as my books would show*; when I left them they were balanced up to a cent; it was through malice that I was in prison."

Now, it is inconceivable that any man in his sane mind would have referred to these books as certain to prove his innocence, *unless they included this accommodation note-book*.

This is one of those circumstances which, in determining disputed questions of fact, become important by reason of their very insignificance, and the unlikelihood of premeditated fabrication about them. If Dickie spoke the truth here,—and no attempt was made to contradict him, nor is there any reason to suppose he did not,—it is very difficult to believe that there was not a deliberate suppression by Crego of this accommodation note-book.

3. It should further be noticed that it appeared without contradiction that this series of false additions in "balance books" and cash-books kept in Crego's business extended through a period of four years and a half (fols. 243-251), and that during this period Crego constantly consulted them, having the cash-book placed

on his desk usually every morning (fols. 238, 239, 242, 286). So Crego was obliged to testify that, with these incorrect additions staring at him from every page of these books during these four and a half years, he never knew until after Dickie left that his books had not been always kept with perfect correctness. Considering the minute supervision which Crego admittedly exercised over his not very extensive business, this also is at least hard to believe.

In reading over the testimony on this general subject of the books and the contradictory explanations of their peculiarities, the Court is asked to bear in mind that Crego likewise suppressed the evidence next to this accommodation note-book most important to Dickie—the slips and I. O. U's. left behind him in his drawer, the existence of which was not denied; and also to bear in mind the undisputed attempt of Russel Crego to induce Dickie to accept bail and avoid his trial; and the threats of Russel Crego as to what would befall Dickie if he refused to do so; the failure of O. M. Crego to account in any way consistent with his story for the disappearance of the first check for \$100; his failure to make the easy and obvious contradiction of Dickie's testimony that he gave him a new blank check that Saturday afternoon, which he only could have done on the use of the last one being accounted for; his omission to deny in any way Dickie's charge that he, Crego, constantly procured his notes to be discounted at his bank by deliberately false representations as to the cost of the butter pledged as collateral; and the various other unexplained gaps in Crego's testimony.

It is believed that upon such consideration the conclusion is inevitable, not, perhaps, that Dickie demonstrated his innocence—that under the circumstances of the trial and the manner in which it was conducted was hardly possible—but that nothing was shown which was not compatible with his innocence, even of larceny; and that on this charge, which, though not the subject of an indictment, was in fact the one to which most of the evidence was directed

and upon which the verdict was obtained, he certainly did not have a fair trial, either according to the rules of law or general principles of justice.

**First Point.** The facts testified to by the witnesses for the prosecution do not constitute the crime of forgery; and it was for this reason error to deny the motion made at the close of the People's case to direct an acquittal.

The case for the prosecution was that Dickie, rightfully in possession of this check signed by Russel Crego and made payable "to the order of W. T. Dickie," his authority with regard to filling in the amount not limited to any particular figure, and having authority to endorse it over to some third person, yet had no authority to get cash on it; and that as he did use it for this unauthorized purpose, he forged the check.

It is not necessary to argue that forgery can only be committed with a pen, or some similar instrument; and that, unless the prosecution can point to some writing on this check and say that that particular writing in some way added to or altered the legal effect of the check, and that the words or figures so written were words or figures Dickie's pen had no right to put there, Dickie did not forge the check, whatever he did with the proceeds.

Now there were only four things that Dickie wrote on this check, viz.: he dated it, he added the word "currency" to his name, he filled in the amount "two hundred and twenty-five," and on the back he wrote his name "W. F. Dickie."

1. Dickie had authority to date all his checks. The mere dating of this one could not be forgery.

2. Nor was his authority limited as to the amount. If he otherwise kept within the limits of his authority



he had a right to make a check call for two hundred and twenty-five dollars, or for twenty-five, indifferently.

3. The addition of the word "currency" to his name was the wholly immaterial addition of a mere book-keeper's memorandum; and is, by the way, strongly indicative of Dickie's innocent intent throughout the transaction. The legal effect of a check payable to "W. F. Dickie or order" and endorsed "W. F. Dickie" is precisely the same as that of one similarly endorsed, but payable to "W. F. Dickie, currency or order." Forgery cannot be predicated upon an immaterial alteration like that.

2 Bishop on Criminal Law, § 577:

"It is not not forgery to add to a written instrument any word which the law would supply. Such alterations do not change in any degree the legal effect of the instrument. Therefore, they are not forgery."

Martindale vs. Follet, 1 N. H., 95:

*By the Court:* "Alterations have been held to be immaterial when they were made to supply a word omitted by mistake, as in *Hunt vs. Adams*, 6 Mass., 519; or when made by inserting into the body of a bond the name of an obligor who had already signed it, as in *Smith vs. Crocker*, 5 Mass., 540; or by writing "good" before "merchantable wool" as in *Slate vs. Cilley*, Hillsborough, April, 1817.

4. Nor was it forgery for Dickie to write his name "W. F. Dickie" on the back of the check. This he was especially authorized to do. Where he departed from his authority, according to Crego, was in not also writing above his name, "Pay to the order of So and So." But the mere omission to write something cannot constitute the crime of forgery.

The fallacy upon this point of the prosecution, and, it is respectfully submitted, of the learned Judge below, lay in confounding the use of the pen with the use of the check. If the pen wrote nothing on the

check which would have amounted to forgery if the check had been put to a proper use, the mere fact that the check itself, when the pen was through with it, was put to an improper use, could not make that forgery which was otherwise innocent.

There are two tests, both of which are always applicable and each of which is always conclusive. When the instrument was complete, was there any material writing upon it, which, *for some purpose*, the prisoner was not authorized to put there? Was the instrument, when complete, still susceptible of some legitimate use in the hands of the prisoner? If so, the subsequent use of it by him might involve him in larceny, but not in forgery; for it could not alter its character fixed when his pen quitted it. The forgery was then complete or never. If it were then not a forgery, it could not be subsequently uttered; if it were, its uttering would merely be another crime.

Thus, in the case at bar, there was no material writing on the check when Dickie laid down his pen, which, *for some purpose*, he was not authorized to put there. And it was then still susceptible of a legitimate use by him. It might have been legitimately handed by him to the treasurer of the Central Railroad Company to pay a freight bill, or deposited in bank to meet one of the Western drafts. Consequently it was not forged.

The same tests can be applied to every one of the line of cases which were supposed to authorize Dickie's conviction, and it will be found that in each case they point unerringly to the result. The cases are the following:

Rex vs. Hart, 7 C. & P., 652 (1837):

The prisoner having been given an acceptance, blank as to amount, with authority to fill it in for £200, filled it in for £500.

*Held*, a forgery (no opinion).

Rex vs. Bateman, 1 Cox Cr. Cas., 186:

Prisoner acquitted on account of failure to prove lack of authority from both of two partners to get cash for a check and use proceeds.

*Dictum* that "If the blank check was delivered to

him with a limited authority to complete it, and he filled it up with an amount different from the one he was directed to insert; or, if after the authority was at an end, he filled it up with any amount whatever, that too would be clearly forgery."

Reg. vs. Wilson, 1 Den. C. C., 284 (1848):

The prisoner had been given a check signed by the maker, payable to bearer, for an amount left blank; with instructions to fill in the amount due on a bill for some £150 and interest, then get the check cashed and pay the bill.

Instead, he filled in the sum of £250, and retained part of the proceeds to his own use, claiming that it was due him for salary.

Held (following Rex vs. Hart), forgery.

Wright's Case, 1 Lewin C. C., 135:

Blank check left with a clerk fell into the hands of the prisoner, who had no authority whatever with it. He having filled in the blanks and obtained the proceeds.

Held, forgery.

State vs. Kroeger, 47 Mo., 552:

Held, that the prisoner, who was authorized only to fill up some signed checks to the order of holders of warrants against the City of St. Louis, but who instead made one payable to "cash or bearer," deposited it in his bank account and converted the proceeds to his own use, was guilty of forgery.

In each of these cases it will be seen that where the instrument was complete some material thing had been written upon it, which *for no purpose* was the accused authorized to put there; and each instrument, when complete, was incapable of any legitimate use in his hands. Compare with these the following case:

Reg. vs. Richardson, 2 Foster & Fin. 343 (1860):

The prisoner, a clerk, had authority to draw checks upon his employer's bank account, not only to the order of creditors of the firm, but to the order of himself for such sums as he was supposed to require for cash disbursements of the business.

On one occasion he drew to his own order a check

for £11 10s., which he entered on his books as having been paid for freight bills, but which he really appropriated.

Held, that the prisoner "could not be convicted of forgery, inasmuch as having a general authority to draw he did not necessarily exceed his authority when he drew the check; and that the criminal act, if any, was the subsequent appropriation of it."

Here it will be observed, precisely as in the case at bar, the prisoner *was* authorized, for some purpose, to write what he did upon the check; and when he had finished the writing, the check was still susceptible of an honest use in his hands. Consequently his acquittal was directed, as Dickie's should have been. The cases are identical.

**Second Point.** Dickie's case was, however, even clearer, because he was not indicted for forging the *endorsement* of the check.

It is unnecessary to cite authorities at length to show that an indictment for forging a check cannot be sustained by proof that the prisoner forged the *endorsement* of the check.

Archibald's Criminal Pleading, p. 359:

"Where forgery is of a mere addition to the instrument, and which has not the effect of altering it, but is merely collateral to it; as, for instance, a forged acceptance or *endorsement* to a genuine bill of exchange, proof of the forgery of the addition will not support an indictment charging the forgery of the entire instrument. The forgery of such addition must be specially alleged, and must be proved as laid."

The prosecution, therefore, could make no complaint of the way Dickie endorsed the check—of what he did or did not write on the back of it—but were compelled to stand or fall on the proposition that, when Dickie had written what he did on the face of it, it was then a forged check. But he had authority to date his checks, and he had authority to fill them in for even



more than two hundred and twenty-five dollars; and the insertion of the word "currency" was a wholly immaterial one, which in no way changed the legal effect of the paper. And not another letter or figure did he put upon the face of that check.

Upon this flimsy foundation rests his sentence to nine years and six months imprisonment at hard labor in the State prison.

**Third Point.** So far the case has been discussed as if the doctrine of the English cases already cited were the law in this country. It is not. It has been rejected in Massachusetts, and in this State has been referred to only to be questioned.

All the English cases, holding that if one has authority to fill in a blank check in a certain fashion, and in any way departs from that authority, he forges the check, all hark back to the one case of *Rex vs. Hart*, 7 C. & P., 652, where this extension of the law of forgery was for the first time made. On referring to it it will be seen that not merely no authority was cited for the decision, but no opinion was given.

The difficulty with the doctrine is this. It is, of course, a fundamental rule that a forged instrument is utterly void, even in the hands of a *bona fide* holder. Forgery can affect no title, give no cause of action. If, then, a check like the one under consideration is really forged, no holder could recover upon it. And so far as the doctrine of estoppel is concerned, it is believed that it has not hitherto been held that if an instrument is really a *forgery*, the victim can under any circumstances be estopped from setting up the fact.

Putnam vs. Sullivan, 4 Mass., 45-53:

The defendants had intrusted to a correspondent a note endorsed by them in blank to enable him, by signing it and filling in the proper amount, with it to renew a previous note which they had endorsed for him. By false representations that the first had been destroyed

he obtained from the plaintiffs several duplicates of the first; filled in the blanks, used them all for his own purposes and upon one of them this suit was brought by a *bona fide* holder. The makers defended on the ground that the note was a forgery.

*By the Court, PARSONS, C. J.:* "It is objected that this note ought to be considered as a forgery of the names of the endorsers, because a note was afterwards written on the face of the paper by the promiser, not only without the direction or consent of the defendants, but against their express instruction; and, therefore, that it was a false and fraudulent alteration of a writing, to the prejudice of the endorsers."

"This objection would have great weight, if when the endorsers put the name of the firm on the paper, they had not intended that something should afterwards be written, to which the name should apply as an endorsement; for then the paper would have been delivered over unaccompanied by any trust or confidence. If the clerk had fraudulently, and for his own benefit, made use of all the endorsements for making promissory notes to charge the endorsers, we are of opinion that this use, though a gross fraud, would not be in law a forgery, but a breach of trust."

Van Duzer vs. Howe, 21 N. Y., 531:

(This case, by reason of its inaccurate headnote, is frequently cited as holding precisely the opposite of the opinion really given by the Court.)

The defendants had given one Webb a blank acceptance, with instructions to fill it up for a sum not greater than \$1,000. Webb filled it up for \$1,200, and it came into the hands of the plaintiffs as *bona fide* holders for value.

It was objected that the note was forged, and that consequently there could be no recovery upon it.

*By the Court, DENIO, J.:* "The defendant's counsel relies upon several adjudications in the criminal courts in England, in each of which it was held that a person having a blank signature of another which he was authorized to fill up with a check or bill for a limited amount and who wrote one for a larger amount was guilty of forgery" (*Rex vs. Hart*, 7 Carr. & C., p. 652; *Reg. vs. Wilson*, 2 Carr & Kirwin, 527; *Reg. vs. Bateman*, 1 Cox's Cas., 186). "The difficulty which the doctrine of these cases presents does not seem ever to have been urged by counsel or noticed by the Courts in the civil actions brought upon such paper, though it

would seem incongruous to hold that any recovery could be had upon an instrument which was in itself a forgery. The positions of the two classes of cases can only be reconciled by holding the authors of the blank signatures estopped from setting up against a *bona fide* holder who has paid value that the paper was not his genuine act." \* \* \*

"But if the two apparently hostile positions which the cases present are really incapable of being reconciled, I am in favor of sustaining those which uphold the civil action. The decisions of that class are so numerous and consistent, and the principle is so uniformly and confidently acted on by business men, that it would be eminently dangerous to depart from it. It is better that the wrongdoer should go unpunished until the legislature shall have provided a suitable penalty for his illegal act."

**Fourth Point.** It was gross and fatal error to allow it to be proved as part of the evidence in chief of the prosecution, that after Dickie's departure a shortage in his accounts was discovered of \$2,775.

This evidence was first elicited by a question from the presiding Judge himself (fol. 66.) To his question no objection was interposed, an omission surely pardonable, if ever, when the Bench, by itself putting the question, has ruled in advance upon its relevancy. But the District Attorney took the cue, and at once put a similar question (fol. 67), "What was the discrepancy?" to which, and to the then inevitable ruling upon it, seasonable objection and exception were taken.

It is believed that this is the first time in the history of criminal trials that the prosecution has been permitted to sustain an indictment for forging and uttering a particular instrument by proof that for an indefinite time before the act in question the culprit had been robbing the employer whose check he is on trial for forging.

Of course the rule is familiar that evidence of one crime is not relevant upon an indictment for another; also the exception to it, that where it is important to

show a *scienter*, as in cases of uttering forged or counterfeit notes, not forged or counterfeited by the prisoner himself, or in cases of receiving goods stolen by others, evidence of similar acts at times so closely connected as to make it improbable that there could have been absence of guilty knowledge in all of them, is, under carefully guarded restrictions, admissible. One of these restrictions is that the alleged purpose of establishing a *scienter* shall not be merely colorable.

Coleman vs. People, 55 N. Y., 81:

*By the Court:* The practice of calling out evidence for one purpose, apparently innocent, and using it for another, which is illegal, is improper; and if it is clear and manifest that the avowed object is colorable merely, its admission is error. It was idle and frivolous to put in this evidence for the purpose avowed, while its influence could not be otherwise than damaging to the prisoner. Indicted for receiving twenty-two bars of pig iron, the facts proved under the pretense of distinguishing between that and manufactured iron railing, tended very strongly to prove the prisoner guilty of a different crime from that charged. \* \* \*

It (this evidence) was received under a general objection for no specified purpose, and it must be assumed that it was received as competent upon the main issue."

It is unnecessary to discuss the extent and limitations of this rule at length, for they have been defined at great length and with the utmost clearness in a recent and well-known case—*People vs. Sharp*, 107 N. Y., 427, where the entire opinion of Judge PECKHAM is devoted to the topic. It is only necessary to read it to be assured that the ruling in the present case—a much more extreme one than that in the *Sharp* case, was error.

Here there could be no question of a *scienter* in the uttering of a check which was the prisoner's own handiwork; and the second crime proved was not "of the same nature" as the one charged in the indictment; it bore no relation to it except that both were assaults upon Crego's property. It would have been just as proper



to prove that the week before the alleged forgery Dickie had burglarized his employer's residence.

It is respectfully submitted that this was simply a most barefaced attempt to convict Dickie of forgery because he was a bad fellow generally; and that it deserves the swift condemnation of every fair minded man, layman, lawyer or Judge.

**Fifth Point.** It was also fatal error for the Judge presiding at the trial to overwhelm the prisoner, when hard pressed by the embarrassments of his situation and the rigorous cross-examination of the District Attorney, with this outburst of abuse, ruinous itself of course of the prisoner's chances with the jury.

(The Court speaks:) "You know that you kept that book. You know perfectly well what you kept it for. You know perfectly well what it represents, probably not absolutely and definitely. You could give us such information, if you meant to, there is no doubt in my mind." (fol. 130).

Extended comment on this is unnecessary. It is in the style of a judge of former days, famous for the certainty with which he obtained convictions. It amounted to telling the prisoner, in the presence of the jury, that in the opinion of the Court he was a liar.

**Sixth Point.** It was also fatal error to strike out the testimony of the witness Brandt, that on different occasions while in Crego's employment, Dickie had told the witness that "Crego kept his books in a funny way; that anybody coming to examine them would not quite understand them" (fols. 267, 268).

When this occurred, the District Attorney had devoted nearly two days of the trial to an attempt to show by Dickie's cross-examination, on the plea that

it was competent as affecting Dickie's credibility as a witness on his own behalf, that while in Crego's employment Dickie had been guilty of repeated petty peculations, which he covered up by false entries in his books; and that in testifying that these false entries were made not for that purpose but by Crego's directions, he had perjured himself.

