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Indictment.

State of New Jersey

HUDSON COUNTY.

to wit: Be it remembered, that at a Court of Oyer and Terminer holden at Jersey City, in and for the said County of Hudson, on the second Tuesday of April in the year of our Lord one thousand nine hundred and seventeen, before Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Mark A. Sullivan and Honorable George G. Tennant, Judges of the Court of Common Pleas in and for said County of Hudson, according to the form of the statute in such case made and provided, by the oaths of

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|----------------------------|--------------------------|
| 1. Thomas H. Hall, Foreman | 13. Thomas J. Harmon |
| 2. Harry H. Baker | 14. Frederick Hansel |
| 3. Michael F. Bauer | 15. George W. Irving |
| 4. George H. Blake | 16. Harry Jeffers |
| 5. Louis A. Boehler | 17. Charles Katzenberger |
| 6. John Gallery | 18. George McCausland |
| 7. Thomas F. Carey | 19. Henry Neumann |
| 8. Henry Dimse | 20. Eugene Newkirk |
| 9. Michael J. Donovan | 21. George H. Reed |
| 10. Thomas P. Duff | 22. Robert J. Randall |
| 11. Wm. S. Everson | 23. Hermen Seydel |
| 12. August Hannibal | |

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good and lawful men of said County, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it presented in manner and form the following, that is to say, that the following are true bills.

THOS. H. HALL,
Foreman.

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Indictment.

HUDSON OYER AND TERMINER

April Term, A. D. 1917.

Hudson County, to wit:

10 The Grand Inquest of the State of New Jersey,
in and for the body of the County of Hudson,
upon their respective oath and the foregoing be-
ing presented to the said Court on the twenty-sixth
day of June, in the year of our Lord one thou-
sand nine hundred and seventeen, with bills of
indictment Nos. 235 to 260 inclusive, it is ordered
by said Court that the said bill of indictment num-
ber so as aforesaid included as Bill No. 252 for
20 unlawfully carrying weapons as charged upon
William Tietjen should be handed to the Court
of Quarter Sessions for trial and disposal accord-
ing to law and said bill is in word as follows:

HUDSON OYER AND TERMINER

April Term, A. D. 1917.

Hudson County, to wit:

The Grand Inquest of the State of New Jersey,
in and for the body of the County of Hudson,
upon their respective oath
30 Present, that William Tietjen, late of the City
of Hoboken, in the said County of Hudson, on the
twenty-first day of May in the year of our Lord
one thousand nine hundred and seventeen, with
force and arms, at the City of Hoboken afore-
said, in the County aforesaid, and within the juris-
diction of this Court, did then and there unlaw-
fully and wilfully carry concealed in and about
his clothes and person a certain deadly, offensive
40 and dangerous weapon, namely, a certain revolver

Indictment.

then and there loaded with gunpowder and leaden bullets, he not then being a sheriff, prosecutor, deputy sheriff, jailer, police officer, State detective, member of a legally organized detective agency, or any other peace officer carrying said weapon in the discharge of his duty; he then and there not being parading with a duly authorized military or civic organization, nor going to or from the places of meeting of such organizations; he not being a person having a written permit to carry said weapon from the Mayor of any city, borough or other municipality having a mayor, or from the township committee or any governing body of any township, or other municipality not having a mayor; he not being a person having a written permit to carry said weapon from any Judge of the Court of Common Pleas; he not then keeping or carrying said weapon about his place of business, dwelling house or premises, or carrying said weapon from any place of purchase to his dwelling house or place of business, or from his dwelling house or place of business to any place where repairing is done, to have the same repaired and returned, or carrying said wapon in the woods or fields, or upon the waters of this State, for the purpose of hunting, and he the said defendant, not having then and there recorded a dated permit to carry said weapon in the office of any Clerk in any County within the State of New Jersey within the period covered by law, contrary to the form of the statute in such case made and provided, and against the peace of this State and the government and dignity of the same.

Endorsed bill No. 252 Hudson Oyer and Terminer, April Term, A. D. 1917. The State *v.* Will-

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Indictment.

iam Tietjen, indictment for unlawfully carrying
concealed weapon.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas.

A true bill.

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THOS. H. HALL,
Foreman.

Presented June 26, 1917, and handed down to
the Court of Quarter Sessions,

JOHN J. McGOVERN,
Clerk.

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And afterwards to wit: on the twenty-seventh
day of July in the year of our Lord one thousand
nine hundred and seventeen, at a session of the
Court of Quarter Sessions of the County of Hud-
son aforesaid, being now of the term of April,
one thousand nine hundred and seventeen, in the
said year, before the Honorable George G. Ten-
nant, Judge of the Court of Common Pleas in
and for County of Hudson, who doth constitute
and hold the Court of Quarter Sessions, in and
for the County of Hudson here cometh the said
William Tietjen, under the custody of Joseph
Scatiorshio, his bail, in whose custody he had be-
fore been committed for the cause aforesaid, who
being brought here in his proper person by his
bail aforesaid, to whom he is also here committed
and having heard the indictment read and forth-
with being demanded of and concerning the prem-
ises in the said indictment above specified and
charge upon him, how he will acquit himself there-
of, he says that he is not guilty thereof, and there-
for, for good and evil he puts himself upon the
county, and Robert S. Hudspeth, Esq., Prosecutor
of the Pleas of said County, who prosecutes for

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Indictment.

the State of New Jersey, in this behalf, doth the like.

Therefore, let said indictment be continued until November twenty-eighth nineteen hundred and seventeen, and let a jury come before the Honorable George G. Tennant, Judge of the Court of Common Pleas in and for the said County of Hudson, constituting and holding the Court of Quarter Sessions, for said county being now of the term of September, one thousand nine hundred and seventeen, or twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one and under the age of sixty-five years by whom the truth of the matter may be better known, and who are not of kin of the said William Tietjen, to recognize on their oath whether the said William Tietjen be guilty of unlawfully carrying concealed weapons, as in the indictment aforesaid, is charged against him, or not guilty thereof, because as well as the said Robert S. Hudspeth, Prosecutor of the Pleas of the County of Hudson aforesaid, who prosecutes for the State of New Jersey, in this behalf, as the said William Tietjen, have put themselves upon the same jury, and the same day is given to the parties aforesaid, at the same time and place.

