

from the bank for which Garborino was surety, but that he would in a month settle everything. . . . Taking all Garborino's evidence and his conduct, it shews that he was satisfied with the explanation and promise of Spada. . . .

On 7th or 8th June, 1905, Spada told Garborino that he (Spada) was going to New York, and that it would be all right when he returned. . . . When he returned from New York Garborino saw him, and he (Spada) said he would be all right. Garborino saw Spada again on 9th July and again on 10th July, and on one of these days said that if Garborino would lend him \$1,900 he would make it all right, that is, with the bank, and give Garborino security for his debt. Garborino agreed to this, and Spada gave to Garborino an invoice of goods then said to be in Carrie's store. This invoice is dated 3rd July, 1905, and is . . . for \$4,140 in all, and is receipted by Spada.

Together on 10th July Spada and Garborino went to the Imperial Bank branch at the corner of York and King streets. This bank had a warehouse receipt for the same goods, or for a part of them, upon which advances had been made to the amount of \$1,000, which Spada then paid to that bank. It does not appear that Garborino knew exactly what amount Spada then owed and was paying to the Imperial Bank, but he knew that Spada then made a deposit and had some money transaction. Then Spada and Garborino went to Carrie's warehouse, where Spada turned over the property to Garborino, and Carrie gave to Garborino a warehouse receipt dated 10th July, 1905. . . . The transfer at the warehouse was in the afternoon of 10th July. Spada at once informed Mr. Ross of the Dominion Bank of it, and on that day . . . Mr. Ross wrote to Garborino. That was the first intimation, according to the evidence, that Garborino had that the bank did not care to continue the advances to Spada upon the security of Garborino's bond. . . .

On 11th July, whether before or after the receipt by Garborino of the letter from Ross does not appear to me to be material, Garborino went to Spada's; together they went to the Dominion Bank . . . saw Mr. Ross, and Garborino handed over to Spada \$1,906.25, that being the amount Spada required to borrow to enable him to pay his indebtedness to the bank.

There was an actual cash advance by Garborino of the \$1,906.25; there was the payment by him of the further sum