In that state of the case it was not "irrelevant" to show that long before, long *ante litem motam*, Dickie had made similar statements. The evidence, if allowed to remain, might well have gone far toward assuring the jury of the truthfulness of Dickie's story, which the prosecution had put in issue. These statements, having been made coincidentally with the entries to which they relate, came precisely under the rule admitting as *res gestae* such contemporaneous declarations as tend "to give character to the act or to show the motive or purpose of the party doing it."

*People vs. Greenfield*, 23 Hun, 454; affirmed 85 N. Y., 75.

**Seventh Point.** The other rulings upon questions of evidence to which exceptions were taken (fols. 103, 176, 187, 203-207, 215, 217, 227, 235) were also errors. They are not waived, though it is not now thought necessary to discuss them at length.

**Eighth Point.** It was error to allow the prosecution, as part of its evidence in chief, to put this question (fol. 29):

"Q. Was he authorized to endorse a check in blank, get the currency for the check and use currency in the liquidation of those claims?"

Dickie was not indicted for forging the endorsement.

**Ninth Point.** It was error to allow Crego in rebuttal to contradict (fols. 284, 293) Dickie's testimony that the false entries in the books were made by his (Crego's) directions.

This was a point purely collateral to the one on trial, brought out only by the cross-examination of Dickie by the District Attorney as affecting his credibility; and upon it the prosecution was concluded by Dickie's answers (fol. 293).

So far only as the rule of the common law held the prosecution concluded by the denial of a witness that he had been convicted of a crime, it has been charged by statute (Code Civ. Proc., 832); but it is otherwise unchanged.

Stokes vs. People, 53 N. Y., 164, 176:

*By the Court:* "With a view to impair the credibility of her (one of the witnesses for the defense) testimony, she was asked by the prosecution upon cross-examination, whether she had not left Mrs. Morse, by whom she had been employed, without her knowledge or consent, and whether *she did not take things not belonging to her* when she left. The prosecution was permitted to prove by Mrs. Morse that her testimony in answer to those questions was untrue, to which the counsel of the accused excepted. This was error. Upon cross-examination the prosecution had the right, for the purpose of impairing the credit of the witness, to ask questions as to those collateral matters; but having asked and obtained answers, must abide by the answers given; other witnesses could not be called to prove such answers untrue (citing cases). It cannot be said that the accused sustained no injury from this. The direct tendency of the incompetent testimony was to impair the credit given to the testimony of his witness."

**Tenth Point.** There were numerous fatal errors in the charge of the Court to the jury; and it was error to deny the motion for a new trial, made expressly on this ground (fol. 359).

1. It was error to say to the jury (fol. 302):

"You are not here to determine if there be any false entries or footings in that book, except as an incidental question; *and you are only to consider that question* when it may throw light upon the question at issue, viz.: Is this a forged instrument?"

This was to instruct the jury that if there were false entries in the books they might, relying in part upon that fact, convict the defendant of forgery.

The only permissible instruction upon this point would have been that the jury could consider these false entries only as bearing upon the credibility of the defendant as a witness on his own behalf.

2. It was an error of the gravest nature to say to the jury (fol. 309):

"The altering of the endorsement [of a check] constitutes forgery, if it be accompanied with a fraudulent intent."

Dickie was not indicted for forging the endorsement; and yet this was virtually telling the jury that if they found that the endorsement of the check was forged, *i. e.*, written without authority and with a fraudulent intent, they might convict the defendant. It is not unlikely that this was the precise ground on which in point of fact they did convict him.

3. It was also error, and upon the vital point of the case, to say to the jury (fol. 310):

"If he [the defendant] had authority to do certain acts and he exceeded that authority, knowingly and intentionally meaning to defraud, then he comes within the act charging forgery."

(a) This ignored the principle that forgery can only be done with a pen or the like; and instructed the jury to convict the defendant of forgery, even though they found that he wrote nothing on the check which he was not authorized under certain circum-



stances to write there, provided they did find he used the check, or its proceeds, in an unauthorized way.

The error of such an instruction has been already discussed under Point I., *supra*. It renders it wholly impossible to say what was the conclusion to which the jury did come on the limits of Dickie's authority.

(b) This instruction also ignored the difference between forging the check and its endorsement; and authorized the jury to convict, although they believed that Dickie was authorized to put everything on the face of the check which he did put there, if they also believed that he endorsed it in a way in which he was not authorized to endorse it.

That this was error has been sufficiently shown under Point II., *supra*. Under this instruction, particularly in view of the fact that Crego had been erroneously allowed to negative the question (fol. 29) "Was he (Dickie) authorized to endorse a check in blank?", it may well be that Dickie was convicted, although the jury believed him innocent of the only crime for which he was indicted. This instruction could only have been made correct by altering it thus:

"If Dickie had authority to do certain acts *with his pen*, and he exceeded that authority *by writing ON THE FACE OF THE CHECK words and figures which under no circumstances he was authorized to write there*, knowingly and intentionally meaning to defraud, then he comes within the act charging forgery."

4. It was also error to instruct the jury (fol. 310):

"If a person has authority to fill up a blank check for one sum only and he fills it up for a larger sum, that constitutes forgery."

This brings up the question already discussed in Point III., *supra*.

5. It was also error to say to the jury (fol. 320):

"If this defendant intended to commit a crime, then that check when he either obtained the signature or used that check, having it already in his possession; if that

was his intent, and he exceeded his authority; if that was what he had in mind, to cheat and defraud *by the use of that instrument*, then I leave it for you to say whether he did or did not commit forgery."

The syntax of this sentence is perhaps rather mixed, but its meaning is plain enough; and was no doubt perfectly comprehended by the jury.

They are instructed that if the defendant exceeded his authority *in the use he made of the check*, and so used it with a fraudulent intent, he was guilty of forgery.

There could not have been a more serious error on a more vital point of the case. The charge ignored the fact that the forgery could only occur in the *making* of the check, and permitted the jury to convict, though its making were authorized and lawful, if the use to which it was put was wrong. The question is the same as that discussed in Point I.

If there could otherwise be any doubt that this was the meaning intended to be conveyed, it would be removed by the next sentence. "But, Dickie said, 'I wanted that money to pay salaries,'" etc., showing that the Court was making the conviction turn simply upon the use to which the money was put.

The instruction should have been that whatever the use to which the money was put, the defendant could not be guilty of forgery, if for any purpose he was authorized to write upon the face of a check such words and figures as he put upon this.

5. For the same reasons it was error to say to the jury (fol. 305):

"Forgery, in other words, exists in giving the appearance of truth to deceit and falsehood, and in giving an instrument an operation which in truth and in justice it ought not to have."

This likewise allowed the jury to convict Dickie of forgery if they believed that he gave this check an operation—*i. e.*, put it to a use, which it was beyond his authority to do, although they should believe that the

actual writing on the check was entirely within his authority.

6. It was also error to make it a turning point of the case (fol. 323) whether or not Crego was in the office when the necessity of getting a check for \$225 instead of \$100 arose. The defendant's testimony was that he was authorized to use his checks, not merely when Crego was absent, but when he was too much engaged to sign a check. The charge took the defendant's case on this point out of the jury's hands.

7. It was error to instruct the jury (fol. 334), with reference to Dickie's explanation of his visit to Montreal, that

"He said: 'I received a letter from my cousin in Montreal.' He immediately corrected that, and said his cousin was in Seattle."

There was nothing in the evidence to warrant this; and it was virtually informing the jury that Dickie himself was not able to tell a straight story with regard to his alleged flight; which had been treated by the prosecution and the Court as a vital point in the case.

Although the prisoner's counsel at once objected to this statement, it was not withdrawn by the learned Judge.

8. It was also error to instruct the jury (fol. 338) that Dickie had said:

"I told Mr. Brandt I might not be in the office the following day; I told him I had been moving. I made this statement to deceive Mr. Crego," and then to comment on this imaginary statement thus, "Had he any purpose to deceive Mr. Crego? Had he any reason to deceive him? Was it in furtherance of some other purpose? Was it because he had conceived the intent, &c."

The evidence will be searched in vain for any testimony by Dickie that he made any statement to deceive Mr. Crego.

Dickie's story on this point was perfectly consistent and probable. He *had* been moving; he was making his preparations to go to Seattle the next Saturday,—and his intention was to be absent only Tuesday, returning Tuesday night, unless his cousin should perhaps be able then definitely to offer him a place. It was the fashion for Crego's employees to leave without notice (fols. 171-173).

9. It was again error to say to the jury (fol. 340):

"Did he (the defendant) obtain or use that check which had been previously entrusted to him, contrary to his instructions? Did he exceed his authority and did he have the intention to deceive and defraud? If he did, I leave you to say whether or not he is guilty."

This again authorized the jury to convict if they found that Dickie fraudulently exceeded his authority with the check after the writing on it was complete, even though they should believe that he wrote upon it nothing that he was not authorized to write there.

9. Finally, the very last words of the Judge to the jury contained at least by implication, the same error so often complained of, which might not in any one case have been so important if it had not been so often reiterated—the intimation or instruction that the jury could convict Dickie of doing something else than with fraudulent intent writing on the face of this check material words or figures which he was not authorized to put there. The jury were now told that their verdict would be one of three—guilty of forgery in the second degree, guilty of an attempt at forgery in the second degree, or "if you believe that no crime at all was committed, your verdict will be not guilty" (fols. 356-358).

It is true that for some inconceivable reason no exceptions were taken to the charge, though the questions seem to have been raised on the motion for a new trial.

But the criminal law of this State does not intend



that either the inadvertence, negligence or incompetence of counsel, shall deprive the prisoner of the right to have an unfair or unjust or illegal conviction set aside. The Criminal Code provides (§ 527) that the appellate court may order a new trial, if it be satisfied that the verdict against the prisoner was against the weight of evidence, or against law, or that justice requires a new trial, whether any exception shall have been taken or not, in the Court below.

Under this section convictions have been reversed for errors on the charge less grave than these, and not excepted to.

*People vs. Wileman, 44 Hun, 187.*  
*People vs. Williams, 29 Hun, 520.*  
*People vs. Valbreau, 4 Crim. R., 193.*  
*People vs. Magone, 12 Abb. N. C., 187.*

Certainly the case at bar is one in which the justice of the conviction should be carefully examined. Up to the time of this trial the defendant had borne an unblemished reputation (fol. 278). He was indicted for forgery only because he could not be extradited for larceny; and by an extension of the law of forgery never before attempted was convicted on a trial which was introduced by evidence on the part of the prosecution that he had stolen \$2,700 from his employer, and three-fourths of which was occupied with the endeavor to force upon him the responsibility for a long-continued system of false entries in his employer's books. At the outset of the trial, while on the witness stand, he was told by the Judge that he was deliberately endeavoring to conceal the truth from the jury. The only evidence which could explain the situation of his accounts was cruelly suppressed by the prosecutor, who swore that the endeavors of his father and partner to persuade Dickie to run away from his trial, were without his advice or consent. And the case was submitted to the jury in a charge which never once presented to them the only issue upon which they had the right to pass, and virtually informed them

that they should bring in a verdict of guilty if they considered that the prosecution had established any one of the divers offences against law or morals of which it had been permitted to introduce evidence. And upon the verdict thus obtained the prisoner was sent to State prison for nine years and six months; whereas the extreme penalty for the crime which he was really convicted is imprisonment for five years.

**Last Point.** The judgment should be reversed, and, inasmuch as the case of the prosecution itself negatives the possibility that the defendant forged the check in question, without ordering a new trial.

H. B. CLOSSON,  
 Attorney for Appellant.

POOR QUALITY  
ORIGINAL

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PHILLIPS & MOWER, 82 NASSAU ST., N. Y.

B

STENOGRAPHER'S MINUTES.

Court of General Sessions. Part I

The People

vs.

William F. Dickie

BEFORE

Hon. Judge Martine

July 11, <sup>th</sup> 1890

WITNESSES.

Direct. Cross. Re-Direct. Re-Cross.

Oscar M. Crego

Charles Jacob

William F. Dickie

Rudolph Brandt

Walter Wise

Oscar M. Crego (recalled)

Judge's Chair

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**PAGE (S)  
OUT OF  
SEQUENCE**



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A. I was not going to give him any time.

Q. Is it not true that you told Mr. Brandt you were going to move and would be a little late coming on Tuesday ?

A. I told Mr. Brandt I might not be in the following day, but I did not say that I would be late, I said I might not be in the office that day, the following day.

Q. Did you tell him where you were going ?

A. I did not.

Q. Did you tell him why you might not be down ?

A. I told him I had been moving part of my things, last Saturday and that I was not going to stay in that house.

Q. You said you might be moving and not be there ?

A. I told him there would be some things I was going to move that I might not be there that day.

Q. You intimated to him that the reason you would not be there was that you were employed in moving?

A. That was to put Mr. Crego off his guard that I was away looking for a situation, for another position, I wanted to deceive Mr. Crego, I did not want to let him know that I was away looking for another position.

Q. You wanted to deceive him ?

A. In that way.

Q. Had you ever asked Mr. Crego for a day off at any time, yes or no, since you have been there ?

- A. I have.
- Q. Havn't you gotten it ?
- A. I have.
- Q. Havn't you asked quite a number of times ?
- A. Not quite a number of times.
- Q. More than once ?
- A. Well yes.
- Q. You got it every time you asked it didn't you ?
- A. Yes sir, it was a day off.
- Q. Why instead of deceiving him didn't you ask him for permission to be absent that day ?
- A. I did not think of asking him for that day.
- Q. You do not know what Mr. Grege's arrangement was about getting notes discounted at the bank on the strength of the butter transaction do you -- you said that Mr. Grege told you to make out the butter worth 14 cts. a pound so many pounds at 20 cts. and these notes were discounted, you do not know what arrangement was made with the teller of the Importers Bank ?
- A. No.
- Q. Do you know that all butter was to be made out at 20 cts. a pound and the value was to be made out by him and notes discounted on that basis ?
- A. I was not aware of that.

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- Q. If that was so do you see anything crooked in that transaction ?
- A. I think it was not just.
- Q. When it was agreed upon if that was the method ?
- A. If it was agreed upon "--
- Q. (By the Court) -- The valuation to be at 20 cts. the District Attorney says and then 25 per cent. of the gross valuation to be taken off do you think then that that would be an unfair transaction ?
- A. No I do not think so.
- Q. (By Mr. Jerome) -- Why should a transaction of that kind induce you to leave his employ ?
- A. I was not aware of that.
- Q. When you saw that crooked transaction did you call his attention to it ?
- A. No sir I did not.
- Q. Did you ask the bank about this crooked transaction ?
- A. I did not.
- Q. You thought he was obtaining money from the bank by false pretences did you, yes or no ?
- A. I did.
- Q. Why did not you notify the bank that the money was stolen ?  
(Objected to -- Objection overrules -- Exception).
- A. I did not know it at that time until I had gone to the bank



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for these loans and got them.

Q. Why did not you tell them about it so that they could secure themselves ?

A. I did not think it was my duty to go and tell them.

Q. You thought Mr. Crego was stealing from them ?

A. I thought he was not doing right.

Q. You did not notify them when you saw them that you thought he was stealing from them ?

A. I did not notify them.

Q. (By the Court) -- Was there ample security there for the loan ?

A. On some of the butter there was not.

Q. On the whole transaction was there or was there not ample security for the amount got putting it the way you figure it ?

A. There was not.

Q. (By Mr. Jerome) -- According to the way you figure it Mr. Crego was stealing from the bank?

A. It looked like it.

Q. You told us that you had general authority to pay cash to Church the cart man didn't you ?

A. I did.

Q. Is it not true that every time that you made a payment to Church the cart man where you did not pay him by a check he

had to wait for Mr. Crego to come there ?

A. No.

Q. You say that because you know that it is collateral and it cannot be rebutted or do you say it because it is true ?

A. It is true.

Q. What time did the morning mail arrive ?

A. I could not say.

Q. How often were you in the habit of opening it ?

A. I would find the mail there when I would come in the morning.

Q. (By the Court) -- What time did you get there about ?

A. Seven o'clock.

Q. (By Mr. Jerome) -- These I.O.U.s. what were they - you tell us about them ?

A. It would be for currency that I would pay out, currency that I would lend out.

Q. How ?

A. I might lend some to the book-keepers and something to the stenographer or employees, Mr. Russell Crego or O.M. Crego and I would pay in the I.O.U., sometimes Mr. Crego would give me an I.O.U. and sometimes he would not.

Q. Why in some cases did you use I.O.U.s. and in some cases slips ?

A. If I had my slip out of the safe drawer I would put it on

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a slip and if I did not I would put it on an I.O.U.

Q. Why in making up that balance book in that column of items which showed your balance on hand at night did you put the I.O.U.s. in one item and the slip in another item when they both arose out of transactions of the same nature and represented the same thing.

A. If I had not entered them up on a slip or was busy I would put one slip in along with the checks and the separate slips.

Q. The I.O.U.s. and the slips represented the same kind of transactions, they both meant advances of money to Mr. Crego or the employees?

A. Yes sir, the same kind of transactions.

Q. Why in making up your balance in this book did you put the slips in one of the items of the balance and the I.O.U.s. in another item of the balance together with the cash and checks, why did not you put the slips and the I.O.U.s. together?

A. It depended upon the ones that were entered up; when I had a slip I would enter up so much, such as Harry or John so much on one slip and added it up.

Q. It might be Oscar Crego \$25. or Russel Crego \$10.?

A. Yes sir; after that I put in the I.O.U. or the slip and



added that up along with the checks.

- Q. I asked you referring to your balance books if the two items which were found in the third column show added together your balance at night ?
- A. Yes sir.
- Q. You have told us in one of those items are contained the slips of disbursements and in the other item are contained the I.O.U.s.- checks and cash ?
- A. Yes sir.
- Q. Now when the I.O.U.s. and the slips represented the transactions of the same nature why did not you separate them in your balance book and not classify them in one item?
- A. The I.O.U.s. were not entered up on this pad which I called a slip, I had not time to enter them up.
- Q. You did not enter them in the cash book or anything ?
- A. No I entered them on this little pad till it was paid.
- Q. But you kept the I.O.U.s. until they were paid ?
- A. If I entered them up in the slip I put them in an envelope and paid no more attention to them until the end of the week.
- Q. You kept the slip and the I.O.U. ?
- A. Yes sir.
- Q. The I.O.U. was another slip or another item on ~~xxx~~ it, for instance, if Mr. Crego got \$25. and had you enter it on

a slip and would come in the after and said Mr. Dickie give me \$25., you made an I.O.U. ?