At which time, that is to say, on the twenty-eighth day of November, in the year of our Lord one thousand nine hundred and seventeen, at Jersey City aforesaid, in the County of Hudson aforesaid, before the Honorable George G. Tennant, judge as foresaid, constituting and holding the Court of Quarter sessions as aforesaid, here come as well the said Robert S. Hudspeth, Prosecutor of the Pleas aforesaid, who prosecutes as afore-

Indictment.

10 said, as well as the said William Tietjen, under
the custody of his bail aforesaid, to whose cus-
tody he has been hitherto committed and who
being brought to the bar in his proper person by
his bail, and the jurors of the jury by the Sheriff
of the County of Hudson aforesaid, for the pur-
pose chosen and empanelled and returned, to
wit: Ambrey Harris, Thomas Smith, Max Aster,
Miles O'Donnell, Fred Caisten, Daniel O'Connell,
Frank Hansen, Richard Tyack, Wm. A. Wyatt,
James Callaghan, George Seigelken, Joseph Miller,
being called come who being chosen, tried and
sworn to speak the truth and concerning prem-
ises, and thereupon the trial of the said issue com-
menced before the said Court and jury, at which
20 day the evidence of the parties is submitted and
the attorneys were heard thereupon, and the said
issue after a charge from the Court was submitted
to the said jury, and the said jury in charge of the
said officer of the Court, duly sworn for that pur-
pose, were taken to a private room to consider of
their verdict, and afterwards, to wit, at the last
aforesaid, at the City of Jersey City aforesaid,
the said jury returned to the Court in charge of
the said officers sworn as aforesaid, to keep them
30 in charge and then and there in the presence of
the said Robert S. Hudspeth, Prosecutor of the
Pleas as aforesaid. and of the said William
Tietjen, do say that the said William Tietjen is
guilty of unlawfully carrying concealed weapons
as in the aforesaid indictment is charged against
him.

Therefore, let the said indictment be continued
until December 6th, 1917.

40 Whereupon, all and singular the premises being
seen and by the Court here fully understood, the

Indictment.

sentence of the law is and it is by the Court here considered and adjudged, that the said William Tietjen be and is hereby sentenced to be confined at the County Farm for a term of eighteen months (18) and thence until the cost of prosecution are paid.

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Judgment entered and signed this sixth day of December nineteen hundred and seventeen.

GEORGE G. TENNANT,

Judge of the Court of Quarter Sessions
in and for the County of Hudson,
State of New Jersey.

Attest:

HUDSON OYER AND TERMINER,

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APRIL TERM, A. D., 1917.

Hudson County, to wit:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath, Present, that William Tietjen, late of the city of Hoboken, in the said County of Hudson, on the twenty-first day of May, in the year of our Lord one thousand nine hundred and seventeen, with force and arms, at the City of Hoboken aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did then and there unlawfully and wilfully carry concealed in and about his clothes and person a certain deadly, offensive and dangerous weapon, namely, a certain revolver then and there loaded with gunpowder and leaden bullets, he not then being a sheriff, prosecutor, deputy sheriff, jailer, police officer, constable, state detective, member of a legally organized detective

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Indictment.

agency, or any other peace officer carrying said
weapon in the discharge of his duty; he then and
there not being parading with a duly authorized
military or civil organization, nor going to or from
the places of meeting of such organizations; he not
10 being a person having a written permit to carry
said weapon from the mayor of any city, borough
or other municipality having a mayor, or from
the township committee or any governing body
of any township, or other municipality not hav-
ing a mayor; he not being a person having a writ-
ten permit to carry said weapon from any Judge
of the Court of Common Pleas; he not then keep-
ing or carrying said weapon about his place of busi-
ness, dwelling house or premises, or carrying said
20 weapon from any place of purchase to his dwell-
ing house or place of business, or from his dwell-
ing house or place of business to any place where
repairing is done, to have the same repaired and
returned, or carrying said weapon in the woods or
fields, or upon the waters of this State, for the
purpose of hunting, and he the said defendant not
having then and there recorded a dated permit
to carry said weapon in the office of any clerk in
any county within the State of New Jersey within
30 the period covered by law, contrary to the form
of the statute in such case made and provided
and against the peace of this state, the govern-
ment and dignity of the same.

ROBERT S. HUDSPETH,
Prosecutor of the Pleas.

Writ of Error.

New Jersey, to wit:

The State of New Jersey, to Hon. George
 G. Tennant, Judge of the Court
 of Quarter Sessions of the County
 of Hudson, holds at Jersey City,
 [SEAL] in and for the County of Hudson, 10
 of the Term of November, nine-
 teen hundred and seventeen.

Because in the record and proceedings, and also
 in giving of judgment upon a certain indictment
 against William Tietjen, of the City of Jersey
 City, in the County of Hudson, for having and
 carrying concealed weapons, whereof before you
 he has been indicted, and is thereof convicted by
 a certain jury of the county, taken between the 20
 State of New Jersey and the said William Tietjen,
 as it is said, manifest error hath intervened to
 the great damage of the said William Tietjen as
 from his complaint we have received information,
 we being willing in his behalf, to correct the error
 in due manner, if any there shall be, and that
 speedy justice be done to him, the said William
 Tietjen, command you that if judgment the thereon
 given, then that you distinctly and openly send,
 under your seal, the record and proceedings afore- 30
 said, with all things touching the same, to our
 justices of our Supreme Court of the State of New
 Jersey, on the eighth day of January next, and this
 writ, that the record and proceedings aforesaid
 being inspected we may further cause to be done
 thereupon, for correcting that error, what of right
 and according to the laws of New Jersey ought
 to be done.

Witness, William S. Gummere, Esquire, Chief
 Justice of our Supreme Court, at Trenton, this 40

Return.

nineteenth day of December, nineteen hundred
and seventeen.

W. C. GEBHARDT,
Clerk.

ALEX SIMPSON,
Attorney.

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Return.