A. Yes sir.

Q. So that the I.O.U. was nothing but a slip with only one entry ?

A. That is all.

Q. What made you separate the I.O.U.s. which were only slips with one entry from the slips which had a number of entries?

A. I think I explained that. The explanation is this, I had a pad with different items on it, such as money paid to the book-keeper or the stenographer or for a cash sale although I did not receive the money from the party, such as giving butter to some men that did not pay it. That day I put this on that pad, I call that a slip, add that and that would bring in the amount of one of those items there, and if there was an I.O.U. by itself I would put that in along with the cash, say for instance cash and checks, I would make out a list of my checks and a list of currency in hand and the I.O.U.s. and add the whole thing up together and make it one thing; the slip that was on the pad I would make that one slip.

Q. When you came to enter it in your balance book you only made two items ?

A. Yes sir.

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- Q. What I want to know is why you split it up and separated the I.O.U.s. from the slips, I ask you why you did it ?
- A. The reason is I had not it entered on the pad and that is the reason I did not enter it up.
- Q. You told us that on this Saturday when you got this \$225. on the morning of that day you had certain cash and checks in the drawer ?
- A. Yes sir.
- Q. And you drew out your disbursements that day amounting to \$130. I believe you told me on the 28th ?
- A. Yes sir like that.
- Q. So that the difference between your disbursements of \$130. and \$225. is \$95. ?
- A. Yes sir.
- Q. How much of that \$95. did you leave in the cash drawer ? How much in cash and how much did you give Mr. Grege ?
- A. I am not positive of the amount.
- Q. What is your best recollection ?
- A. I could not say exactly.
- Q. Did you leave \$50. in the cash drawer ?
- A. I could not say.
- Q. Will you swear that it was as much as \$10. ?
- A. I rather think so, I won't swear.
- Q. Will you swear that you did not have on hand at the



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beginning of the 28th in money --  
you have in the cash drawer ?

how much money did

A. I could not say the exact amount.

Q. Did you have any ?

A. Very little I think.

Q. How much do you think ?

A. It might \$5. or \$10.

Q. You told us that always with Russell Crego you took his receipt in this book ?

A. Yes sir.

Q. You told us that there was no receipt from him on that date the 28th and that was Saturday the end of the week ?

A. Yes sir.

Q. And all the other receipts are made at the end of the week ?

A. Yes sir, perhaps not signed until the Monday or Tuesday.

Q. You were there Monday ?

A. I was there Monday.

Q. And you told us further that when you gave money to either of the Cregos you put it on a slip or put an I.O.U. ?

A. I put it on a slip or put the I.O.U. in the drawer.

Q. So that when you left there was in that drawer representing money given to the Mr. Cregos either I.O.U.s. or slips ?

A. Yes sir.

Q. So that on Tuesday morning a person -- going and taking

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possession of your cash drawer would find those slips there?

A. Yes sir.

Q. Now take your cash book, you tell us the balance on hand on the evening of the 28th was \$333.60 on that morning, you did not start with over \$10 cash ?

A. I do not believe I would.

Q. So that after paying out this \$225. in salaries and to Mr. Crego and with what you had left how much cash would you have on hand about in the afternoon of the 28th when you closed up ?

A. I do not know.

Q. Did you pay out \$50. to Crego ?

A. Yes sir, I paid that.

Q. You will swear that it is as much as \$50. ?

A. I think it would be.

Q. To which Mr. Crego ?

A. O. M. Crego, I paid him money that day.

Q. (By the Court) -- As much as \$50. ?

A. As much as \$50.

Q. Your cash book calls for a balance of \$333.60 does it not ?

A. The balance book shows that.

Q. That balance book was made up corresponding with the check book ?

A. The check book and the small accommodation note book.

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- Q. What do you mean by that small accommodation note book ?
- A. That is the book that I put in checks.
- Q. What has that to do with the cash book ?
- A. It won't show the balance unless that book is --
- Q. Where was that accommodation note book ?
- A. Mr. Crego wanted the accommodation note book.
- Q. Where was that ?
- A. In my drawer.
- Q. What did it represent on that day ?
- A. Any checks that were held back and were not sent out to the country, it might be for a week or so, it would show what checks were kept back and what checks were sent out.
- Q. So that if the checks were not out there would be cash on hand, then your balance would show if you had not checks out you would have money in bank ?
- A. Yes sir, the money in bank.
- Q. (By Mr. Jerome) -- I want to call your attention to this fact, the footings of both the second and the third column correspond exactly ?
- A. Yes sir.
- Q. And that shows the amount of your total balance on the night of the 23th both in the cash drawer and in the bank?
- A. Yes sir, and what checks we had held back.
- Q. Do you count those in the cash drawer that you had held back?



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A. Yes sir.

Q. (By the Court) -- What does that book show ?

A. It would show what cash ought to have in hand.

Q. Had you deducted that amount ?

A. Yes sir.

Q. So they were charged up against Mr. Crego's account in the bank ?

A. Yes sir, but deducted off the footings of the cash book.

Q. (By Mr. Jerome) -- You deal with those checks that had not been sent out just in fact as if they had been sent out?

A. Yes sir.

Q. That is your cash balance and that is correct (pointing to the book) ?

A. Yes sir, that will show correctly what checks were held back.

Q. (By the Court) -- What difference will that make ?

A. It won't make any difference.

Q. (By Mr. Jerome) -- Simply in method ?

A. Yes sir.

Q. You might send them in a day or two ?

A. Yes sir.

Q. (By the Court) -- That does represent the actual cash charged, everything that had been drawn against you ?

A. Yes sir.

- Q. (By Mr. Jerome) -- That is correct ?
- A. That is correct.
- Q. There is no crooked business in that, that is straight and honest ?
- A. No it is not straight.
- Q. What did you say it was straight for, which was it, is it straight or is it not straight, did you commit a forgery when you made this ?
- (Objected to -- Objection overruled -- Exception).
- A. I do not understand.
- Q. When you made these figures up did you make them up truthfully and correctly or didn't you ?
- A. They were made up from the check book with deduction checks that were out.
- Q. You made it up honestly didn't you ?
- A. Yes sir.
- Q. You kept all the books, you kept the check book and the cash book ?
- A. It is made up the way O.H. Crege wanted it done, by his instructions.
- Q. (By the Court) -- That was the correct amount, did not you take the figures as you found them from the entries ?
- A. From the entries with the deduction of those checks.
- Q. (By Mr. Jerome) -- Did not you make the entries ?

A. Yes sir.

Q. Were not the entries correct representations of the transactions which they asserted to represent ?

A. Yes sir.

Q. (By the Court) -- It was correct ?

A. Yes sir but it is not a correct system.

Q. Was it correct figures ?

A. Oh yes it is correct.

Q. (By Mr. Jerome) -- So then you did have that actual balance on the night of the 28th of Sept. 1889 \$1,763.02 ?

A. Yes sir.

Q. And that is correct ?

A. Yes sir.

Q. And that balance as you have told us half a dozen of times at my repeated request was made up from the check book and included that \$100. there ?

A. Yes sir.

Q. And whereas, as matter of fact, though you had included a \$100. you had drawn \$225., which was \$125. more, is that not so ? You had included in making up your balance \$100. and you had drawn \$225. hadn't you ?

A. I do not understand right what you are driving at.

Question withdrawn.

Q. You told us a moment ago when we were on the subject and



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we went over it very fully the additions in this check book were right on the stubs there on the date of the 26th and the 27th, it is continued there, and that in making up that amount you charged him a \$100., that \$100. check that was destroyed instead of the \$225. check ?

- A. I see the way it stands there is correct but the whole footing is not correct.
- Q. That figure is correct ?
- A. That is not correct.
- Q. Are those figures in your handwriting ?
- A. They are in my handwriting but not correct.
- Q. How are they incorrect ?
- A. They are incorrect.
- Q. (By the Court) -- In what way ?
- A. The footing is not added up.
- Q. In what respect are they incorrect ?
- A. For the reason these certain checks are kept back and that is deducted off that footing.
- Q. (By Mr. Jerome) -- They are not made out, not sent out ?
- A. Yes sir.
- Q. Signed to be forwarded to his name ?
- A. Yes sir, or so much paid out for an accommodation note, and that is deducted off or added on.
- Q. But you put those figures down there didn't you ?

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- A. Yes sir I put those figures down.
- Q. You put 12 there ?
- A. Yes sir.
- Q. You added 17.21 and you put the \$100. you had then paid to the total ?
- A. Yes sir.
- Q. You carried that forward to the next page ?
- A. Yes sir.
- Q. You put 11.10 and you added them up \$30,540.71 ?
- A. Yes sir.
- Q. And it came even \$30,540.71 ?
- A. Yes sir.
- Q. You testified a moment ago that this balance book was correct that night ?
- A. It shows the balance that we ought to have in hand.
- Q. And that you did have in hand ?
- A. Yes sir, that I did have in hand.
- Q. You made it up from this check book ?
- A. Yes sir.
- Q. To make that up you had to add up those figures ?
- A. Yes sir.
- Q. You had to go past this entry W.F.Dickie \$100. and add in that \$100. ?
- A. Yes sir.

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- Q. You know that \$100. check had been destroyed, you had issued in its place the \$225. check, you were passing right by that item, why didn't you change it to \$225. ? Why did not you have the time to do this and why did not you do it ?
- A. The reason when that was added up, when I would make up the balance I would see I was \$125. wrong; after that I would conclude that Mr. Crego had got so much.
- Q. (By the Court) -- He asks you if you can give any reason why you did not when you came to that check make it \$225. in making up your balance, why you did not do it at that time ?
- A. I can explain, I could show you my reason if I got that book.
- Q. (By Mr. Jerome) -- You will have the book, I do not see what it has to do with the check book. ?
- A. That is the particular thing.
- Q. That is the check you are said to have forged for \$225.
- A. Yes sir.
- Q. There is a check for \$100. which you say was drawn to that bank, it was destroyed and you filled in this \$225. check that is correct ?
- A. Yes sir.
- Q. You told us you did not make any memorandum in any book



for the reason you had not time ?

A. I omitted to alter the amount.

Q. Is that true you said you had not time ?

A. I omitted it.

Q. Did you omit to do it because you did not have time ?

A. I omitted to do it because the check was not present at my hand at the time, I was busy.

Q. You omitted it because you had not time ?

A. Yes sir I had not time.

Q. You omitted to change the figures \$125. to \$225. because you had not time ?

A. Yes sir I had not time.

Q. When you came in the evening to make up that balance book and changed that sum of \$30540.71 from that check book and to do that had to add up these items, when you knew that the check of \$100. had been destroyed why did not you change \$100. to \$225. ?

A. Very often --

Q. (By the Court) -- Why did not you do that, can you give any reason ?

A. The reason was that the check book was not there, I must have made up that day's proceedings without the check book at all.

Q. (By Mr. Jerome) -- You told us just now that you made up

this balance book and got that number \$30,546.71 from the addition in the check book and to do that you had that \$100. in, when you were adding that \$100. in why did not you change that to \$225. ?

A. As far as I recollect now it was on the Monday that my balance was made up, Monday morning.

Q. Then why didn't you add it when you made it up ?

A. In adding up the figures perhaps I might find \$125. wrong, I would mind I had to get a check for \$125. more to put that in.

Q. (By the Court) -- That is the only explanation ?

A. That is the only explanation.

Q. When did you discover the discrepancy ?

A. Very likely --

Q. Did you ever discover it ?

A. If there was a discrepancy --

Q. Answer the question, yes or no ?

A. I might have discovered it.

Q. Did you ever discover it ?

A. I cannot say.

Q. (By Mr. Jerome) -- You say when you came Monday morning and found that your cash in your drawer did not correspond with the balance in your book what did you do then ?

A. I recollected what it was, whether I paid currency out.

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Q. Well did you recall on that occasion ?

A. Very likely at the time.

Q. What did you do to rectify it ?

A. I would rectify it.

Q. Where ?

A. In my balance book.

Q. Why did not you rectify it in the check book too ?

A. Very likely I did not have the check book handy.

Q. But you did not rectify it in the balance book, it is not rectified ?

A. I would rectify it perhaps in the --

Q. (By the Court) -- Does Mr. Crego's book show the rectification ?

A. It is not rectified there, very likely it is rectified in the accommodation note book.

Q. (By Mr. Jerome) -- The accommodation note book will be here, now you see these entries here paid out to a party, was it a check ?

A. Yes sir, a check.

Q. The First National Bank, currency account, that was to take up some draft ?

A. Yes sir.

Q. The Importers & Traders National Bank check that was paid out to take up some check ?



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A. Yes sir.

Q. These were paid out that day in checks ?

A. Yes sir.

Q. You told us a moment ago oftentimes in making up your balance you would not make it up from the check book but would make it up from your checks ?

A. Yes sir.

Q. How would you make up your bank book from those checks ?

A. From the entry of the checks.

Q. Where did you keep them ?

A. In this small book.

Q. In the accommodation note book ?

A. Yes sir.

Q. (By the Court) -- So that you kept two records of checks paid out ?

A. The checks that were paid out and held back.

Q. Did you keep a separate record of all the checks paid out ?

A. Yes sir I did.

Q. So that you had a separate record and your system of book-keeping was to keep your check book in addition to that and make a separate entry somewhere else, where was that record kept, where would you make it ?

A. I do not understand you.

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Q. You testified that in addition to the check book you kept a separate record of checks paid out is that so ?

A. I did.

Q. Where did you keep that ?

A. I kept that in this accommodation note book.

Q. Every check that was paid out in addition to being in the check book was also in an accommodation note book is that so ?

A. Yes sir.

Q. (By Mr. Jerome) -- You say it was an accommodation note book ?

A. -Yes sir.

Q. And where were the accommodation notes put ?

A. In the sides that the checks were held back.

Q. Will you please tell me when you made checks payable to Dickie currency as this \$100. was made how that came to get into the accommodation note book, on what theory did you put it in that ?

A. It could not be in there, the \$225. would be put in there in the accommodation book.

Q. And is there ?

A. Yes sir, it is in there.

Q. Under that date ?

A. Under that date.

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Q. You swear to it positively ?

A. Yes sir I swear to it.

Q. You remember entering it ?

A. It should not come out unless it was there.

Q. Do you remember entering the \$225. in the accommodation note book ?

A. Yes sir it is in the book, it is bound to balance.

Q. (By the Court) -- Do you recollect entering it in that book, answer yes or no ?

A. I won't swear to it.

Q. (By Mr. Jerome) -- When you made checks payable to Dickie currency and when you made checks that way you sent them to the bank and got the currency and used it in the business you say ?

A. Yes sir.

Q. When you made checks out payable to Dickie currency did you put those checks in the accommodation note book ?

A. Yes sir, they are in one side of it only.

Q. You always put those checks in the accommodation note book ?

A. Yes sir.

Q. What did you put them in there for, what did they have to do with the accommodation note book ?

A. They were put in there.

Q. (By the Court) -- What for ?



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A. Mr. Crego has an object in putting them there.

Q. Do you know what for ?

A. I do not know.

Tuesday, July 15th, 1890.

WILLIAM F. DICKIE, Cross-Examination Resumed:-

Q. I hand you a book and ask you if that is the accommodation note book (book shown to witness) ?

A. No it is not, Mr. Crego knows very well it is not it.

Q. He says he has not any books there ?

A. It is something like the balance book.

Q. Is it any of those books, that is all the books we have got ?

A. It is a book something like that (pointing to a book)

Q. You left it there ?

A. I left it there.

Q. Where did you leave it ?

A. I left it in my drawer.

Q. What is in it ?

A. It is an accommodation book, that is what it is called.

The checks that were held back, the money that was paid out for notes before they were due, or if we accommodated, lifted a note for Harry Dowie, accommodated him for a certain time.

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Q. And that is all there is in it ?

A. Yes sir.

Q. Is all that there is in that book notes of Harry Dowie, and accommodation endorsements and checks which you had failed to mail the day that they were made out ?

A. Yes sir, to show how my balance was wrought out.

Q. So you tell us then that if you had that accommodation book - what did you want to do with that accommodation note book ?

A. That would show exactly how my books stood, how the balance would come out, I cannot show the balance right unless I would see that book.

Q. (By the Court) -- I wish you would describe that book definitely ?

A. It is a small book something after the balance book.

Q. That book which you have in your hand ?

A. Yes sir the balance book, in which I enter all checks on one side and in the other side I would enter his checks, I would retain back, that was not sent out, or checks that we thought the country people would not return to the bank within a certain time; we knew the time it would take to go to the country and be brought back into the bank.

Q. (By Mr. Jerome) -- You told us in your balance book under Sept. 28th, 1869 \$323.60 was the amount in the drawer ?

A. Yes sir the amount of cash .

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- Q. Either in cash, I.O.U.s. or checks or slips ?
- A. Yes sir.
- Q. And that if you had the accommodation note book you could tell us of what that was made up ?
- A. I would tell you how the balance was made up.
- Q. That is the bank balance ?
- A. The bank balance; this is for Mr. Crego, what he considers he can draw against.
- Q. By the accommodation book can you tell us -- ?
- A. That would show what was deducted, the footings of the check book and cash book.
- Q. The accommodation book would show what the bank balance was or what the cash balance was, for which of those purposes do you want that book ?
- A. To show how the bank account balanced.
- Q. Then it would not show what the cash balance was would it the accommodation note book ?
- A. No it would not show the cash balance.
- Q. Why did you say if you had the accommodation note book here you could tell us of what the cash balance was made up ?
- A. I would tell you how the balance was made up, I mean the balance in the bank that we could draw against.
- Q. You did not mean what you swore to ?
- A. I mean the balance we could draw against.



- Q. Just come down here a moment and I will show you, that footing is that yours (showing book to witness) ?
- A. Yes sir that is my footing.
- Q. I will show you those two footings, is that \$16.08 on page 602 yours ?
- A. I think so, it seems to be altered there.
- Q. The difference is in what ?
- A. In the 6 or the 8; that don't look like the 6 of mine.
- Q. Look at this (showing another item) ?
- A. That is mine.
- Q. Will you tell me why the footings of the column in your figures on page 604 is about \$200. short of the real footing (Objected to).
- Q. Look at page 604 of the cash book, you told me that the summation of those columns of figures \$20,033.51 opposite which the red mark is were your figures ?
- A. Yes sir.
- Q. Was your accommodation scheme the way you footed the column?
- A. Yes sir.
- Q. Will you tell us why you footed that column some \$200. short that is of the actual footing on the credit side of the cash ?
- (Counsel) -- Objected to.
- Q. (By Counsel) -- What is the date ?

A. The date is the 30th of Sept.

(Mr. Jerome) -- The 28th and part of the 27th.

(Counsel) -- I object to it as the question assumes something that has not been proven.

(The Court) -- If there is any dispute as to this the witness is at liberty to answer.

(Counsel) -- I will except to your Honor's ruling.

Q. (By Mr. Jerome) -- Will you tell us why you had your credit side of the cash about \$200. short ?

A. The small book that is wanting will explain that.

Q. The accommodation note book will explain why you footed the cash short \$200. ?

A. I always called it the key, the key books kept by Russell Crego; you cannot find out the balance unless you have that book and Mr. Crego knows that and that is the reason it is not here.

Q. Did you foot those columns about \$200. short ?

A. The accommodation note book will show that.

(Counsel) -- I object to that.

(The Court) -- Objection overruled.

(Counsel) -- Note an exception.

Q. (By the Court) -- Did you or did you not foot that column short, you have got it there before you ?

Q. (By Mr. Jerome) -- On page 604 on the debit side of the cash

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A. That column seems to be right with my figures from here to here.

Q. You say from there to there added to your figures is the amount that you footed up ?

A. Yes from here to here I think.

Q. Will you swear to that ?

A. I ran it up very hurriedly .

Q. Run it up very carefully,, that is the amount brought forward ?

A. Yes sir, the amount brought forward.

Q. And all the other figures down to and including the one with the red mark are yours ?

A. All right.

(Counsel) -- And all this is taken subject to my exception.

(The Court) -- Yes.

Q. (By Mr. Jerome) -- There is a difference of over \$2000. between your footing and the correct footing on that one page on the debit side of the cash.

(Objected to -- Objection overruled -- Exception).

A. I do not see it; from my figures here is only a difference of about \$200.

Q. Between the correct summation and the summation you put in that book ?

A. From here to here there is a difference of \$200.



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Q. The debit entry on the cash book for these three days or rather for the 28th and 29th of Sept. 1889 and part of the 27th shows a shortage of about \$200. ?

A. About \$200.

Q. Why did you on the debit side of the cash enter \$200. less than you received ?

(Objected to -- Objection overruled, -- Exception).

A. I cannot tell without that book; that book would assist the examination in fact very quick, it would settle it right off.

Q. You said that among the items that were in the accommodation note book were the Dowie check held back, there can't be any checks held back on the debit side of the cash ?

A. But sometimes it has to be deducted off the debit or credit side and sometimes Mr. Crago would ask me to show it in the balance book without deducting it off the cash check or bank book.

Q. That would not go in the accommodation book then ?

A. It shows clearly in that book, I thought it was the right way to do it.

Q. Your morality since was shocked at that conduct ?

A. Yes sir I said I did not understand it, it took me quite a little time to get in his way of doing it, it took me quite a long time, I said I did not like the system.

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- Q. (By the Court) -- Did you know that that addition was incorrect ?
- A. The addition is incorrect .
- Q. Did you add it incorrectly ?
- A. It would be added incorrectly.
- Q. Did you add it incorrectly originally, did you intend so to do, answer the question, to add it incorrectly ?
- A. It would be added correctly.
- Q. Did you intend to add it incorrectly ?
- A. No I intended to add it correctly.
- Q. Did you put the figures at the footing there ?
- A. Yes sir, I did.
- Q. Were you aware at the time that you put them there that it was not the correct addition of the figures in that book ?
- A. Yes sir I was then aware of it.
- Q. You intentionally put the footing which you put there ?
- A. Yes sir.
- Q. (By Mr. Jerome) -- You put the debit side of your cash \$200. short intentionally ?
- A. Yes sir, with this book, with the deductions there.
- Q. Did Mr. Crego instruct you to enter on the debit side of your cash book \$200. less than you received ?
- A. Yes sir, that was the way I was told to do it.
- Q. What were you to do with the other \$200. that you received

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and that did not sum up, were you to keep them ?

A. That would show also in the other book.

Q. The \$200. received is not an accommodation note is it ?

A. No that is not an accommodation note.

Q. Therefore it would not be in the accommodation note book, that \$200. which was received by you and not entered would not go in the accommodation note book because of its being an accommodation note would it ?

A. No.

Q. Would it go in the accommodation note book because it was an accommodation note given to William H. Dowie ?

A. It would go into the accommodation note book to show that some checks had been sent out or been retained back and that would be deducted off that footing.

Q. There is no William H. Dowie on this page at all is there on the debit side of that cash ?

A. It is not necessary.

Q. (By the Court) -- Is there any ?

A. No sir there is not one Dowie there.

Q. (By Mr. Jerome) -- That \$200. it would not go in the accommodation note book because it was a check of William H. Dowie's would it ?

A. No.

Q. It could not be a check held back if it was on the debit



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side of the cash could it ?

A. No it could not.

Q. Then it would not go in the accommodation note book because it was a check held back would it ?

A. No.

Q. Now you told us these were the only three items in the accommodation note book, therefore this \$200. would not be in the accommodation note book at all would it ?

No answer.

Q. (By the Court) -- Would they ?

A. Those items would be in it.

Q. How would they get there, what for ?

A. They would get there -- in fact I could explain it.

Q. Any item that should go to the debit account of that cash book would that go at all in the accommodation note book ?

A. Yes sir it would go in.

Q. Why, explain ?

A. Seeing this small book that there was \$200. deducted from the footing of page 604 to be deducted off the checks. or accommodations that were granted by Mr. Crego it would show that \$200. from the cash book page 604 deducted from the footing.

Q. (By Mr. Jerome) -- Did you ever know an accommodation note to go on the debit side of the cash ?

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- A. It was called the accommodation note book, it was not an accommodation note book, it was a key to his books.
- Q. It contained something else than the three items which you swear was all it contained ?
- A. Yes sir it did.
- Q. What else did it contain ?
- A. It contained the footings of the cash book and the footings of the bank book and the check book.
- Q. Why did not you tell us that before, before this discrepancy was called to your mind ?
- A. That is how it was.
- Q. Can you give us any explanation why you did not tell us that those items were included in it, you swore that there was only three items which I specified included until after I called your attention to this discrepancy ?
- A. You asked me I understood if those items were in that book and I said yes.
- Q. I asked you what was in it ?
- A. I told you those three items were in it.
- Q. (By the Court) -- Those others were in it too ?
- A. Yes sir, in fact the only way I could show the way the balance came out would be by the accommodation note book.
- Q. (By Mr. Jerome) -- You intentionally added on that page false footings known to be false by you of about \$200. ?

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(Objected to -- Objection overruled -- Exception).

A. Yes sir.

Q. I call your attention to the corresponding page on the credit side under this same added page 605 on the credit side of the cash, you have already testified that the summation of the column there \$19,342.59 is in your figures?

A. Yes sir, that is in my figures.

Q. I call your attention to the fact that the true summation, I ask you if that is the correct sum on the credit side?

A. It seems so.

Q. It is the correct sum?

A. It seems so, yes sir.

Q. What amount did you bring forward on to that page 605?

A. \$18,918.84.

Q. And do you see the amount that is brought forward in someone else's figures above yours?

A. I do.

Q. There is a difference of about \$600. do you see that?

A. Yes sir I see that.

Q. I call your attention to page 602 -- in fact look over that during Sept. and tell me if in every case the debit side of your cash book is not some shorter than the cash actually received and the credit side some larger amount and state also whether you did that by direction of Mr.:



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Crego ?

(Objected to -- Objection overruled -- Exception).

- A. From the beginning of Sept. ?
- Q. Yes, start in there, how does that come out ?
- A. \$200. short.
- Q. On the credit side of the cash ?
- A. Yes sir on the credit side of the cash from the third of Sept. to the fifth.
- Q. So that on page 584 your cash from the 3rd of Sept. to the 5th, 1889 on the credit side your summation was about \$200. less than the larger sum ?
- A. Yes sir.
- Q. Under whose direction did you sum the credit side there short ?
- A. Under the direction of Mr. Crego.
- Q. That is Mr. Crego told you to enter them in your book that you had received less money than you had actually received ?
- A. He told me to do it, to add up my footings in that way, whatever checks were made out or whatever accommodation he had was to be deducted, which will show in this small book, what was to be deducted off either the credit or the debit side or from the bank book or from the check book.
- Q. Checks out would not be deducted from the credit side of

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the cash would they, which show the amounts received by Mr. Crego ? 188

A. No, I do not think it would.

Q. We will take the debit side of your cash book during that time, how do you come out ?

A. That seems to be all right.

Q. You carried forward the amount that you summed up ?

A. It seems so.

Q. How about page 586 on the credit side, how do you come out from the 5th of Sept. including the 5th to the 7th of Sept. 1889 ?

A. I make it \$4,444.45.

Q. Well how much shortage was there about, I only want round numbers, I don't care for the cents?

A. About \$700.

Q. A shortage of about \$700. when you put down that addition there, that summation, that column, you knew it to be incorrect did you ?

A. I knew it to be incorrect, yes sir.

Q. And intentionally placed it there knowing it to be incorrect ?

A. Incorrect.

Q. You say you did that at Mr. Crego's direction do you ?

A. Yes sir.

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- Q. When you get through that book you will find in a great many places will you not as I understand it from your statements, you will find in a number of places that the credit side of the cash is footed short, and the debit side of the cash is footed long, you did this in both instances by Mr. Crego's direction ?
- A. Yes sir.
- Q. Now your bank book I understand from Mr. Crego and from you too and your little balance book agree with the figures as you put them down ?
- A. The balance book ought to agree with the figures I put down there in the cash book.
- Q. You have started here on Friday if my recollection serves me right, that the balance as shown in the balance book was a correct balance ?
- A. They were balanced from the figures in the cash book, the check book and the bank book.
- Q. That is the check book, the bank book, the cash book and this balance book correspond when you take the figures as you add up here these columns by direction of Mr. Crego ?
- A. Yes sir.
- Q. As I understand your statement it is this, that Mr. Crego instructed you so to keep his cash book that it would show you as receiving less than you actually did and paying out more than you actually did ?



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A. No.

Q. Have not you told us it occurs on very many pages here where it was so kept and that the debit side was summed up by you for less than the true amount ?

A. In some cases, for instance --

Q. Question withdrawn. Did you ever sum the debit side in this cash book for more than you actually received ?

A. I think so, but I am not certain, I am not positive.

Q. Can you tell me the year or the month ?

A. I cannot unless this book --

Q. Will you swear that you ever did ?

A. Well I will not positively.

Q. Will you swear that you ever summed the debit side of the cash book for more than the true amount, besides showing the cash received ?

A. I won't swear to that.

Q. Will you swear that you ever summed the credit side of the cash book for an amount less than the true amount ?

A. I won't swear to that either till I get this book.

Q. You swore you did the reverse in both cases ?

A. I see that by the figures there.

Q. Now isn't this true, that you received a good deal of cash and you stole the cash and deposited the checks and you made a false summation on the debit side of the amount of

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cash which you stole during that period.

(Objected to).

A. I did not.

(The Court) -- The tendency of this line of examination is to prove a larceny outside of this charge of forgery; I think it not to be proved.

(Mr. Jerome) -- This question is asked on the ground of credibility.

(The Court) -- If you seek to show by your question that there was an appropriation of money coming from this check which was forged and the defendant attempted to cover it up by false entries and false addition, by anything of that sort, I think it is proper to ask the question; unless it relates to that I think the fairer rule is to exclude it.

In this case we are held to narrow lines. We are here to try the question of forgery. If there is anything that throws light upon that or anything that touches the credibility of this witness you have a right to ask it. Anything that might look at establishing any other crime will be excluded.

Q. (By Mr. Jerome) -- When you were carrying notes for Harry Dowie did not you always enter those in your balance book?

A. On some occasions only.

Q. When did you do it and when did you omit it?

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- A. Well I cannot tell.
- Q. What was the side you debited ?
- A. The side that I debited was whatever Mr. Crego would tell me in that morning to do.
- Q. But you made your balance book up at night when Mr. Crego was not there or early in the morning before he came didn't you ?
- A. I would not make it up, I would ask him how he wished this done or he would come and tell me what was to be done.
- Q. (By the Court) -- So far as your system of book-keeping was concerned you give us no information here except what yourself and Mr. Crego has ?
- A. That is all; if I could get this book he knows very well it would throw light on it.
- Q. (By Mr. Jerome) -- That book you left there when Mr. Brandt was there ?
- A. Yes sir, he was there.
- Q. (Walter Noise stood up) That boy was there when you left the book there ?
- A. He was in the office.
- Q. Mr. Crego was there ?
- A. Mr. Crego was there.
- Q. Will you describe that book in appearance ?



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- A. The book in appearance is like this small balance book.
- Q. A book about that size ?
- A. A book about that size and the same cover.
- Q. Now is it not true that that book had no existence as a record book of that firm, it was a private book which you personally kept to keep track of these missing sums that you made ?
- (Objected to -- Objection overruled -- Exception).
- A. Certainly not.
- Q. Can you tell us where you left it ?
- A. Mr. Crego has got four or five in his drawer, in his desk, that was finished up; the one that I left was along with the other books in my cash drawer or in the safe drawer, I am not positive which, one or other of those places when I left on the night of the 30th.
- Q. (By Counsel) -- Did I understand you to mean there were four others that Mr. Crego had beside this one, four old ones ?
- A. Four or five old ones that had been used up.
- Q. (By Mr. Jerome) -- Now you told us that you had some conversation in the Tombs with Russell Crego ?
- A. Yes sir.
- Q. Mr. Russell Crego is an aged man is he not ?
- A. Yes sir.
- Q. Rather infirm ?

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A. He is not infirm, I do not think so.

Q. How old a man is he ?

A. Over 60.

Q. He is not over 70 ?

A. I could not swear to that.

Q. Pretty close to it ?

A. Yes sir.

Q. (By the Court) -- Give us your best judgment ?

A. Over 60.

Q. (By Mr. Jerome) -- Now he came down to see you in the Tombs didn't he ?

A. He did.

Q. And he said to you, you know what I did in Albany, didn't he ?

A. He did.

Q. And he said, I beat a lawyer there, didn't he ?

A. "You know I have beat a lawyer".

Q. (By the Court) -- What impression did it convey to you ?

A. There was a case going on, a legal contest.

Q. (By Mr. Jerome) -- "If you do not consent to do what I tell you, you will get yourself into trouble." ?

A. That is the words he used.

Q. What did he tell you to do ?

A. He went off after that; previous to that he said he would go to some of my friends and get bail for me.

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- Q. You have stated that he threatened you that "if you do not consent to what I tell you you will get yourself into trouble ?
- A. Yes sir.
- Q. (By the Court) -- Did he tell you to do anything ?
- A. No he went right off then.
- Q. (By Mr. Jerome) -- That is the old man came down there and asked you if you did not have some friends that could bail you out ?
- A. That is so.
- Q. And said if you did not do what he wanted you to do it would be the worse for you and he did tell you what he wanted ?
- A. He wanted me to run away.
- Q. Did he say so ?
- A. Yes he did.
- Q. (By the Court) -- What did he say ?
- A. He said, I will go to some of your friends and get bail for you and get it reduced on condition that you run away and leave New York.
- Q. (By Mr. Jerome) -- Then why did you swear that he did not tell you what he would do ?
- (Objected to -- Objection overruled -- exception).
- A. That was previous to asking me about this case in Albany, that was the last thing that he said to me.



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Q. What did he tell you he wanted you to run away for ?

A. He wanted me to run away for the purpose he did not want me to stand trial.

Q. (By the Court) -- Did he say that ?

A. He said he wanted me to run away. I said, no, I will not, I will stand my trial as I am an innocent man here, your son knows that.

Q. (By Mr. Jerome) -- You came right on from Montreal to stand your trial willingly ?

A. I came on willingly, yes sir.

Q. What did you do, did you come willingly or did not you come unwillingly ?

Q. (By the Court) -- Did you or didn't you ?

A. No I did not.

Q. Why did you say you did ?

A. When I saw that I could not get the books --

(The Counsel) -- The District Attorney asked him the reason why did you do so and so ?

(The Court) -- I will let him go on and see if it is responsive.

Q. Go on with what you are going to say ?

A. I could not get the books on there to prove my innocence.

I wrote on to the ex-Premier of Canada, he knows me intimately, telling him that unless he could get the books

sent on to ~~perx~~ Montreal to prove my innocence there that I was quite willing to go to New York to prove it as I did

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not want to be detained in Montreal under any points of law.

Q. (By Mr. Jerome) -- That is you meant Sir John Macdonald ?

A. No, Alexander McKenzie.

Q. Mr. McKenzie is a tall, broad man with red hair ?

A. Mr. McKenzie is not, he is a short man, Alexander McKenzie.

Q. When did you know him intimately ?

A. He was born in the town that I came from.

Q. How old a man might he be ?

A. I should say about 60 years of age.

Q. Where did you know him intimately, in this country or the old country ?

A. I wrote out the form of the Borough, that was a grant to him when he was in Scotland and I wrote that ticket out for him.

Q. And that was the extent of your intimate acquaintance with him ?

A. He was very intimately acquainted with my uncle and my father in Perth.

Q. You swore that you were intimately acquainted with him ?

A. He knew me by my parents.

Q. (By the Court) -- Do you call that an intimate acquaintance ?

A. Yes sir.

Q. (By Mr. Jerome) -- So you wrote on to see if you could get

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the books to prove your innocence in Canada ?