The answer of George G. Tennant, Esquire,
Judge of the Court of Quarter Sessions holden in
and for the said County of Hudson, and within
named the record and proceedings of the plaint
whereof mention is within made with all things
touching the same, I send to the justices of the
Supreme Court of judicature at Trenton, N. J., at
the day and year within contained in a certain
schedule to this writ annexed as within I am com-
manded.

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January 10, 1918.

GEORGE G. TENNANT,
Judge.

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Writ of Certiorari.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">THE STATE, Respondent,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">WILLIAM TIETJEN, Prosecutor.</p>	}	10
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New Jersey, to wit:

The State of New Jersey to our Court of
 '[SEAL.]' Quarter Sessions of the County of
 Hudson, GREETING:

We being willing, for certain reasons, to be certified of a certain indictment before you lately found against William Tietjen, for having and carrying concealed weapons, as is said: 20

We do command that you send under the hand of the Judge of said Court, and the seal thereof, to the Justices of the Supreme Court of Judicature of the State of New Jersey, to be held at Trenton, on the fourth day of June, 1918 next, all and singular, the said indictment, with all things touching and concerning the same, and especially the out branches of the record showing how the jury was empanelled to try said cause, by whatsoever name the said William Tietjen may be named and called in said indictment, together with this our writ, that we may further cause to be done what of right and according to the laws of this State should be done. 30

Witness, William S. Gummere, Esquire, Chief 40

Stipulation.

Justice of our Supreme Court, at Trenton, this
third day of June, Nineteen Hundred and Eighteen.

ENOCH L. JOHNSON,
Clerk.

10 ALEX. SIMPSON,
Attorney for Prosecutor.

Filed, Clerk's office, Hudson Co., June 4, 1918.

Stipulation.

NEW JERSEY SUPREME COURT.

20	THE STATE, Defendant-in-Error, <i>v.</i> WILLIAM TIETJEN, Plaintiff-in-Error.	}	In Error to Hudson Quarter Sessions.
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30 It is hereby stipulated and agreed by and between the respective parties hereto that at the trial of the above entitled cause certain jurors of the regular panel were excused by the Court, without any reason being assigned by the Trial Judge therefor, and without objection being made thereto by counsel for defendant and without challenge by the State of the jurors thus excused.

40 It is contended by counsel for the plaintiff-in-error that by taking testimony under a writ of certiorari, which has been allowed in aid of the writ of error in this cause, he could establish that the jurors thus excused by the Trial Judge had, on the previous day served on a jury in the trial of an indictment for murder, which rendered a verdict of acquittal.

Stipulation.

For the purposes of this writ of error, it is hereby further stipulated and agreed that testimony establishing these facts could have been adduced, and, subject to its competency and relevancy, such testimony is admitted as though actually taken under the said writ of certiorari.

10

Dated November 18th, 1918.

PIERRE P. GARVEN,
Attorney for the State,
Defendant-in-Error.
ALEX. SIMPSON,
Attorney for William Tietjen,
Plaintiff-in-Error.

Stipulation.

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NEW JERSEY SUPREME COURT.

<p style="text-align: center;">THE STATE, Defendant-in-Error, <i>v.</i> WILLIAM TIETJEN, Plaintiff-in-Error.</p>	}	In Error.
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It is stipulated and agreed, that the taking of testimony which was set down for 4:00 P. M. on the 29th day of October, 1918, be continued until the 4th day of November, 1918, at 4:00 P. M. at the same place.

It is further stipulated, by the defendant-in-error, through the Prosecutor of the Pleas, that the motion to dismiss the writ of error and the certiorari will not be pressed at the opening of

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Charles Wilhelm, direct.

10 the term of court because of the inability of plaintiff-in-error to print the testimony to be taken on the said 4th day of November, 1918, provided, however, that this stipulation shall not bind the defendant-in-error unless the plaintiff-in-error shall bring in the cause for argument at the coming November Term of the Supreme Court.

Dated October 29, 1918.

PIERRE P. GARVEN,
Attorney for Defendant-in-Error.
ALEX. SIMPSON,
Attorney for Plaintiff-in-Error.

20 HUDSON COUNTY QUARTER SESSIONS.

TENNANT, J.

THE STATE

v.

WILLIAM TIETJEN.

30 JOHN DREWEN, Esq., for the State.
AUGUST ZIEGENER and ROBERT KINKEAD,
Esqs., for the Defendant.

The above entitled case was tried on November 28, 1917, before Judge Tennant and a jury.

CHARLES WILHELM, sworn.

Direct examination by Mr. Drewen:

Q. What is your business, Mr. Wilhelm? A. I am a motorman, Public Service.

Charles Wilhelm, direct.

Q. What line did you work on? A. West New York.

Q. How long have you been so employed? A. Four years and nine months.

Q. Were you working on the 21st of May last?
A. Yes, sir. 10

Q. What were your hours on that day?

Mr. Ziegner: What day was that, May 21st?

A. I run the night car every night.

Q. What time did you go to work? A. I go to work at five o'clock and get done half-past five in the morning.

Q. Your run runs from Greenville to Hoboken?
A. No, runs from North Bergen down 14th Street Ferry. 20

Q. Do you know this defendant, William Tietjen? A. Now I know him.

Q. Ever see him before? A. Only that night when we had the car.

Q. Where did you see him that night? A. I seen him about the 14th Street Ferry.

Q. Did you see him on the trolley car at any time? A. Yes.

Q. What did you see him do when he was on the trolley car? A. Well, I seen him first—I seen the conductor talking to him to get out of the car. 30

Q. Yes; and then what happened? What did you see after that? A. And he got off. He didn't want to get off the car. He used profound language.

Q. Profane language, and didn't want to get off the car. What did you do? A. Puked all over the car.

Q. What else did he do? A. And he finally got him off. 40

Charles Wilhelm, direct.

Q. Yes; and just where was this car when these things took place? A. Just at the 14th Street Ferry.

Q. Did you see this defendant at any time have anything in his hands? A. Not at that time.

10 Q. Well, did you see him at any other time? A. Yes, sir.

Q. What did you see him have? A. A revolver.

Q. What was he doing with the revolver? A. Wanted to shoot me.

Q. Wanted to shoot you? A. Yes.

Q. What did he do with it? A. He pointed it at me and said, "I am going to take it out of you now."

20 Q. What was this man's condition at that time, do you know? A. Oh, he was under the influence of liquor.

Q. Where was it that this defendant had the revolver in his hand and pointed it at you? Where did that happen? A. At the front end of my car.