A. Yes sir.

Q. And finding that you could not you came here voluntarily ?

A. I waited until the papers were brought on, I waited till the very last until I heard word from Mr. McKenzie .

Q. When the papers came you had to come, then you went ?

A. Then I came on.

Q. Until that time you did not come ?

A. I did not come.

Q. You were willing to go all that time ?

A. I did not want to stay in Montreal.

Q. Were you will or not, yes or no to come ?

A. Well I wanted to prove my innocence.

Q. (By the Court) -- Answer the question, were you willing or not, did you come willingly or unwillingly to New York ?

A. Well no, I did not come willingly.

Q. (By Mr. Jerome) -- You came back here then not to establish your innocence, but you came because the police authorities brought you here by force is not that true ?

A. Because the police authorities brought me here.

Q. You tell us that you were brought here on the complaint of Mr. Crego, were you not, Oscar M. Crego ?

A. On the complaint of him, yes sir.

Q. You wish us to understand that his father after you had



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been brought here on the complaint of his son came to you and asked you to get bail and run away ?

A. Yes sir.

Q. And forfeit your bail ?

A. Yes sir.

Q. You told us the other day that you supposed a person could be brought back for all kinds of crime, couldn't he from Canada ?

A. I did not know they could hold them.

Q. Did not you swear the other day that you thought a person could be brought back from Canada for all sorts of crimes ?

A. Well yes sir, I think I did.

Q. So when you got arrested there you thought you could be brought back to answer to the crime, didn't you, of larceny?

A. For anything if I was guilty of it, for any crime if I was guilty of it.

Q. Then if you thought you could be brought back here, did you employ a lawyer there ?

(Objected to -- Objection sustained).

Q. You had a conversation with Dowie too, didn't you ?

A. I had.

Q. And Dowie said to you, "if I had not sold my property, my real estate, I would go your bail and then you could skip and suggested to you to run away ?

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A. I did not say that.

Q. What did you say, what did he say to you ?

A. He said that he was sorry that he had sold his place in Washington St. or he would have bailed me out, he would have assisted me and bailed me out.

Q. Did he make any suggestion that you should run away ?

A. He did not make any suggestion to run away.

Q. Nor the old man Crego ?

A. The old man Crego, yes sir, I have a witness to prove that.

Q. What is his name ?

A. His name is L. Lasher.

Q. He is under indictment ?

A. He is not.

Q. Was he present at the conversation ?

A. He was present at the conversation.

Q. Now I hand you three deposit slips, three slips of paper purporting to be deposit slips in the Importers & Traders National Bank, dated respectively 9, 28; 9, 27; and 9, the 30th day of the year 1889 and ask you if these papers purporting to be deposit slips are made out in your handwriting ?

A. Yes sir, they are made out in my handwriting.

Q. You notice they are all for checks are they not ?

A. They are all for checks, checks or postal notes or money

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orders.

Q. But not for cash ?

A. No cash there.

Q. Do I understand you then that during a period covered by these dates you received no cash ?

(Objected to -- Objection overruled -- Exception).

A. I cannot positively say.

Q. But one of those periods includes the time at which your cash book on the debit side was some \$200. short does it not ?

A. It seems so.

Q. Now will you tell us how you balance your book so as to show the true balance of the cash in the money drawer when you had summed up a column in that way, \$200. short ?

(Objected to -- Objection sustained).

A. I cannot do that without this book, that is the whole key of it.

(Mr. Jerome) -- I ask that these three slips be marked for identification.

Q. These are the original slips made at the time you made a deposit, at the time you gave it to the bank ?

A. I am positive I made duplicates, these might be slips, that were left in the drawer.



Q. (By the Court) -- You have no doubt they are correct ?

A. I have no doubt they are correct; upon them I made the deposit.

(Mr. Jerome) -- Will it be conceded that these are from the Importers & Traders Bank ?

(Counsel) -- Yes sir.

Q. (By the Court) -- Those slips show that you made no deposits of cash ?

A. No deposits of cash.

RE-DIRECT EXAMINATION :-

Q. (By Counsel) -- Mr. Dickie, were you ever book-keeper before you went into the employ of Russell Crego & Son ?

A. No.

Q. What occupation did you follow before that ?

A. I was a cashier.

Q. Did you ever keep books before this ? Before you went to the employ of Russell Crego & Co. at all ?

A. No, I did not keep books.

Q. (By the Court) -- Did you keep any books in connection with your duties as cashier in the other place ?

A. Nothing but my balance book.

Q. (By Counsel) -- How was it you came to carry out this system, was it yourself that concocted it or formed that system

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or was it at the request or suggestion of any body ?

A. It was the request of O.M.Crego.

Q. For how long ?

A. The time that I went in there as cashier until I left.

Q. How long was that ?

A. Over 4 years.

Q. Covering a period of four years ?

A. A period of four years.

Q. Were the books during that time under the control of Mr. Crego ?

A. Under the control of O.M.Crego.

Q. Did he have access to the books every day or whenever he required them ?

A. He did at all times.

Q. You say that you kept a book that you called the accommodation note book ?

A. O.M. Crego called it an accommodation note book, but I called it the key.

Q. (By the Court) -- You kept it ?

A. I kept that.

Q. (By Counsel) -- How long was that kept by you, while you were there as a book-keeper ?

A. The period that I was there for four years.

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Q. Did you keep one book or a number of books ?

A. I kept a number of books.

Q. How many to the best of your judgment ?

A. Three.

Q. (By the Court) -- You mean filled up the three books all of a like character ?

A. Three different characters.

Q. Do you mean that you filled up a book and then would get a new one ?

A. Yes sir.

Q. It was the same system ?

A. The same system.

Q. You would lay it aside and then you would take another one ?

A. Yes sir.

Q. (By Counsel) -- Will you give us the name of the books you kept ?

A. Mr. Crego called it a small accommodation note book, the balance book and the sundry book, I called it the key.

Q. (By Mr. Jerome) -- Those were the only three books you kept?

A. Those three small books that I had.

Q. (By Counsel) -- Is that the only cash book that you had for four years ?

A. No I had another cash book.

Q. You remember carrying on this system of figuring before the



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month of Sept. last ?

A. Yes sir.

Q. For how long ?

A. For over 4 years, the time that I was there.

Q. When you went away from your business over night what would you do with those books ?

A. I would leave them in the safe drawer.

Q. Would you ever put them on Mr. Crego's desk ?

A. The cash book was put on Mr. Crego's desk sometimes for the month every morning.

Q. Are you positive that this system of keeping the cash book with incorrect figuring has been going on for 4 years ?

A. It has.

Q. (By Mr. Jerome) -- When you were chashier didn't you keep a cash book?

A. I did.

Q. Did you ever sum that cash book up in the way you summed this cash book up ?

A. Before I went to Mr. Crego or since do you mean ?

Q. Since ?

A. I never summed it up, no -- excuse me I did not keep a cash book when I was cashier in another place.

Q. Why did you swear you did ?

A. I understood another cash book previous to this one.

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- Q. Did you sum that one up falsely?
- A. The one previous to that was the same way.
- Q. You have told us for four years this system of summing up falsely has been in use, will you swear to that?
- A. Yes sir.
- Q. Can you point to any incorrect summation in that cash book previous to the 1st of Sept. 1889?
- A. I can.
- Q. During recess time you will have an opportunity to look at the book?
- A. Excuse me -- I will supplement the answer; the cash book was kept in pencil for the month until the month was up, then it was all rubbed out and put in properly the correct figures. You will find the correct figures is put in properly but if you look at the balance book it don't correspond with the figures that is on there at all; at the end of that month it will correspond then.
- Q. That is this incorrect summation was kept and at the end of the month you rubbed out the incorrect and put in the correct summation?
- A. Yes sir, so as not to throw any light on to the book-keeper.
- Q. (By Counsel) -- Are those erasures discernible on the books?
- A. They might be.
- Q. (By the Court) -- Look to see if you can find them?

A. I do not know.

Q. (By Mr. Jerome) -- I call the witness' attention to the fact that previous to Sept. the month of August here the footings of cash are all in lead pencil and afterwards the figures in ink are written under them, that pencil is not erased and the figures in ink correspond exactly with the figures in lead pencil.

A. The reason is that I added it in pencil and put them in ink.

Q. In August you added them up correctly?

A. No, the pencil marks was all taken out at the end of the month, I erased all the pencil marking out and added them all up fresh in pencil; then when I found out that to be correct I inked them over.

Q. In August they are not inked over?

A. I was very busy in August and September; sometimes I had scarcely time for to do anything, I had so much to do with the shipping, more or to do with shipping and running about than to attend to my cash books. Mr. Crego knew that because he had the cash book in his hand and all the time he had access to it.

(By Counsel) -- I desire to give the witness an opportunity to explain that by looking through the cash book to show the jury.



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(Mr. Jerome) -- I have no objection.

(The Court) -- He may do anything he pleases during the recess in that regard.

Q. (By Counsel) -- Mr. Dickie you have examined the cash book, is that the balance book?

A. This is the balance book, yes sir.

Q. Can you show me in the cash book figures that are different from the amount either on the debit or credit side for some time past, the same as they were in Sept. last? that the District Attorney interrogated you about this morning, go back from the first one and show the District Attorney.

A. There seems to be 501 there in pencil.

Q. (By Mr. Jerome) -- In your figures?

A. In my figures.

Q. What do you want to say about that page in reference to the addition?

A. The addition here is 5051 and the bottom is 4974.

Q. Making a difference of about how much?

A. Of \$100.

Q. (By Counsel) -- That is when, what is the date of that?

A. The date of that is June 10.

Q. (By Mr. Jerome) -- That would make the disbursements appear larger in the book than they actually were.

Q. (By Counsel) -- There are some slips of paper you put in

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there in reference to the balance book ?

A. Oh yes, I will find it; there seems to be 6595, that is more.

(Mr. Jerome) -- I will submit it to the Jury. He says that under the entry \$1000. on the credit side of the cash book on page 569 there is the figures 6595.

Q. Is not that what you mean originally placed there and erased under that figure ?

A. Yes sir, it is more there than what it is at the bottom.

Q. (By Counsel) -- What is the date of that ?

A. August 12.

Q. ( By Mr. Jerome ) -- Both in your figures are they not ?

A. Yes sir.

Q. Number 73594 the last one in your figures is the one that is carried out in ink ?

A. Carried out in ink yes sir.

Q. (By Counsel) -- If that book has gone back further will it show the same as that ?

A. It will show the same, it might be a different way, it might show less.

Q. It might show less instead of more ?

A. Yes sir, instead of more.

Q. Explain about the check book ?

A. On June 20, the balance book shows \$51,385.69.

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- Q. (By Mr. Jerome) -- The balance book shows that as representing what ?
- A. As representing the check book.
- Q. And the check book shows \$51,435.69 both in your handwriting ?
- A. Both in my figures. June 21st the balance book shows \$52,066.00. The check book, the stub check book shows \$53,516.
- Q. A difference of how much ?
- A. A difference of over \$1000.
- Q. In your figures ?
- A. In my figures.
- Q. And that was before the monthly trial balance was taken from the individual ledgers wasn't it ?
- A. No sir, the trial balance was taken at the end of each month; this is on the 21st of June.
- Q. (By Counsel) -- Go ahead Mr. Pickie ?
- A. On June 24, the balance book shows \$52,563.89; the stub check book shows \$52,263.89.
- Q. A difference of about how much ?
- A. A difference of \$300. June 25, the balance book shows \$52,741.16; the stub check book shows, \$52,441.16.
- Q. A difference of about how much ?
- A. A difference of \$ 300.



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- Q. (By the Court) -- Are those the books that you kept ?
- A. Books that I kept.
- Q. Were they mistakes ?
- A. No, but the small accommodation note book or the key will show how the balance comes out.
- Q. Do you mean to say that those additions were made intentionally in those figures because there was something else that would explain them ?
- A. Yes sir, that would explain them.
- Q. (By Mr. Jerome) -- It was a greater balance in the balance book, or the balance in the check book in that case.?
- A. In this case in the balance book it is greater than what it is in the check book. On July 8, the balance book shows \$66,592.40, the stub check book shows \$66,502.32, that is a difference of about \$89., the balance book being larger in every instance.
- Q. (By the Court) -- There are a good many others of the same kind ?
- A. Yes sir.
- Q. (By Counsel) -- How far will you discover that ?
- A. For 4 and a half years.
- Q. And if you go through the cash book, how far will you discover that ?
- A. The same time.

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- Q. (By Mr. Jerome) -- I ask you if in all these cases the differences in balances between the balance book and the check book, the balances in the balance book are not always greater ?
- A. Not in all cases.
- Q. In all those you pointed out to-day it was ?
- A. No not in all cases; in the cash book do you mean ?
- Q. The balance in the balance book was always greater in the cases that you pointed out to-day when you pointed out a discrepancy than the balance in the check book ?
- A. No sir.
- Q. Which one was it ?
- A. In the balance book it is less on June 20:
- Q. (By Counsel) -- Will you read the amount ?
- A. The amount is \$51,389.69. in the balance book; in the check book it is \$ 51,435.
- Q. (By Mr. Jerome) -- I call your attention to the fact that the 3 has been altered in that balance book in your handwriting, does that make any difference ?
- A. You will find the footing in that is correct and shows that that balance is correct, by deducting the amount of the bank book from that.
- Q. (By Counsel) -- When was that made?
- A. Made on June 20.

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Q. (By the Court) -- You have a right to explain that ?

A. You will find there the bank book is less, the footing of the bank book seems to be less than the footing of the check book and by deducting the amount of the bank book the footing of the bank book from the amount of the check book you will find my figures is correct, with that alteration there. The footings are correct.

Q. (By Mr. Jerome) -- I call your attention to the first that you have picked out of the alleged errors, the book kept them the same way, page 527, June 1889, you called the attention of the Jury to the fact that the figures were written in here \$5051 and some cents, which was an incorrect footing ?

A. It seems to be.

Q. You see figures there in your own handwriting \$549.76 just below which is the correct footing ?

A. The footing will agree with the accommodation note book.

Q. Is that the correct footing ?

A. That is the correct footing, the second one is correct.

Q. And the first one is incorrect ?

A. The first one is the footings to bring out the balance with the key.

Q. The first one is incorrect ?

A. The first one is incorrect.



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- Q. It is on the debit side of the ledger and it is a great deal larger than the correct footing ?
- A. Yes sir.
- Q. It makes you appear from your account to have paid out a great deal more than you really did pay out ?
- A. Yes sir.
- Q. You have not pointed us out any of these alleged errors prior to the first of Sept. on the other side of the cash book ?
- A. I did not go through the book thoroughly, I only had a few moments.
- Q. Did you pick them all out on the debit side ?
- A. No I did not.
- Q. (By the Court) -- Were those that you testified to all on the debit side ?
- A. Yes sir.
- Q. (By Mr. Jerome) -- In all these cases on the debit side you charged cash in your false entries with a great deal more than you actually received ?
- A. Yes sir.
- Q. You did that by order of O.M.Crego ?
- A. Yes sir.
- Q. That is by order of O.M.Crego you made entries in the book which would show that you spent a good deal more money than

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you actually did spend ?

A. No, that was not what it was done for, it was to make up the balance in the way that he wished it in the accommodation note book.

Q. In other words you have attempted to show that you not only made these false entries after Sept. 1st, but you made a lot more false entries during the whole time that you were in his employ ?

A. I have had to do so since I was in his employ, that is the way I was authorized to keep his books.

Q. Did any of these discrepancies between the check book and the balance book that you have pointed out occur in the early portion of the month ?

A. Yes sir, the one on July 9 and July 8.

Q. And that was after the trial balance had been made out from the individual ledger was not it ?

A. Yes sir.

Q. So you have no cases where just a day or two before the commencement of the month when the trial balance was made out from the individual ledgers ?

A. I have got June 24 & 25, I did not look through all the books, I haven't picked out any so far.

Q. (By Counsel) -- Were those figures that are on that book there all the while ?

A. Yes sir, and they were made at the dates they refer to.

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RUDOLPH BRANDT, sworn and examined.

By Counsel. Q. What is your business?

A. Book-keeper.

Q. I believe you are in the employ of Oscar H. Crego?

A. I was.

Q. In what capacity?

A. As book-keeper.

Q. For how long in the firm of Russell Crego & Son, I believe?

A. Yes sir, I do not know exactly, I suppose about three years, something like that.

By the Court. Q. From when to about when?

A. I think about the first part of July, 1888, until the first of this year, about that time.

By Counsel. Q. Do you remember any people that used to do cartage for Mr. Crego, give us the names?

A. Transportation cases, Church did the cartage of the New York Central Railroad, the Star Union, the Penn. Road, the Rondout & Catskill boats.

Q. While you were there was Dickie in the employ of Russell Crego & Son?

A. Yes sir.

Q. Did you ever see Dickie pay bills to Church in the absence



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of Mr Crego?

A. Yes sir, I can remember distinctly one, I cannot remember the date, it was in the Fall of last year.

Q. Do you remember how many small books there was kept by Dickie as book-keeper there?

A. The exact number I do not know, I could not tell what they were.

Q. Did you ever see him enter in a small book from the check book?

A. Every morning and every evening he used to take his little books and put some pencil figures in the cash books, I never was inquisitive to see what it was.

By the Court. Q. You do not know what they were?

A. No sir.

By Counsel. Q. Can you tell us about what hour of the day, do you know, that Dickie was accustomed to go to the bank?

A. Generally towards the close of banking hours, Saturdays at twelve or other days just before three about.

Q. Right before the bank closing?

A. About that, shortly before, probably about half past two or a quarter to three.

Q. Can you tell the custom or do you know anything about Mr. Crego giving different checks during the day to Mr. Dickie

to have the check altered to a different amount?

A. I do not quite understand, I cannot say anything about that about having them altered.

Q. Did you know very much about what transpired between Mr. Dickie and Mr. Crego?

A. In fact I might say nothing, I was supposed to be in the dark as regards that.

Q. Do you know that Dickie had any blank checks in the drawer?

A. I do.

Q. Can you tell us about how many?

A. The exact number I do not know but I was under the impression ----

By Mr. Jerome. Q. No, do not give it.