Q. How long was that after you first tried with the conductor to get him off the car? A. About a minute or two.

Q. Did you see where he got this gun from? A. No, sir.

30 Q. Did not see? Did he have the gun in his hand when he first—when you and the conductor first tried to put him off the car? A. No, sir.

Q. Was he with anybody? A. Yes, sir.

Q. Someone else with him. Where was this other man when you tried to get this defendant off the car? A. He was the same condition that he was.

40 Q. Same condition as he was. When did you first see the gun? A. When the conductor told me to look out, he has got a revolver, and he came

Charles Wilhelm, cross.

on the front—he went alongside of the car—first we tried to get him off the back end and he got off then and then I walked toward the front where my place was and he must have come running around and he stood on the front step and said, “I am going to take it out of you.”

10

Q. When you first saw this man he did not have the revolver in his hand, at the tail end of the car? A. No, he did not.

Q. When he came around the front of the car he had the revolver? A. Yes.

Q. What happened then after he pointed the revolver? A. I told him “Look out what you are doing. Do you know what you are doing?”

Q. Go ahead. A. And he said, “I am going to break you, you big Dutch —” He says, “I will take it out of you.”

20

Q. Then what happened? A. I said, “Go ahead, you want to kill me, but shoot good.”

Q. Go ahead. Call the policeman? A. Oh, that conductor attended to that.

Q. The conductor attended to that. Did you see the gun at any time after it was taken away from this man? A. When the policeman searched him.

Q. What was the condition of the gun? A. It was a blue—sort of a blue rifle-barrel like.

30

Q. Is this the policeman, Officer Lane? A. Yes.

Q. Was the gun loaded or unloaded? A. I couldn't tell you.

Cross examination by Mr. Ziegner:

Q. Did you try to find out? A. If the gun was loaded?

Q. Yes. A. No, sir.

The Court: Didn't look into it to see.

Q. Well, outside of looking into it, did you,

40

Henry Roth, direct.

while the officer got the gun, attempt to find out by opening the gun? A. No, sir.

Q. Nor have the officer open the gun? A. No, sir.

10 The Court: You mean after this occurrence that he refers to?

Mr. Ziegner: He says when he got off the officer took the gun.

The Court: Yes, but after the officer took the gun.

Q. Yes; when the officer had possession of the gun did you try to find out whether it was loaded or not? A. No, sir.

20 Q. Do you mean to tell this Court and jury that when that man got off that he deliberately pointed a gun at your face and you said, "Shoot right"? A. Yes, I did.

Q. Why did you say that? A. Well, I was going to take a chance to get a bullet in my body.

Q. Do you appreciate, sir, that you are under oath?

30 Mr. Brewen: I object to that as incompetent, irrelevant and immaterial. He is under oath and sworn.

Q. Do you mean to tell this Court and jury just what you said, that you wanted to take a chance of getting a bullet in your body? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. That is all.

HENRY ROTH, sworn.

Direct examination by Mr. Brewen:

40 Q. You were the conductor on the car with the previous witness, were you? A. Yes, sir.

Henry Roth, direct.

Q. On the night of this trouble with the defendant, William Tietjen? A. Yes.

Q. What happened between you and Tietjen on the night of this trouble? A. Well, Tietjen boarded the car up in North Bergen and of course he was under the influence of liquor. 10

Q. Yes. A. A little after he was on the car he started using profanity, and I went inside and told him to stop, as long as the passengers were around, and he started to call me down, names, and I went back again, I wouldn't bother with him, going to Union Hill, and he commenced to vomit on the floor and I asked him—

Mr. Ziegner: I object to it as not having any bearing on the charge. 20

Mr. Brewen: All right, I consent that it be stricken out.

Q. Did you see anything in his hand that night? A. Yes, sir.

Q. What? A. When he got off the car.

Q. What did you see in his hand? A. He pulled a gun out of his pocket and pointed it at me.

Q. Where was he when you saw him do that? A. He was off the car.

Q. On the car? A. No, sir; off the car. 30

Q. Off the car? A. Yes.

Q. You had been trying to get him off the car, had you? A. I had been trying to get him off the car. He was sitting alongside of the stove and I told him, I says to him, "It ain't very nice for a young man like you to make such a muss on the floor."

Q. You finally did get him off the car? A. I finally told him to get off.

Q. After he got off, what did he do then? A. He felt down in his pocket and pulled out a gun 40

Henry Roth, cross.

and said, "I will get you." I slammed the door shut and I ran inside and he walked toward the front, and I called to my motorman, "Look out, he has got a gun," and the motorman saw him coming, and I got out on the side door and I got in the fire house and called an officer.

10

Q. Did you get Officer Lane? A. Yes.

Q. The officer came with you? A. Yes.

Q. What did he do? A. He went in the pocket and took the gun out of the pocket.

Q. Do you know whether the gun was loaded?
A. I don't know.

Q. The officer took the gun away with him? A. Yes.

Q. What kind of a gun was it? A. Blue gun.

20

Q. You are sure that you saw him take the gun out of his pocket? A. Yes.

Q. Which pocket was it that he took it out of?
A. In his hip pocket—in the side pocket.

Q. Back hip pocket? A. Yes, sir.

Cross examination by Mr. Ziegner:

Q. Where did he put it, Mr.— A. What is that?

30

Q. Where did he put it? A. I don't know. He had the gun in his hand when he went to the front of the car and I got out the side door and I called to the motorman to look out, because I didn't know where he put it after that, because I got off the car and called the officer.

Q. Did you see the officer take the gun? A. Yes.

Q. This man was under the influence of liquor, wasn't he? A. Yes, sir.

40

Q. How far from North Bergen does your car run down? A. From North Bergen all the way down to 14th Street.

Q. The extreme end of North Bergen? A. Yes, sir, the extreme end, last stop.

P. J. Lane, direct.

Q. Down to the 14th Street Ferry in Hoboken?

A. Yes.

Q. It was when you reach the Hoboken depot that you shook him to get him off the car, didn't you? A. That is where I tried to get him off the car, yes.

10

Q. He was practically sleeping all the way down, wasn't he? A. No, he wasn't sleeping all the way down.

Q. Part of the time? A. Well, from about the Hackensack Plank Road he started sleeping.

Q. Notice to you that the man had been drinking? A. I now it was, yes. I know he had been drinking.

20

P. J. LANE, a witness sworn on behalf of the State, testified as follows:

Direct examination by Mr. Drewen:

Q. You are a member of the Hoboken Police Department? A. Yes, sir.

Q. Do you recall the night of May 21st? A. Yes, sir.

Q. When you were called to— A. Yes, sir.

Q. What time of night was that, officer? A. About 2:15.

30

Q. Sunday morning? A. Sunday morning.

Q. Where was this defendant when you saw him? A. He was quite close to the car, 14th Street Ferry.

Q. What did you do when you came upon him? A. My attention was called by the motorman and conductor that the young man had a gun in his pocket.

Q. And as the result of that what did you do? A. He had a gun.

40

P. J. Lane, cross.

Q. Did you search him? A. I did search him.

Q. What did you find? A. I found the gun.

Q. Where did you find it? A. In the right-hand side pocket.

Q. Of what garment, coat pocket or what? A.
10 No, it was just a plain, blue gun, .32.

Q. In the right-hand side pocket of what, his coat or trousers? A. I think he had a sack coat on at the time.

Q. What kind of a gun was it? A. Blue; .32.

Q. Loaded or unloaded? A. Unloaded.

Q. Not loaded? A. Not loaded.

Q. What did you do with the gun? A. I took it to the police station.

Q. I see. Turned it over to the police? A. Yes,
20 sir.

Q. Did this man say anything to you at the time that you took the gun from his pocket? A. He seemed to have a little drink; that is all.

Mr. Drewen: Cross examine.

Cross examination by Mr. Ziegner:

Q. That is the gun, officer, isn't it? A. (After examining a gun.) Yes, sir.

Q. And at the time you say that you got possession of this gun it was in his pocket? A. Yes,
30 sir.

Q. You got there almost immediately when the car got there, didn't you? A. No, sir; it might be about two minutes.

Q. But, at any rate, when you got there the motorman was up at the front part of his car?

A. No; they were right in front of the ferry, both of them, at the time, understand. The man was right outside the door.

Q. Outside where? A. 14th Street Ferry.
40

P. J. Lane, cross.

Q. Was he outside of the presence of the motorman and conductor? A. Three standing together.

Q. And he was not at that time, when he was standing with this motorman and the conductor, exhibiting the pistol in his hand, was he? A. No, he was not. 10

Q. And when you took possession of this pistol you immediately saw it was an unloaded pistol, didn't you? A. No, I did not; not until I got to the police station.

Q. And when he was taken to the police station you turned this over to your proper authorities in Hoboken? A. Yes.

Q. Were you in court the next morning? A. Yes, sir. 20

Q. And when this man was held to await action, the gun was redelivered to him, wasn't it? A. Yes, sir.

Q. And you are sure this is the same gun? A. I am pretty sure.

2493—8

O. Did you search this defendant? A. Yes.

O. And other than this gun what else did you find on him? A. I don't think I found anything else. 30

O. Well, particularly as to cartridges, did you find any bullets at all on him? A. No.

Witness Excused.

State Rests.

William Tietjen, direct.

WILLIAM TIETJEN, sworn in his own behalf, testified as follows:

Direct examination by Mr. Ziegner:

10 Q. Where do you live, Mr. Tietjen? A. 356 Seventh Street.

Q. How old are you? A. Twenty-five.

Q. What is your business? A. Saloon business.

Q. Where? A. Seventh and Brunswick.

Q. And how long have you been engaged in that business? A. Three years.

Q. How long have you lived in Jersey City? A. All my life.

20 Q. And on this night that is spoken of, which was May 21, had you gone to North Bergen or Union Hill? A. Yes, sir. I went to Union Hill, Schuetzen.

Q. Union Hill, Schuetzen Park? A. Yes, sir.

Q. And how long did you remain at Schuetzen Park? A. Until after the march of the picnic.

Q. And what was your business in going to Schuetzen Park? A. Why, a friend of mine comes in the store every day, and he invited me out to the Schuetzen, some Polish affair, and I went up.

30 Q. And how long did you stay there? A. Well, I got there about nine o'clock and stayed there until twelve—I don't know just what time. after the march, you know.

Q. And after leaving Schuetzen Park did you come directly towards your home or go anywheres else? A. No, sir; I went up to Nungesser's to eat.

Q. What time did you reach Nungesser's? A. Well, about two o'clock, I don't know just the time.

40 Q. What time were you on your way home

William Tietjen, direct.

then? What car did you get, do you know? A. Well, I don't know just the time of the car.

Q. Do you remember taking a car towards Jersey City? A. Yes, sir.

Mr. Drewen: Objected to as leading. It is not competent, anyway. It is irrelevant and immaterial. 10

The Court: I suppose it is preliminary; but you would better go right to your defense.

Q. Now, Mr. Tietjen, a gun has been spoken of here as having been found in your possession at the Hoboken 14th Street Terminal on the night that you came from Union Hill. Did you have that gun? A. Yes, sir. 20

Q. How came it that you had that gun in your possession that night? A. Why, a fellow came to me that I saw before and he said—

Q. Where did you see him? A. At Union Hill, Schuetzen.

Q. Well? A. And he said to me: "Here, I need some money," and he said: "Give me three dollars for the gun and take it home. You can keep it in the store."

Q. Yes? A. So at the time I needed the gun. Somebody had stolen mine and I bought the gun for business purposes. 30

Q. And you paid what? A. I paid three dollars for it.

Q. Now, at that time were there any cartridges in this gun? A. No, sir.

Q. Were there any cartridges in your possession at the time you bought it? A. No, sir.

Q. When you reached Hoboken do you recollect having this gun taken from you? A. Yes, sir. 40

William Tietjen, direct.

Q. And when you bought the gun where were you taking it to? A. To my store.

Q. And when you appeared in Court—

Mr. Ziegner: Withdraw that.