A. All right, I don't know the exact number.

By Counsel. Q. Do you ever know that Mr. Dickie drew a check for currency in the morning and then later on have it changed to another amount, a larger amount to use in the business?

A. That I could not answer because it was kept between them, I never knew anything about the checks.

Q. Have you seen Mr. Dickie go into Mr. Crego in the afternoon when he would be disengaged, to get blank checks signed?

A. I have.

Q. On many occasions?

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A. About everytime he drew a check.

By the Court. Q. You saw him do that on several occasions?

A. Yes sir.

By Counsel. Q. Can you tell what checks they were?

A. In exchange for checks that he drew during the day.

Q. Other checks for ones that Dickie drew during the day?

A. Yes sir.

CROSS EXAMINED by Mr. Jerome.

Q. State that again, I did not understand the questions and answers ?

A. The freight clerk or somebody would come in there and present his bills and Mr. Dickie would pay them in the absence of Mr. Crego and give him his check and Dickie would draw a mark on the margin of the stub as nearly as I remember, what it was for and in the afternoon Mr. Crego would sign the check.

Q. To replace that one?

A. Yes sir.

By the Court. Q. Is that what you mean, to replace the one heretofore given out?

A. Yes sir.

By Mr. Jerome. Q. You left Mr. Crego because you desired to do so?



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A. No sir, I left him because the man did not treat me right.

Q. Did not you leave because you desired to leave him?

A. Yes sir.

Q. You were not forced to leave him or anything of the kind?

A. No sir, I left because I desired.

Q. You did not carry on any system of false book-keeping while you were there, did you?

A. No sir.

Q. You did not know that there was any false system of book-keeping carried on?

A. No sir.

Q. So far as you know and understood, so far as it came within your province there the system was right and proper?

A. Yes sir.

Q. Were you the one that prepared the trial balances?

A. Yes sir.

Q. You were the head book-keeper?

A. I was the only book-keeper there in fact.

Q. So you had occasion to look over the accounts of Dickie?

A. Yes sir, I had orders as far as that goes.

Q. He has told us a great deal about these footings, did he ever say anything to you about being directed to make false footings in his cash?

A. No sir.

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- Q. When you reviewed his books to compare with the trial balance you accepted his footings as true?
- A. Yes sir, I accepted the footings as true, there was no comparison about it, my orders was to post my entries and return the books to Mr. Crego's desk.
- Q. The first you knew of any system of Dickie's making false entries was after he left, at Mr. Crego's request you went over his work?
- A. Yes sir.
- Q. And then you found this system?
- A. Yes sir.
- Q. Mr. Crego had not said anything to you about maintaining a system of false entries?
- A. No sir.
- Q. When you found these false entries how did he act when you called his attention to them?
- A. Mr. Crego called my attention to them, he told me to take the cash book and check book and verify the figures.
- Q. Then you found they were not correct?
- A. I did, yes sir.
- Q. And as I understand it you said in reply to a question by Mr. Moss, your department lay outside of Dickie's department?
- A. Yes sir.

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Q. What specific directions he might receive from Crego of course you do not know any more than any man in the store?

A. No sir.

Q. So Mr. Crego might direct Dickie to do a particular thing to any particular check and you would not know it?

A. I would not know anything about it.

Q. You can't say in any instance where Dickie used a check to pay a bill whether he had specific authority to do it or not?

A. There was some cases, such as consignments, they were to be referred to me.

Q. I mean suppose Dickie takes a check out of the safe and pays Mr. Church for cartage with it, you don't know whether in that particular instance Mr. Crego had authorized him to do it or not of your own knowledge?

A. No sir.

Q. Did you ever know of Mr. Dickie's drawing a check for currency, filling in one of the checks that was kept in the safe to pay to his own order currency and get currency?

A. That I could not say, I know he was in the habit of going to the bank.

Q. Did you have anything to do with the return checks at all?

A. No sir.



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- Q. Did you still remain in Mr. Crego's employ after Dickie left  
A. Until the first of January.
- Q. Were you there on that Saturday the 28th and Monday the  
30th and the first of October?
- A. I believe I was.
- Q. At the time that Dickie disappeared from the place?
- A. Yes sir.
- Q. Did he say anything to you about going away?
- A. He told me he was going to leave.
- Q. Anything else at all?
- A. He would not be down or would be late, I do not remember  
exactly.
- Q. Did not he say to you that he would not be down on Tuesday  
morning until late, that he was going to move his furniture.
- A. I do not remember his positive words about the time of com-  
ing down but he told me he was going to move.
- Q. He said nothing to you about going to Montreal?
- A. No sir.
- Q. Or the offer of any position elsewhere?
- A. No sir, he had spoken different times that he had offers or  
was looking.
- Q. Did he make any statement about offers from Montreal?
- A. He had spoken to me about having some friend in the far west  
I cannot remember the exact town, I got an idea that it

was Seattle.

By Counsel. Q. When was that Dickie spoke to you about getting another position, how long before he left?

A. He had been for quite some time up to the time he left.

Q. How long before that up to the time he left had he been speaking to you about getting another position?

A. I should think a year or a year and a half, probably longer.

Q. Right along?

A. Right along, yes sir.

Q. Was that the subject of conversation?

A. Yes sir.

Q. Did you have to keep your balance open at times or would you close the balance till you got the figures from Mr. Grego?

A. Not until I had the final figures from the cash.

Q. Who gave you those figures?

A. I took the cash book when it was finished; those times I would be told they were kept open for bills payable on accommodation paper or something like that, it could not be closed.

By the court. Q. Who told you that?

A. Mr. Dickie or Mr. Grego spoke to me about not having it balanced.

By Counsel. Q. Before making your final balance had you to keep

the books open till Mr. Crego gave you the figures?

A. Not Mr. Crego, Mr. Dickie as I said, told me the books would have to be kept open until the bills payable came in.

Q. Was the final balance made up in May, the yearly balance?

A. I can't say as to that; they were kept open for some time for stock taking.

By Mr. Jerome. Q. Do you know anything about an accommodation note book?

A. There was one I believe with notes in it I think that I saw.

Q. What was in that, accommodation notes?

A. I believe so.

Q. Did you ever see any system of book-keeping in that place which entered checks for bills that had not been mailed but mailed the next day and entered as accommodation notes?

A. I could not really say as to that; as I said before, Mr. Crego and Mr. Dickie kept the cash between themselves, I never heard of such a thing.

By the Court. Q. You say you know of an accommodation note-book, what was that?

A. That was a book they entered the bills payable and such things as that in, only bills payable.

Q. What do you mean when you say an accommodation note-book?

A. No, I never heard of it.



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By Mr. Jerome. Q. This is the missing book that you have reference to where bills payable are entered?

A. That is it.

Q. And that is the book that you mean when you just testified?

A. Yes sir.

Q. You never saw a little book of that kind called an accommodation note-book around the office?

A. Not by such name, I only knew that he had some <sup>books</sup> ~~names~~ I seen him carry from the safe.

By the Court. Q. You don't know what books they were?

A. No sir.

By Mr. Jerome. Q. Did you ever know of any system in vogue in that place where you were book-keeper whereby a man made up his balances on hand in the drawer by adding together what he actually had in the drawer and his disbursements of the week.

A. I never heard of any in that office.

By Mr. Moss. Q. Did you know anything about the system that was carried on between Crego and Dickie?

A. Nothing.

Q. Mr. Dickie had charge of his own books, did he not?

A. Altogether.

Q. Did you know all the books that he had?

A. No sir.

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Q. Do you know that Dickie told you at any time that Crego kept his books in a funny way?

A. He did say that, yes sir.

Q. When was that?

A. Oh, on different occasions, I could not specify the time exactly.

Q. Did he specify in what way they were funny?

A. He made the remark once that anybody coming to examine them would not quite understand them, or something to that effect.

By Mr. Jerome. Q. Was that after Dickie went to Canada.

A. Oh no, before Mr. Dickie told me this.

Q. It was before he told you that?

A. Yes sir.

Mr. Jerome: I move that that be stricken out, I do not see what relevancy that has.

The Court: The motion granted. let it be stricken out.

Mr. Moss: I accept.

By Mr. Jerome Q. Did you ever understand in the business of Russell Crego & Son that Dickie could use blank checks for anything that was necessary to be used in the business?

A. I never knew of his authority but I have seen him draw checks at different times.

By the Court. Q. You did not know what his authority was:

A. No sir.

By Counsel. Q. You saw him draw checks?

A. On the presentation of freight bills, I know positively about the freight bills, beyond that I cannot say.

Q. Do you remember the time when Mr. Crego was sick?

By the court. Q. He was sick about ten days?

A. I believe he was.

By Counsel. Q. Do you remember during that time that Dickie paid all bills, drew currency and everything?

A. It is beyond my memory.

By Mr. Jerome. Q. These freight bills that you refer to were paid by Dickie by check?

A. Yes sir, sometimes and sometimes cash when the amounts were small from the drawer.

Q. Are you positive as to that?

A. Yes sir, small ones.

Q. You do not know what authorization he had to pay those?

A. No sir.

By Counsel. Q. Was there much currency coming in on an average daily through the week or was it all by checks mostly?

A. Mostly checks.

By Mr. Jerome. Q. Did the currency average more than ten dollars a week?



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A. Ten dollars a week, I should not think it averaged much more for a year.

Q. Most of the remittances were by check or some commercial paper.

A. Yes sir.

Q. I understood Mr. Moss to ask you if you had to hold open your trial balance till you got from Mr. Crego certain figures, did you answer that you did have to do that till you got the figures from Dickie?

A. That is the yearly balance, or the monthly balance?

Q. Both?

A. Well, the yearly balance Mr. Crego would give me some figures probably or would make them mean something like that but for the other I was told when I asked about the closing of it I had to wait until something was done to the accommodation paper, bills payable or something or other.

Q. Who told you this?

A. Dickie.

Q. So that Dickie would keep your trial balance until something occurred which he talked about.

A. Yes sir.

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WALTER NOISE, sworn and examined.

By Counsel. Q. How old are you?

A. Sixteen.

Q. Where do you live?

A. No. 428 West 34th Street.

Q. And where are you employed?

A. I am not employed anywhere just now.

Q. Where were you last employed?

A. Russell Crego & Son.

Q. Of which Oscar Cregonhere, the complainant, is one of the firm?

A. Yes sir.

Q. In what capacity were you employed there?

A. General clerk.

Q. And for how long?

A. For a year and a half.

Q. Covering what period of time, from what month to what month.

A. From October 1, 1888, till just about a year and six months from this to May, 1890.

Q. The de endant Dickie was in the employ of Russell Crego & Son during that period of time?

A. Yes sir.

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Q. Did you see him pay bills? at different times for freightage and cartage?

A. Yes sir.

Q. To whom?

A. To the Hudson River Railroad, the Star Union and Pennsylvania Railroad, etc. once in a while, to Church, the carman.

Q. In what way would he pay the bills?

A. He generally when they were not too large pay them in currency.

Q. Would Mr. Crego be thereat all times?

A. Not at all times, no sir.

Q. Did you hear Dickie ever say anything about leaving his position or looking for another job?

A. I have heard him complain about it as though he was going to leave sometime, yes sir.

Q. When was that?

A. On different occasions, I do not remember.

Q. Covering what period of time?

A. About half a year from January to September.

Q? Leave without giving any notice?

A. I do not know.

By the Court. Q. Do you know if he ever said anything to you about giving any notice?

A. No sir.



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Q. Nothing on that subject was ever said to you?

A. No sir.

By Counsel. Q. Did you get a pass for Dowie to go in to see Dickie?

A. Yes sir.

Q. Who sent you?

A. Mr. Oscar Grego.

Q. Will you tell us the conversation you had with Mr. Grego with reference to seeing Dickie?

By the Court. Q. A pass to the Tombs do you mean?

A. Yes sir.

Q. Where did you get it?

A. ~~From~~ From Mr. Costigan.

Q. Here in this building?

A. Yes sir.

By Counsel. Q. Tell the conversation who was present at that time?

A. He just told me to go up there and get a pass for Harry Dowie and if they asked me who Harry Dowie was and why he wanted to see Dickie, just tell him, a personal friend of Dickie would like to see him; I was to tell Mr. Costigan that if he asked me anything about it, the chief clerk.

Q. You were to tell Mr. Costigan that Dowie was a personal friend of Dickie, in case he asked you who he was?

A. Yes sir.

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CROSS EXAMINED by Mr. Jerome.

- Q. Is that the same Dowie that Dickie testified about that he told him at the Tombs that he would bail him out if he had his money, if you know?
- A. No sir, I don't know anything about it.
- Q. When Dickie went into retirement in Canada from the employ of Crego, I understand he put you temporarily in Dickie's place?
- A. About one day or two days.
- Q. Two days?
- A. Yes sir.
- Q. That was the first of the month?
- A. Yes sir.
- Q. That was the first of October?
- A. The second day, I think he had one day himself.
- Q. And all the books that he intrusted to you you returned to him, didn't you?
- A. Yes sir.
- Q. And did you see anything of an accomodation note-book among the books that were given to you?
- A. I did not notice any such, I did not see all the books.
- Q. All there were you returned to Mr. Crego?

A. Yes, all I had anything to do with.

By Counsel. Q. Do you know of occasions when you went out to pay bills with checks whether any of them were <sup>dated</sup> paid back ?

A. Yes sir, one day.

By the Court. Q. You know of one occasion?

A. No, there was several occasions like Saturday afternoons, he would give them out.

Q. What do you mean by saying one day?

A. I did not quite understand you.

Q. Do you mean one or several?

A. Several.

By Mr. Jerome. Q. This was by Dickie, these ante-dated checks were given out?

A. Yes sir, he gave them to me always to pay.

By a Juror. Q. You meant by being dated back one day, what?

A. He would make them out Saturday afternoon and we would not have time to go around with the checks that day so we would leave them over until Monday, and take them out again.

By Counsel. Q. Is that what you mean by ante-dating?

A. That is what I mean.

Q. Do you know of checks being left in Dickie's drawer for several days without being sent out?

A. Not for several days, no.



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OSCAR M. CREGO, recalled by Counsel.

- Q. Mr. Crego, at the time that Dickie entered your employ, did he present you recommendations from the other side of the water?
- A. He did.
- Q. Do you remember who they were signed by?
- A. One was signed by the minister where he told me he had been a teacher in Scotland I think, in Glasgow or near Glasgow and I think another one by a business firm there or something of the kind where he had been employed.
- Q. You wrote over there and found out the recommendations were correct?
- A. I received replies that were very satisfactory to me.
- Q. Now you heard Walter Noise testify here to-day?
- A. I have.
- Q. You had a conversation with him when you sent him to get a pass for Dowie?
- A. I sent him to get a pass, yes sir.
- Q. You told him to tell the chief clerk that Harry Dowie was a personal friend of Dickie's?
- A. Mr. Dowie asked me to get a pass for him, I did not know

anything about the arrangements of the District Attorney's office, I had been up here attending to the case several times and I sent Walter to get a pass, and I heard him testify that I told him to say that Mr. Dowie was a friend of Mr. Dickie's. I have no doubt I said that but I do not remember.

Q. You say that Dowie asked you to get a pass?

A. Yes sir.

Q. You testified that the conversation Dowie and you had was to fix things up and Dowie went there to fix things up?

A. Mr. Dowie went there, I can't be definite about it.

Q. You testified that he went there to fix things up?

A. Yes sir, that is about it.

Q. What did you mean, what did you want him to do to fix things up?

A. I did not want him to do anything.

Q. You say that you did not want Dowie to do anything?

A. NO.

Q. Was it Dowie proposed to you to do that?

A. Yes sir.

Q. What did you understand him to mean by fixing things up?

A. I understood him to mean that he would like to try to arrange so that Dickie would give me back the money he had taken and be let go, that is what I thought he meant.

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Q. If you got your money back?

A. Well, no; I understood him to mean that he would like to arrange if he could so that Dickie would not be punished.

Q. And that met your approbation?

A. NO.

Q. You did not object to his going to the Tombs after that, did you?

A. I told him before he went that I would be very glad if he could arrange it in any way so I could get my money back.

Q. You did? A. Something to that effect.

Q. Did Dowie report to you what took place between him and Dickie at the Tombs?

A. Yes, when he came back he told me something about it.

Q. When did you last see Dowie?

A. About three weeks ago.

Q. Is he around the city now?

A. Yes, as far as I know.

Q. Have you gone to see him to tell him what Dickie testified to here in regard to the conversation?

A. I have not.

Q. About those books, Mr. Crego, when Dickie came to your employ did you ever have any system of book-keeping at that time?

A. Yes sir.



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- Q. You heard Dickie testify that you discharged a man because he would not keep books to suit you?
- A. Yes sir.
- Q. What was the name of that man?
- A. He says it was Martin, some such name, Martin I think he said was the name.
- Q. What do you say it is?
- A. I do not remember having had such a man in my employ at all.
- Q. He says that you discharged him because he would not keep books, did you ever discharge any man because he would not keep books to suit you?
- A. I do not remember such a case.
- Q. If you had would you remember it?
- A. I presume so, yes sir.
- Q. Will you swear you did not?
- A. I will swear I did not in Dickie's time, I did not have any such man in Dickie's time.
- Q. You have heard Dickie testify in reference to the way that his books were kept during the four years?
- A. Yes sir.
- Q. Were they kept that way under your instructions?
- A. They were not, that is, the irregularities that he mentions were not kept under my instructions.

Q. Were the figures in the books that are here to-day the same as they were when they were originally entered at the bottom of the pages, both the erasures, the lead pencil figures and the figures in ink?

A. The same as when -----

By Mr. Jerome. Q. He wants to know if you falsified them, made any changes?

A. I have not made any, I do not think I understand the question.

By Counsel Q. We will take the cash book, the figures that are in there to-day, were they there at the time Dickie left?