10 Q. How did you come to have possession of this gun today? A. Today? Why—

Mr. Drewen: Objected to as immaterial, incompetent and irrelevant.

The Court: How is that material?

Mr. Ziegner: I think it is in corroboration of his statement; that is all; that when he was taken before the officials of the court—

20 The Court: What difference does it make?

Mr. Ziegner: It merely shows this is the same pistol.

Mr. Drewen: That is admitted; there is no doubt about that.

Q. Who was present with you, Mr. Tietjen, at the time you purchased this gun? A. Mr. Sweeney.

Q. Is he here to-day? A. Yes, sir.

Q. Where was it purchased in the park, do you remember? A. Park, yes.

30 Q. Park proper?

The Court: That was at what time when you bought it?

The Witness: What, the gun?

The Court: Yes.

The Witness: Why, about ten o'clock, eleven o'clock.

The Court: It was on Saturday when you bought it, I suppose?

The Witness: I guess it was Saturday.

40

The Court: I suppose so.

William Tietjen, cross.

Q. What time of the night was this affair that you speak of?

The Court: Saturday night. He has testified to that.

A. I ain't sure whether it was Saturday or Sunday now. I think it was Sunday night, or Monday morning I went to trial in Hoboken. It was Sunday night; it was Sunday night, I am pretty sure. 10

The Court: Well, it makes some difference. Can't you tell us whether it was Saturday night or Sunday?

The Witness: I am pretty sure it was Sunday. I am too busy on Saturday. 20

Q. That was the night that you were there,— was that Saturday or Sunday? A. Sunday, I think.

Cross examination by Mr. Drewen:

Q. Now, Mr. Tietjen, the street car conductor and the motorman both have testified that this was on Saturday night and it was two o'clock Sunday morning when you were taken into custody by the policeman. Now, will you say that is not so? A. Well, I ain't sure of the time. 30

Q. All right. What time did you leave your place of business, or your home? A. Around eight o'clock.

Q. What time did you get to Schuetzen Park? A. About nine or a little after, maybe.

Q. When did you buy the gun? A. About eleven.

Q. Eleven o'clock. From whom did you buy it? A. From a fellow— 40

William Tietjen, cross.

Q. What is his name? A. I could not tell you his name.

Q. Don't know his name. Did you see him before? A. Yes, sir.

10 Q. How often? A. Oh, I did see him home, maybe three times a week.

Q. And how did he come to open the conversation with you upon the subject of your buying this gun from him? A. Well, on account of his coming to my place I knew him, and he knew that I had money.

Q. What did he say? A. He said: "Will you buy this gun? I need some money." And I said: "I don't want it."

20 Q. Yes? A. "Well," he said. "Take it. Give me three dollars for it. The gun is worth a few dollars more than three."

Q. Go ahead. A. I said: "All right—" I didn't say "All right" to him; but I thought after awhile, and I said, "All right, I will give you three dollars for the gun and take it down."

Q. And you took the gun and gave him three dollars for it. Were you drunk or sober at that time when you bought this gun? A. I was sober, I guess.

30 Q. You were sober, you guess. Are you sure of it? A. Yes.

Q. You are not quite sure of it? A. Yes.

Q. After you bought this gun at eleven o'clock what did you do? A. I staved there until the march was over and I put it in my pocket and it stayed there.

Q. Until the march was over? A. Yes.

Q. What time was the march over? A. Well, about twelve.

William Tietjen, cross.

Q. Twelve o'clock? A. I say twelve or one o'clock; I don't know just.

Q. Where did you go then? A. I went to Nungesser's.

Q. What kind of a place is that? A. Why, it is a place that you can go to eat. 10

Q. I know. How long were you in Nungesser's? A. About an hour.

Q. What time did you leave Nungesser's? A. About two o'clock; I don't know just the time.

Q. About two? A. I won't just say.

Q. Well, about when? Give us your best judgment in the matter? A. Maybe around one or two o'clock; maybe later. I don't just know.

Q. Were you drunk or sober when you left Nungesser's? A. Well, I wouldn't say I was drunk. 20

Q. Were you sober? A. Well, I wouldn't say I was sober, either. I had a few drinks; I had been drinking.

Q. Did you feel the influence of what you had been drinking? A. No.

Q. Where did you go after you left Nungesser's? A. Got on a car.

Q. What car? A. Car that comes down to Hoboken.

Q. Car that comes down to Hoboken. Were you drunk when you got on the car? A. I don't think I was. 30

Q. Do you remember vomiting all over the car?

Mr. Ziegner: I object to the question, if your Honor please. I do not think it is material.

Mr. Drewen: I withdraw the question.

Q. So that you did not come home from where you bought this gun? A. I was going to transfer to Washington Street— 40

William Tietjen, cross.

Q. One minute. Let me finish the question. You didn't come home from where you bought the gun, but after you bought the gun you went to Nungesser's. How far is Nungesser's from this Schuetzen Park? A. Oh, I guess two miles.

10 Q. How did you get there from Schuetzen Park? A. Why, I took a jitney.

Q. And you went by jitney to Nungesser's, and from the park to Nungesser's? A. Yes.

The Court: Was that north or south of the park?

The Witness: North.

The Court: That is, you went towards Bergen County?

20 The Witness: I went north.

The Court: From Schuetzen Park?

The Witness: Yes, sir.

The Court: Two miles away from the direction of your home?

The Witness: That is what I judge; I don't know.

The Court: Well, that is what he wants to know.

30 Q. Now, you didn't want to buy the gun from this man, did you? A. Not at first.

Q. Why did you change your mind about it? A. Why, because the gun was cheap, and I needed it. I needed it in my place of business. Somebody had stolen mine, the one I had down in the store.

Q. Somebody had stolen the gun? A. I am down in a rough neighborhood, and I need it.

40 Q. What we want to get clear is that you didn't go home from the park that night where you bought the gun, directly, did you? A. No, sir.

William Sweeney, direct.

Q. You didn't leave Nungesser's to board the car on your way home until perhaps two hours after you bought the gun; is that right? A. Well, about that.

Mr. Drewen: That is all.

10

(Witness excused.)

WILLIAM SWEENEY, a witness sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Ziegner:

Q. Mr. Sweeney, where do you live? A. 675 Ocean Avenue.

Q. Jersey City? A. Jersey City.

Q. How long have you lived in Jersey City? A. How long have I lived in Jersey City? All my life.

20

Q. Do you know the defendant William Tietjen? A. Yes, sir.

Q. How long have you known him? A. About twenty years.

Q. And on this night that has been spoken of, did you accompany him to Schuetzen Park? A. Yes, sir.

Q. Do you know whether it was Saturday or Sunday night? A. I think it was Saturday night racket; I couldn't swear to it.

30

Q. What sort of an affair was it? A. Dance.

Q. Did you go to Schuetzen Park with him? A. Yes, sir.

Q. What time did you leave Jersey City, about? A. Eight o'clock.

Q. And how long did you stay at Schuetzen Park? A. About one o'clock.

40

William Sweeney, direct.

Q. And from Schuetzen Park did you still accompany him somewhere else? A. Yes; I was right with him until he got arrested.

Q. And where did you go from Schuetzen Park?

A. What did you say.

10 Q. Where did you go when you left Schuetzen Park? A. Nungesser's.

Q. And from Nungesser's where did you go? A. Took a car.

Q. Toward where? A. Towards Hoboken.

Q. And while at Schuetzen Park did you see this defendant engaged with any person buying a revolver? A. Yes; I was with him when he bought it.

20 Q. Do you know the person from whom he bought it? A. Yes; I know him.

Q. What was his name, do you know? A. I don't know his name.

Q. Well, how do you know him? A. I know him by sight.

Q. Where? A. I see him probably once a week.

Q. Where? A. Around here.

The Court: Around where?

30 The Witness: Oh, around Newark Avenue; Five Corners.

Q. Have you any idea of his first name? A. George, I think.

Q. Do you know his business? A. Sir?

Q. Do you know his business? A. No, sir.

Q. Have you met him—

The Court: I hope I am not suspected. Of course, that is very indefinite. What do you mean by "around here"?

40 A. Why, I meant around this neighborhood.

William Sweeney, cross.

Q. Do you know this man's business? A. No, I don't.

Q. How often had you seen him before this night that this gun was involved? A. Oh, a couple of years.

Q. You say you met him about once a week? 10
A. Yes.

Q. Just tell the court and jury what was said at the time this gun was presented, or submitted to Mr. Tietjen. A. Well, we were at a table and he come and he said: "Do you want to buy a gun"? So Billie said to me: "Well, what do you say? What do you think? Do you think it would be advisable?" I said: "If you need a gun down to the store, why, buy it."

Q. Did you hear what price was asked for the 20
gun? A. Yes, three dollars, he gave him for the gun.

Q. When he bought the gun, do you know whether it was unloaded or loaded? A. Unloaded, because I broke it open.

Q. You broke it yourself? A. Yes.

Mr. Ziegner: Cross examine.

Cross examination by Mr. Drewen:

Q. How long have you known— 30

Mr. Ziegner: Just one question.

Mr. Drewen: Go ahead.

By Mr. Ziegner:

Q. Did you accompany Mr. Tietjen to the police court? A. Yes; in fact, the officer took I and him there that night.

Q. Now, the next morning did you see this same gun? A. Same gun. 40

William Sweeney, cross.

Mr. Drewen: I think that is incompetent, immaterial and irrelevant, and I object to it.

Mr. Ziegener: Go ahead; cross examine.

10 *By Mr. Drewen:*

Q. How long have you known this man from whom he bought the gun? A. A couple of years.

Q. Well, how many years, two, three, four? A. Two years; probably three.

Q. Probably three. Do you know where he lives? A. No, I don't.

Q. Where did you meet him? How did you come to meet him first? A. Met him up in Union Hill, Schuetzen.

20 Q. And how often have you seen him in those three years? A. Probably once a week; probably two times; a couple of—probably I would miss a couple of weeks in that time, too.

Q. Where would you meet him when you would meet him? Where would it be? A. Around the Five Corners, all the way down to Barrow Street.

Q. Ever have any appointment with him? A. Never.

30 Q. Just met him at these places by accident. Did you have any conversation with him? A. Yes.

Q. Every time you met? A. Said, "Hello."

Q. Say anything else? A. No.

Q. Were you ever formally introduced to the man? Were you ever introduced to him? Did you ever meet him formally? A. Yes; I got an introduction to him a couple of years ago.

Q. Up at Schuetzen Park? A. No, not at Schuetzen Park.

40

William Sweeney, cross.

Q. That is where you told me you first met him. That is why I asked you that. Where did you first meet him? A. I met him a couple of years ago.

Q. Where? A. Down in Jersey City.

Q. I asked you a few moments ago where you first met this man and you said at Schuetzen Park. Where did you meet him in Jersey City?

10

A. Around Barrow Street.

Q. Where around Barrow Street? A. Barrow and Newark Avenue.

Q. Who introduced you to him? A. Why, we were all drinking down there one night when I got introduced to him.

Q. You were not drinking in Newark Avenue? A. Yes, in a saloon on Newark Avenue.

20

Q. Whose saloon was it? A. Corner Barrow and Newark Avenue.

Q. Do you know who owns the place? A. No, I don't.

Q. You were all in there drinking and you were there and he was there. Who introduced you to him, do you know? A. No; I got introduced to him through a party.

Q. Through a party. Do you know who the party is? A. No, sir.

30

Q. Did you ever see that party again? A. Yes; I meet him occasionally.

Q. Do you know his name? A. No, sir.

Q. So that you were introduced by a man whose name you did not know to somebody else whose name you did not know and do not know yet? A. Oh, that happens many a time.

Q. Oh, does it? How long were you in this man's company the first time you met him? A. Well, I couldn't tell you; probably ten minutes.

40

William Sweeney, cross.

10 Q. I see. You met him, you say, nearly once a week with the exception of the fact that you might skip two or three weeks, you say? You met him almost once every week— A. No not once every week; occasionally every week, or probably a couple of weeks.

Q. Yes. And that has been going on for the last three years? A. Yes.

Q. And you have met him at Schuetzen Park a number of times, too, haven't you? A. No, this is the first time I ever met him in Schuetzen.