A. Not all of them.

Q. Did you make any changes?

A. I do not think any of his figures were changed but there are additional figures in there.

Q. Made by whom?

A. Mr. Brandt I think made the correct footings in the cash book.

Q. That is, he changed certain figures, erasures and made other ones?

A. No sir, he did not alter them, he made additional footings and he left Dickie's footings there; he made the correct footings in addition to the incorrect footings.

By the Court. Q. He did not strike out the footings?

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A. No, the false footings that are there are left.

By Counsel. Q. The incorrect footings Mr. Dickie says if you go through the cash book go back for a period of four years, do you know that?

A. I do not know it, no sir.

Q. Did you have charge of the books, you had access to the books?

A. I had access to them.

Q. Every day?

A. When I chose, yes sir.

Q. Did you examine them and how often?

A. Not as often as I wish I had.

Q. I ask you how often have you examined them?

A. I will have to acknowledge that I was very careless about examining them.

By the Court. Q. Can you tell how often you examined them?

A. I do not think I examined the cash book, no, I cannot say how often, not often.

B. Counsel. Q. Once a year, can't you give us some idea?

A. I did not make any thorough examination at all.

Q. Can't you tell us if you examine these books once a year, you can answer yes or no.

A. I cannot say that I did in the last year, there was a time when I did.



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Q. Will you swear that once a year you examined them?

A. There was a time when Mr. Dickie was first my cashier when the cash book was put on my desk every day and I made more or less of an examination of all the entries, that is I looked it over and examined it over to see if it was all right.

Q. We will go back to the first of January a year ago, 1889, have you examined the cash book from January 1889 until the time Dickie left?

A. I cannot say that I did, I do not remember any occasion when I did.

Q. Or the stub check book?

A. I do not think I made any examination of that.

By the Court. Q. You do not mean to say by that you did not have them in your hand?

A. Oh, I seen checks every day.

Q. You saw them and saw the ~~check~~ cash book from time to time?

A. Yes sir.

By Counsel. Q. Did not you look at the balance on the stub check book?

A. No, that little book where he figured up the balances.

Q. You saw the balance on there, didn't you, from time to time in the check book?

A. I cannot say that I did not see it but I do not remember when I did.

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- Q. How about the accomodations books, Mr. Crego, they were little books like that that you had, covering a period of four years?
- A. I never ~~use~~ heard of such a book until I heard Mr. Dickie's evidence.
- Q. You did not?
- A. Never heard of it.
- Q. When was it you first heard Dickie testify about that?
- A. To-day, here I believe.
- Q. Did not you hear him testify all day yesterday about the accomodation note-book?
- A. Yes, I did hear about it.
- Q. You said nothing about it at all?
- A. I supposed he meant this book which I brought this morning, I supposed he meant this book in which all bills payable and accomodation notes were entered.
- Q. Did not he mention checks yesterday that he entered in the accomodation note-book?
- A. Yes sir.
- Q. Are there no checks entered in that?
- A. No, that is why I did not bring it before, I did not suppose it appertained to the case at all.
- Q. Did not Dickie give you every morning the balance book and the accomodation note-book and leave it on the desk?

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- A. That little balance book he put on my desk every day or gave it to me, yes, showing what the balance was.
- By Mr. Jerome. Q. Did you have this same system of book-keeping, I do not mean a system of false entering, but employing the same books and pursuing the same method all the time that Dickie was in your employ?
- A. Yes sir, for ten years pretty much the same.
- Q. You had this set of books the time Dickie came into your employ?
- A. I did.
- Q. This book you produced is the only book in which accommodation notes and bills payable are entered as far as you know?
- A. Except a book previous to that, that kind of a book.
- Q. Kept in the same way?
- A. Yes sir.
- Q. Did you ever hear or see or did you receive among the books turned over to you by Walter Noise any book which Dickie described in his evidence on the stand the other day?
- A. I never heard of any such book.
- Q. And do not know of any such book? never have seen it and have not got it in your possession?
- A. NO.
- Q. Did you instruct Dickie at any time to make false additions of his figures in the cash book, making the debit side of



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his cash smaller than it ought to be?

A. NO.

Q. Did you instruct him at any time to make false additions in his cash book, making the credit side of his cash larger than it ought to be?

A. NO.

Q. Did you ever order him or direct him or order or direct anyone in your employ to make any false entries?

A. NO.

Q. Or instruct them to keep books by any system of false entry or false additions or multiplication of mathematics?

A. Never.

Q. When you say you have not examined the cash book personally, do you mean you have not seen it?

A. No, I saw it occasionally.

Q. And saw entries in it?

A. Yes sir.

Q. Did you see other than the outside of it?

A. Yes sir, more or less, I do not remember how much.

Q. When you say you did not examine your check book carefully, you mean ----- you tell us that the defendant brought it to you?

A. Well, I seen checks when they were in the book but I did not-----

Q. You never checked your book off against your bank book or examined your vouchers?

A. No, Mr. Dickie checked off the vouchers when the bank book was written up.

Q. Now Mr. Greco, Mr. Moss has asked you if Dowie told you the conversation that he had with Dickie and you said that Dowie did tell you, I ask you for the conversation that Dowie told you he had with Dickie?

A. I do not recollect.

Q. Nothing as far as you recollect that had any bearing on this case?

A. No, I cannot say, I think he told me that it was his opinion that Dickie had no money and that he represented to him that he had no money.

By the Court. Q. Is that all you recollect?

A. I have an impression to that effect.

Q. Is that all the recollection you have about it?

A. Yes sir.

Q. Anything further?

A. No, I do not remember much of anything about it.

By Counsel. Q. How long ago was it that Dowie went to the Tombs to see Dickie?

A. I should think it was directly after Dickie came back, not long after Dickie came back from Canada.

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Mr. Jerome: The People rest.

Counsel: We rest.

The Court adjourned.

Wednesday, July 16, 1890.

The Counsel for the Defendant and Assistant District Attorney Jerome summed up the case to the Jury.



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THE PEOPLE

vs.

WILLIAM F. DICKIE.

THE JUDGE'S CHARGE.

JUDGE MARTINE charged the Jury as follows:

GENTLEMEN:

I congratulate you that you are now approaching the final discharge of your duty in this case.

There has been much time consumed in the investigation of matters relating to this case and at some stages of it you, gentlemen of the jury, may have been wearied at the length of the cross-examination on the part of the Counsel for the defendant, but you will agree with me that such procedure must be deemed necessary or it would not be permitted in a Court of Justice, and generally we may say that time is not wasted in endeavoring to get at the truth in any case.

Where a charge of an infamous crime is made against a defendant, it is important that if the charge be true it should be fully proved, and it is important to the defendant if the charge be not true that he should have an opportunity to show to the Court and Jury his defense. This defendant has had the benefit of distinguished counsel, a gentleman who has for many years practiced in this Court, and who has

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intelligently and properly contested every foot of ground that he has deemed proper to contest in behalf of this defendant.

So that it finally comes to you for you to pass upon the facts in the case and determine the great question of whether or not this defendant is guilty of the crime charged against him.

I have said that it is known in law as an infamous crime.

Gentlemen, the crime of forgery is a serious one and dangerous in its character to the business community.

But we must not therefore simply because we may have a feeling of indignation at this character of crime, be carried away from the consideration of the plain facts that have been proven.

The simple question that you have to determine is, did this defendant on the 23th day of September forge the check for \$225.00, which is in evidence before you?

Was that a forged check, a false document made by the defendant with the intent to deceive and defraud?

That is the question that you are to determine in this case; and all the other facts have been allowed to come in to the end that you might, if possible, have light as to the methods of transacting business there in order that your intelligence might be aided in coming to an honest and a just conclusion in the case.

Counsel for the defendant has very properly

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remarked that much has come into this case that might appear to have no special bearing. You are not here to try a question of larceny; you are not here to determine if there be any false entries or footings in that book except as an incidental question and you are only to consider that question when it may throw any light upon the question at issue, to wit, is this a forged instrument, and was it forged by the defendant at the bar? Counsel for the defendant has said that he could only be extradited from Canada for forgery.

That is so under the extradition act. He has appeared here in answer to this charge and you are not to consider any charge or accusation against the defendant save and except the accusation against this defendant of the charge of forgery in the second degree.

Now what is forgery? There is a general impression among those not informed in the law, that to commit forgery a person must write another's signature; that is not so.

Forgery has a very wide signification within the meaning of the law. A person is guilty of forgery who makes a document purporting to be what in fact it is not, or who alters a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document, or who introduces into the document without authority whilst being drawn up, matter which



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if it had been authorized would have altered the effect of the document. It is a fraudulent making or altering of a writing to the prejudice of another's rights. That is something which you want to keep in mind, gentlemen, in considering what forgery ~~is~~ <sup>is</sup> --- the fraudulent making or altering of a writing to the prejudice of another's rights.

It is the making of an instrument fraudulently purporting to be that which it is not, or a fraudulent application of a false signature to a true instrument. So that I say to you that every instrument which fraudulently purports to be that which it is not, is, a forgery. Forgery, in other words, exists in giving the appearance of truth to deceit and falsehood, and in giving an instrument an operation which in truth and in justice it ought not to have. In the endeavor to ascertain whether a crime has been committed, whether it be forgery or any other crime, the Jury should try to discover the intent of the person committing the act. The essence of the offence is the intent to defraud. The intent to defraud and deceive constitutes the chief ingredients of the crime of forgery. There must be the intent to defraud some person or some firm, and if there be the intent to defraud the firm, it carries with it the intent to defraud every member of it. And I might go a step further ---- it is not necessary that there should be in fact any person

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defrauded; it is not at all necessary that anyone should lose by the transaction, that there should be any person <sup>really</sup> defrauded.

What was the intent in the mind of the person who altered or wrote anything into an instrument? Or in some other cases, what was the intent of the person who uttered the instrument after it was made? If the probable consequences be to defraud another, in contemplation of law that constitutes the offence of forgery; and generally where the statute makes an act a crime the <sup>intent may be inferred from the act</sup> criminal intent may be inferred from the facts and circumstances. It is not necessary that any act be done toward the attainment of the fruits of crime. The intent may be inferred from the facts and circumstances or it may be inferred from the intrinsic facts.

Now it is charged here that the particular instrument which was the subject of forgery was what is ordinarily known in business as a check or an instrument drawn upon a bank directing the payment of money. So that I say to you that the altering of a check already made with the intent to defraud, the altering of the indorsement constitutes forgery if it be accompanied with a fraudulent intent. The filling up of a blank check to which there is a signature to affect the instrument, or to fill up a blank with terms other than those instructed is forgery. I call your particular

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attention to that, gentlemen, because much will depend upon what you believe the instructions to this defendant were, what his authority was. If he exceeded that authority, if he had authority to do certain acts and he exceeded that authority knowingly and intentionally meaning to defraud, then he comes within the act charging forgery. Or if a person fills a signed check up with a sum without authority forgery is committed. Inserting in a check the words "cash" or "bearer" instead of the words "to order" has been held to constitute forgery. If a person had authority to fill up a blank check for one sum only and he fills it up for a larger sum, that constitutes forgery. So that you see, gentlemen, this word forgery in law has a very wide significance. If an instrument be given a false meaning with intent to defraud, it is for the jury to say whether or not the crime of forgery is committed.

I think, gentlemen, in this case it is unnecessary for me to rehearse in your hearing the testimony. It must be reasonably fresh in your memory because the complainant and the defendant were examined and cross-examined at length, so that the facts have been rehearsed in your hearing several times.

I must trust to your memory of the facts. You will recollect that as to the facts in the case you



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are supreme --- your determination governs as to the facts.

Whatever my view of the facts may be it does not bind you.

You are responsible under your oaths and your consciences as jurors to determine the facts as you believe them to be; I am responsible for the law. Should I knowingly lay down a doctrine that was contrary to law, I would violate my oath.

If you knowingly lay down a doctrine as to the facts that you know is contrary to them, then you violate your oaths.

So you see, gentlemen, we are each supreme in our special province, you on questions of fact, and your determination of them all must take; I upon the law, and my definition as to the law you must take. Each of us have a responsibility ~~in this case~~ to bear and I doubt not that that responsibility in this case will be conscientiously and properly discharged.

Now it is charged against this defendant that on the 28th day of September he fraudulently, knowingly and with the intent to deceive, forged a check for the sum of two hundred and twenty-five dollars. The complainant testified that it had been his custom to give to this defendant, he said twelve but the defendant said ten, signed checks for use in the business of the complainant. Now manifestly, gentlemen, taking abroad view he was not authorized to use them for any purpose except for the

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complainant's business. Any other interpretation of the testimony would in effect be nonsense, ----- indeed, it is not claimed. The defendant said he had the checks for any purpose that might be required generally in the business while the complainant says it was limited to certain specific things which I will allude to presently. The complainant says that these checks were signed and remained to the order of the defendant, his cashier, to be used in the event of his absence for the purposes of business. The complainant said, "he was to use them in my business to pay drafts or bills which I should specify. Parties would ship goods and draw on me; I never gave him power to use them for any other purpose." Then he spoke of having an agent at Illinois and some person in this State at Stockton. In dealing with them these checks could be used and to pay freight bills, but otherwise the defendant was to use these checks when the complainant directed him. He said, "I never authorized him to use them to obtain currency." Now it is conceded in this case that this check was what might be called a currency check and was used to obtain money from the bank for use in business on that day; and there were as occasion required several checks drawn from time to time in like manner, that is, drawn to the order of W.F. Dickie, currency. It is claimed on the part of the People -----

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but it is for you to say, that every check that was drawn for currency was drawn from the check book and that the number corresponded except the check in question, which is claimed to be a forged instrument.

That is a matter for your memory to say whether that is so or not. I am not going to make any statement about that because it is an important fact in the case for you to determine.

If you come to the conclusion that that is the fact, you may give it just the bearing it is entitled to.

You may ask yourselves where it leads to. It is a matter entirely for you.

I will say that if the checks were used for the purpose of this complainant's business, for paying just and legitimate bills, the complainant might not complain; if the defendant paid freightage or cartage or for something else which was a just and legitimate bill owed by this complainant, there is not any crime to be predicated upon that because he could not have any criminal intent in doing such an act. But if the defendant used the check and collected money for his own purposes, then you would ask yourselves did he or did he not have a criminal intent? Did he fraudulently fill it up, make false representations and use it for a purpose which the drawer did not intend it to be used for, use it for his own purposes, use it for a purpose not authorized by the



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law, then I leave it for you to say under the definition of the law that I have laid down did he or did he not commit a crime? The defendant gave an explanation of this, and it is for you to say whether it is satisfactory. First, I want generally to say to you that if this defendant intended to commit a crime, then that check when he either obtained the signature or used that check having it already in his possession, if that was his intent and he exceeded his authority, if that was what he had in mind, to wit, to cheat and defraud by the use of that instrument, I leave it for you to say whether he did or did not commit forgery. But he said, "I wanted that money to pay salaries and Mr. Crego wanted some money." The defendant said to you that this check was used in the business of this complainant, and that he used it that day. He said that he got that check signed by the complainant in the early morning somewhere between nine and ten o'clock. I think the defendant said the complainant came to his office at about nine o'clock on that day; that thereafter Mr. Crego informed him that he would need some money and that he took the check from the safe, one of the ten or twelve as the case may be, which he had for the purposes of business and filled one of those up and used it instead of asking the complainant to sign another check on that occasion. Now, gentlemen, as I intimated to you before if he did that honestly, if he

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took that check and Mr. Grego was not there and that was necessary to be done at that time to get the money before the bank closed, you ought not to impute any bad faith to him, if that was an honest transaction. But was Mr. Grego there? Certainly he was there some time on that day in accordance with all the testimony. The defendant said that Mr. Grego always went to market on Saturday. He may have been; was he there attending to his business? It is absolutely denied by the complainant that he signed any check. Could he not possibly in the hurry of business have signed another check? What is reasonable about it? That is what you have the right to consider in determining the question. It has been suggested that the check for one hundred dollars has never been returned. It had an existence somewhere if Mr. Grego's testimony be true. Who took it? The proof is silent as to that. To whose order was it? Is there any reason why that check has not been presented? There is none in proof; but you have the right to take into consideration the fact that the two hundred and twenty-five dollar check was filled in and that the one hundred dollar check was filled in. Who would have any reason to take such a check, for such a check would be manifestly useless until endorsed? Has the check been lost? There is no proof upon that. Or, did some one take that check and

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for reasons within their own knowledge fail to send that check for collection to the bank? These are suggestions you have a right to consider. Suffice it to say that up to this time there has been no loss to the complainant if it was not used in his business, but if it was used by Dickie and appropriated by him to his own use, there has been a loss of that amount to this complainant of a hundred and twenty-five dollars. It may be that the defendant paid on that day some expenses of the office, that is a matter entirely for you to say. But it makes no difference if the complainant lost but one penny, or even if he lost nothing, if this defendant had a fraudulent design and intent, if he made that instrument in the manner that it is claimed, making false representations to his employer, if you are satisfied from the evidence that that is so, then he is guilty of forgery in the second degree. It is entirely for you to say upon the facts. Mr. Crego's and this defendant's stories do not agree at all, ~~that~~ they are entirely inconsistent. Mr. Crego says that this defendant came to him and told him he wanted a hundred dollars to pay off with. It is in proof by the complainant and the defendant that the salaries are about a hundred dollars ----- Mr. Crego said ninety-eight dollars. If the complainant has told



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the truth upon the witness-stand, the first he knew of this two hundred and twenty-five dollar check having been used was when his bank account was written up; then it was he says he made the discovery of this alleged forged instrument.

The complainant says that upon the disappearance of the defendant from his place of business, he having given him no warning (and the defendant himself says that he did not) that he caused a search to be made of his books and an examination showed that there were certain discrepancies found in the books.

The defendant says, "you will find them all through the books." You have a right to take into consideration the fact that the person who kept that book was the defendant himself; and it is for you to say whether you believe the story that he tells, that this complainant told him to keep the books in accordance with that system, to keep them wrong, and that he meant to keep them wrong and that he made those false footings and incorrect entries under the instructions of Mr. Crego.

Of course if he did that, there is nothing to be predicated against him upon that.

If he was simply obeying the instructions of his employer there is no crime in that. There is no crime in making footings that are incorrect to a man's cash book or check book if he directs an employee to do so and wants it done.

Is that probable? If this defendant

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committed a crime intentionally and knowingly, he was perfectly conscious of it when he testified upon this witness-stand, and it was necessary to conceal that crime by falsification when he came to the stand to testify. It is for you to say whether in telling his story to you he had to lie to cover up the crime which he knew he committed. It is for you to say just what you think about the story he told.

You saw his manner upon the witness-stand; you heard his contrary statements at different times, possibly from being confused and possibly from the pressure of the cross-examination of the learned District Attorney, and it is for you to say if you discovered in his manner of testifying and in his appearance while upon the stand that he told anything but the truth.

Under the liberality of the criminal law a defendant has the right to take the witness-stand in his own behalf and make an explanation and the law says that there shall be no presumption against a defendant who fails so to do.

This accused availed himself of the right he had to tell his story before this Jury. It is for you to say whether in the light of the evidence he is guilty or not guilty of the crime charged. The

complainant tells you also that there was no entry in the cash book or in the check book of this two hundred and

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twenty-five dollar check, but the defendant tells you that the hundred dollar check had been entered and taken from the balance.

There was no entry, said the complainant, in the check or cash book of this \$225.00 check. Was it a mistake or was it part of a plan to intentionally omit making any such entry? No person is held criminally responsible for a mistake. Did he desire to keep the knowledge of it from his employer? In other words if he obtained that by means of forgery is it or is it not reasonable that he would have failed to make the entry? Upon being apprehended in Montreal the defendant, so says the officer, said he did not know that he committed any crime. He asked the defendant why he went away so abruptly and he replied that he did not think he was under any obligation to Mr. Crego. He has given upon the stand an explanation of his leaving upon that night. He said, "I received a letter from my cousin in Montreal." He immediately corrected that and said his cousin was in Seattle.

Counsel: Your Honor is mistaken.

The Judge (resuming): He said, "I received a letter from my cousin in Montreal. My wife was in Rome and then I went to Montreal only because I received that letter. I believed I was discharged when I left, and that the complainant's son was to take my place." Then in further explanation



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of his leaving he said, "I did not tell Mr. Grego when I went away; I thought he intended to treat me as he had the other clerks and I thought I would give him no warning. He did not treat me well; you never could depend upon him, he did not treat me right, I did not like the way he conducted his business, I left on account of the butter transaction; fifty percent of the butter was not eighteen cent butter. I had a copy of my figures in this transaction; I took it out of curiosity; I saw he returned less than he got for the butter it was butter received on consignment. I thought he was doing a wrong act, getting loans on over estimated butter.

This was one reason for leaving. I received word of a place in Seattle at about eighty dollars a month; I told the clerks I was going to leave without warning, I told Mr. Brandt." According to Mr. Brandt's testimony he did not remember that the defendant said he would leave without warning; he said he would leave. The defendant testified, "I did not say I would be late next morning, I told no one I was going away. The reason I left was I was satisfied that he brought his son to put in my place; he treated his other clerks badly, Mr. Coates and Mr. Cockford." He testified afterwards that both those clerks left. The defendant said Mr. Grego discharged Martin but Mr. Grego said he did not discharge him. The defendant also said, "I gave no notice

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because if I did not get the place I was going to return. I told Mr. Brandt I might not be in the office the following day; I told him I had been moving, I made this statement to deceive Mr. Grego." Had he any purpose in deceiving Mr. Grego, had he any reason to deceive him, was it in furtherance of some other purpose? Was it because he had conceived the intent then to leave this jurisdiction because he was conscious of crime committed and that he meant to deceive his employer to the end that the employer might not have the means of ascertaining the place to which he had gone? You have the right to take both views and make up your mind which is true in regard to it. He further testified that when he came from Montreal he came here under a process of law and it was a voluntary transaction. Gentlemen, I am not going to allude further to the testimony. I think this is a case that you can clearly understand and that you will sufficiently recollect what has been testified to before you. What you want to ask yourselves is this--- because this is the question now before you ----- did or did not this defendant commit forgery? Did he obtain that check or use that check which had been previously intrusted to him contrary to his instructions? Did he exceed his authority and did he have the intention to deceive and to defraud? If he did I leave you to say

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whether or not he is guilty of the accusation against him.

There is the doctrine which applies in this and in every case which is known as the doctrine of reasonable doubt.

You observe that the law does not say, "doubt", because we are dealing with human affairs and with human beings whose memory to some extent is liable to err; and where there is simply a mistake, it is a matter for your intelligence to endeavor to ascertain whether there has been a mistake or not; but if a witness comes upon the stand and swears to tell the truth and shall then wilfully swear falsely of course the act is perjury. Now it is for you to say whether Mr. Crego has told the truth, because in the main this case lies between Mr. Crego's testimony upon the one hand and this defendant on the other. Has Mr. Crego told the truth as to what transpired or has he in any particular falsified intentionally? Has the defendant told the truth or has he in any particular falsified? Because if a witness swears falsely intentionally and wilfully as to a matter of fact, then you have a right to reject the entire testimony of that witness. It is for you to examine the statements made by these two persons because they do not agree. I shall not say in this case that perjury has been committed, I shall leave it for you to determine whether it has or has not been committed. Again I call to your mind



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the suggestion that if this defendant is guilty of a crime he is conscious of it; it is for you to say whether he has told an untruthful story. Again as to this doctrine of reasonable doubt; the law says "reasonable doubt", and that is such a doubt as twelve men situated as you are, called upon to pass upon a given question, would have a right to entertain on any given subject after a full, fair, honest and impartial examination of the evidence. It is not a juror's duty when he goes into the jury-room to say, "I am not satisfied; there may be some doubt about this." Look at and examine the evidence. If it leaves an abiding satisfaction, a firm belief, a righteous conviction that the case is made out on the part of the People, then you cannot have a reasonable doubt. You cannot at the same time be reasonably satisfied and entertain a reasonable doubt, the two things are inconsistent. If after a fair comparison and examination of the evidence you are left in doubt, then you have a reasonable doubt and the defendant is entitled to an acquittal at your hands. So if it shall be necessary for you to determine any particular question in the case, if you have a doubt after such consideration as I have outlined, it is your duty to solve that in favor of the defendant. Good character will sometimes create that doubt where otherwise it might not exist ----

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in other words, if you are in a state of doubt you have a right to take into consideration the defendant's previous character. A man has a right to say to a jury when charged with an infamous crime, a crime of this importance, "I have led a life of uprightness and probity in this community for many years past." It is fair and just that that should be taken into consideration; but you have a right also to consider that there are men in this and in every community who for a period of years occupied an enviable position and have been implicitly trusted who fell and committed crime.

Although a man's character has been good, if you are satisfied that a crime was committed it is just as much your duty to say so as if the man's character heretofore had been infamous. The question for you to determine in the case is he or is he not guilty of the specific crime charged against him? You have the right to consider the manner

in which witnesses testify and the motives which may actuate them.

Has Mr. Crego a desire to send this man to prison, has he a desire that he should be convicted of an infamous crime, is that his motive for testifying falsely, if you believe he did? Has the defendant anything pressing upon him which might lead him to commit perjury if you think he has committed that offence? You have the right to

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consider this accusation which is made against him when you are examining his story and ask yourselves whether the explanation he has given is a reasonable and satisfactory one.

Now this defendant concedes that this check was drawn by him, that it was drawn on the day charged, Saturday, the 28th of September, he having previously made an arrangement to leave his house notifying the agent that he was going to move. He came to his place of business on Monday, the 30th and on that night he made a suggestion to Mr. Brandt, who was a witness here, that he might be late. On the night of the 30th, if I recollect the testimony, or was it the next night --- I leave you to say --- he took the train at half past six and went to another jurisdiction. He says the reason of his going was that he was looking for a situation; he did not like his employment for the various reasons that I have already mentioned. It is entirely for you to say whether he left the country in the manner that he describes without giving warning to his employer simply because he wanted to get another situation and did not tell Mr. Crego because he intended to come back if he did not get the situation, or did he go because he had possessed himself of the stolen money, to wit, the proceeds of this check by committing a forgery. Did he put himself out of the jurisdiction to the end that there might not be punished for a crime



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he committed? Was that the reason he went or did he go for the reason that he explained? It is for you to say which is the more reasonable and probable. Which do you believe? Was it, in other words, what is known to the law as flight? Was there a consciousness of guilt, was there a necessity to put distance between him and the person whom he had injured, was it necessary for him to escape the operation of the criminal law? Of course if he went away properly and justly, simply to seek employment or for any other lawful purpose that is not a crime. But did he flee because he was conscious of guilt? Did he think the time had come to put distance between him and seek a harbor in another country? If he had committed crime and was conscious of it that is what is known as flight within the law.

Gentlemen, I think I have said to you all that is necessary to say in this case. Forgery is an act which I have already defined to you within the law as being considered an infamous crime. Forgery is a dangerous crime and it is one to which the law very properly fixes heavy penalty.

If this man has not committed such a crime I am sure that the learned District Attorney would be glad to see him walk forth from this court-room a free man; but if this crime has been committed, the laws of the state of New York have

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been offended, and when from the facts a jury so determine, they ought not to be swerved from their duty by any feeling of sympathy or by any desire that the law should not deal with the person who has offended against it. The criminal law in its administration is not harsh, and there is thrown around a defendant when brought to the bar of justice, many barriers which must be overcome before he can be convicted, but if those barriers are overcome and twelve men called from the community to determine the questions at issue are satisfied, it would be monstrous if being so satisfied they should say, "the consequences of my verdict will be punishment to the defendant, and therefore I will not determine upon the facts as I believe them to exist."

If mercy is to be dealt out to the defendant, it does not belong to the jury to give it. Juries must determine as they believe the facts to be; it is their duty so to do according to their oaths. Mercy if dealt out must be left to the judgment seat. When the jury usurps the functions of the Court they set up for themselves something not known to the law; they set up for themselves a new doctrine, and I ask you is it not dangerous if the functions of the law are to be usurped by juries, judges, district attorneys or sworn counsellors. Let us proceed according to law, giving each the province that belongs to us,

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and let us be satisfied that when a jury has come to an honest and righteous determination, the forms of law having been observed --- that we are a law-abiding community, and believe in the enforcement of the law. I shall leave this case to you, gentlemen, for your determination. Your verdict in this case may be one of three, guilty of forgery in the second degree. You have the power to find him guilty of forgery in the third degree, but I say to you now if there was anything forged it was a check and that the forging of a check is forgery in the second degree. Do you claim forgery in the third?

Mr. Moss: I do not.

The Judge (resuming): The Counsel not asking me to charge forgery in the third degree, I will not submit it to you in that degree. If you believe this defendant did <sup>an</sup> ~~not~~ act which tended to but did not fully accomplish the crime of forgery in the second degree you may find him guilty of an attempt at forgery in the second degree. An act done with an intent to commit a crime which tends to ~~commit~~ towards it and fails to fully accomplish it is an attempt to commit the crime. If you believe from the evidence in this case that you can be warranted in finding such a verdict, you have the power so to do; or if you believe that no crime at all was committed, your verdict will be not guilty. You may



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retire, gentlemen.

Mr. Jerome: In order that the jury may not be misled I ask your Honor to charge that the discount transaction at the bank upon the butter as valued at so much, which I embodied in my question, that they are bound by the answer of the defendant.

The Judge: Yes, they made him their witness in that regard.

Mr. Jerome: Also in regard to the question in which I asked Dickie if he knew the bank officials had been told not to cash any checks of Dickie currency, they are bound by his answer.

The Court: Yes.

MR. Moss: I ask your Honor to charge the jury that the evidence of Dickie in regard to the butter transaction was not a collateral matter so far as the complainant was concerned and he was not called to contradict it. The complainant had a right to contradict it; it was a material matter to the issue, the evidence of Dickie as to the increase of twenty percent and going to the bank.

The Court: I will charge that.

Mr. Moss: I ask your Honor to charge the jury further that the evidence of Dickie as to the conversation he had with Russell Crego, who was the agent of the complainant, was a material

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matter on the question of the motive of the complainant in making this charge.

The Court: I charge you this, it was material or I would not have allowed the evidence; but I say to you it does not make any difference what arrangement Mr. Crego the complainant undertook to make with the defendant. He had no right to compromise with him; it was in the hands of the law. If he saw fit to endeavor to reclaim his money, you have a right to take that into consideration, but you are to determine if the defendant is guilty of this charge in the indictment.

Mr. Crego's attempt to get the money back does not alter the case.

Mr. Jerome: I have no the complainant in Court in the jury desire to hear him; it puts him in an awkward position.

The Court: I won't allow you to call him. You may retire, gentlemen.

The Jury rendered a verdict of guilty of forgery in the second degree.

The Defendant was remanded for sentence.

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*Follows charge*

Friday, July 18, 1890.

WILLIAM F. DICKIE was placed at the bar for sentence.

Mr. Moss: In this case, your Honor, I move for a new trial upon the ground that the verdict was against evidence and against the weight of evidence, and on the ground of errors committed by your Honor in admitting incompetent evidence against objection and exception, and for errors of law committed by your Honor in the charge.

The Court: Motion denied.

Mr. Moss: Note an exception.

The Court: The sentence of the Court is that the Defendant be sent to the State prison for the period of nine years and six months.



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POOR QUALITY  
ORIGINAL

TORN PAGE

Stenographer's Transcript.

July 1890

The People  
vs.

Wm. J. Dick

filed Oct.  
1890.

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City and County of New York, ss.

Robert J. Smith  
being duly sworn deposes and says  
that he is a clerk in the office of  
Parsons, Shepard & Ogden of No.  
111 Broadway in the City of New  
York, and that on the 5th day of  
January 1892 he served the annexed  
Order of Reversal and Notice of  
Settlement upon De Lancey Nicoll,  
Esq. District Attorney by delivering  
a copy personally to Mr. A. Fay Clerk  
of said De Lancey Nicoll at his  
office in the City of New York; that  
he knew said person served to be the  
Mr. A. Fay a clerk of said De  
Lancey Nicoll, Esq. District Attorney.

Sworn to before me  
this 6th day of January  
1892.

Robert J. Smith

R. J. Fox  
Notary Public  
N.Y.C.

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At a General Term of the Supreme Court,  
held in and for the First Department  
at the Circuit Court House in the  
City of New York, on the 31<sup>st</sup>  
day of ~~January~~ *December*, 1891.

P r e s e n t:

Hon. Chas. A. Van Brunt,  
Presiding Justice.  
Hon. George C. Barrett,  
Hon. George P. Andrews,  
Justices.

THE PEOPLE OF THE STATE OF NEW YORK:

-against-

W I L L I A M P. D I C K I E

The defendant having appealed to the General Term of the Supreme Court from the judgment of conviction rendered against him in the Court of General Sessions of the Peace of the City and County of New York, on the 18th day of July, 1890, and his said appeal having been argued, Mr. H. B. Closson appearing for the defendant and Mr. David Welsh of counsel for DeLancey Nicoll, Esqr., District Attorney of the City and County of New York, for the people; and due deliberation having been thereupon had;

IT IS O R D E R E D A N D A D J U D G E D,  
that the said judgment of conviction appealed from be,



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and it hereby is reversed, and that said defendant have  
a new trial, which is hereby ordered:

AND IT IS FURTHER O R D E R E D, that the  
proceedings herein be and the same hereby are remitted  
to the Court of General Sessions of the Peace of the  
City and County of New York.

*[Signature]*

Accepted:  
*Wm. J. McKeena*  
*Cluck*

SUPREME COURT of the  
STATE OF NEW YORK.

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The People of the State of  
New York,

-against-

William F. Dickie.

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ORDER OF REVERSAL.

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H. B. Closson,  
Attorney for defendant,  
111 Broadway, N.Y. City.

*filed Jan 8. 1892*

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Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

William F. Dickie

The Grand Jury of the City and County of New York, by this indictment, accuse

William F. Dickie

of the CRIME OF FORGERY IN THE SECOND DEGREE, committed as follows:

The said

William F. Dickie

late of the City of New York, in the County of New York aforesaid, on the  
twenty-eighth day of September in the year of our Lord  
one thousand eight hundred and eighty-nine, with force and arms, at the City and  
County aforesaid, feloniously did forge, and cause and procure to be forged, and willingly  
act and assist in the forging a certain instrument and writing, to wit: an  
order for the payment of money  
of the kind called bank cheques  
which said forged bank cheque  
is as follows, that is to say:

No. 5934 New York, Sept 28th 1889  
The Importers' & Traders' National Bank New York  
Through the New York Clearing House Association.  
Pay to W. F. Dickie Currency or Order  
Two hundred and Twenty-five <sup>100</sup>/<sub>100</sub> Dollars  
\$225 Russell Crego Son

with intent to defraud, against the form of the Statute in such case made and provided, and  
against the peace of the People of the State of New York and their dignity.



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SECOND COUNT:—

And the Grand Jury aforesaid, by this indictment, further accuse the said

*William F. Dickie*  
of the CRIME OF FORGERY IN THE SECOND DEGREE, committed as follows:

The said

*William F. Dickie*

late of the City and County aforesaid, afterwards, to wit: on the day and in the year aforesaid, at the City and County aforesaid, with force and arms, did feloniously utter, dispose of and put off as true, a certain forged instrument and writing, *to wit:*  
*an order for the payment of money*  
*of the kind called bank cheques,*  
which said forged *bank cheque*  
is as follows, that is to say:

*No 59.34 New York, Sept 28th 1889*  
*The*  
*Importers' & Traders' National Bank*  
*Through the New York Clearing House Association*  
*Pay to W. F. Dickie Currency or Order*  
*Two Hundred and Twenty five \$200.00 Dollars*  
*\$225 Russell Crego Son*

with intent to defraud, he

*Dickie* the said *William F.*  
then and there well knowing the same to be  
forged, against the form of the Statute in such case made and provided, and against the peace  
of the People of the State of New York and their dignity.

JOHN R. FELLOWS,

District Attorney.