Q. This is the first time you ever met him in Schuetzen? A. No, not the first time I have been there the first time I ever met him there.

20 Q. That is what I said. The first time you ever met him at Schuetzen Park. Do you know where he works? A. No.

Q. Don't you know anything about him at all, do you? A. No, sir.

Q. Just happened to meet him "around here," as you say? A. Probably meet him when I go out to a dance.

Q. Now, when you and Tietjen left Schuetzen Park where do you say you went? A. Nungesser's.

30 Q. Nungesser's. And that is about two miles away, isn't it? A. Probably.

Q. How long after you left Schuetzen Park was it that you left Nungesser's? A. That I could not tell you.

Q. About two hours? A. I could not specify the time at all.

Q. Well, it was about two hours, wasn't it? A. Well, if you make it two hours.

40 Q. I am not making it anything? Tietjen said it was about two hours. I am asking you if in

William Sweeney, cross.

your judgment it was two hours or not. A. I could not swear to that, whether it was two hours or an hour and a half.

Q. When you left Nungesser's where did you go with him? A. We got on a car. I believe the cars is right outside. 10

Q. And where did you go? A. Then we went as far as the car went.

Q. And where did you intend to go when you got on the car? A. I was going home.

Q. You were going home. Do you know whether he was going home? A. Yes; I think he was going home, too.

The Court: What is your business?

The Witness: I am in business, 502 West 34th Street; printing business. 20

The Court: In business for yourself?

The Witness: No, I am a partner in the printing business.

The Court: In business for yourself, then?

The Witness: Yes.

The Court: How long have you been in business?

The Witness: I have been working for the man about a year, and in business the last four months. 30

The Court: Where do you live?

The Witness: 675 Ocean Avenue.

The Court: Jersey City?

The Witness: Yes, sir.

The Court: How long have you lived in Jersey City?

The Witness: All my life.

The Court: Have you any other business besides that of printing? 40

The Witness: Why, no; that is my trade.

William Sweeney, cross.

Q. Have you ever been convicted of crime? A. Yes, sir.

Q. What? A. Disorderly conduct.

Q. Anything else? A. A couple of months ago.

Q. Anything else besides disorderly conduct?
10 A. Yes.

Q. What? A. Disorderly conduct in New York.

Q. Anything else besides disorderly conduct here and in New York? A. No, sir.

Q. Sure about that? A. Positive.

Q. What were you doing when you were charged with disorderly conduct? A. What was we doing.?

Q. What were you doing, yes: A. Why, I went
20 in to get a fellow bailed out, and I got put in.

Q. That was in New York, was it? A. No; that was in Jersey City.

Q. What were you doing in New York when you were charged with disorderly conduct? A. Drunk, I guess.

The Court: Have you been drinking today?

The Witness: Why, I drink ten or fifteen whiskeys every day.

30 The Court: I rather suspected it. If you drank less you might appear a little more as you should when you come into a place of this kind. Go on.

Q. You have ten or fifteen whiskeys now, have you? A. I drink ten or fifteen every day.

Mr. Ziegner: I object to that.

Mr. Drewen: I have the right to test—

40 Mr. Ziegner: Just a minute. I do not think that line of examination should be

Court's Charge to the Jury.

pursued. The witness voluntarily suggests his capacity stood ten or fifteen whiskeys a day—

The Court: I think it is perfectly proper cross examination, and the conduct of the witness justifies it. The court will allow it.

10

Q. How many whiskeys have you drunk today?

A. I don't know; about six or seven.

Q. Sure you have not had ten or fifteen? A. No.

Q. You have not finished your full quota yet, have you? A. No, sir.

Q. I see.

Mr. Drewen: That is all.

Mr. Ziegner: That is all:

20

(Witness excused.)

Mr. Ziegner sums up to the jury on behalf of the defendant.

Mr. Drewen sums up to the jury on behalf of the State.

Court's Charge to the Jury.

Gentlemen of the Jury:

30

In this case the defendant is indicted and on trial on an indictment on a charge of what is known as carrying concealed weapons. The law says that any person who shall carry a revolver, pistol, firearms, sandbag, slingshot, or other deadly offensive or dangerous weapon, or any stiletto, blackjack, dagger or razor, or any knife with a blade five inches or over concealed in and about his clothes or person shall be guilty of a misdemeanor. Then following that language there are

40

Court's Charge to the Jury.

10 certain provisions. In this case, as I take it from counsel for this defendant, the class that he comes within is within these provisions. "Nothing herein contained shall prevent any person from carrying the same (that is, this revolver), from any place or purchase to his or her dwelling place or place of business."

20 Now, gentlemen of the jury, I want to say a few words to you. I feel constrained very seriously to excite your mind as to your duty in this case. This is no play room. You and I are dealing with very important matters—the administration of the criminal law of this county. It is not my fortune, I think, as I look at your faces, to know any of you gentlemen intimately. You are twelve men called here from every section of this county to do what your oath says—to well and truly try the issue of traverse joined in this case. And I admonish you that there is to be no sentiment, no sympathy, nothing in this case here or in the jury room, excepting the evidence in this case, upon which you are to bring in any verdict.

30 I fear sometimes, gentlemen of the jury, that we are not in this county always careful enough to uphold the dignity of the law, to see straight the facts presented to us in this court house, and I am pressing this home to you, gentlemen, that you may know just exactly what the Court expects of you—that you will do your duty absolutely, unflinchingly, according to the evidence. Our jury has the right to consider the evidence to determine the guilt or innocence, but let it be the evidence, gentlemen of the jury, in this case—nothing less, nothing more.

40 As I take it, in this case there is no doubt—it is admitted, in fact, that this defendant had this gun in his possession. Whether it was loaded or not

Court's Charge to the Jury.

makes no difference. It is against the law to carry a gun loaded or unloaded, except under the exception, the one in this case to which I have made particular reference.

Now, on that defense it is for you to say whether you believe it or not—mark you, it is for you to say whether you believe it or not. Is that man telling the truth? Has somebody found out what the law is and how a man may get out of a crime? Did this defendant buy that gun that night up at Schuetzen Park in this county, and was he on his way home with it from a place of purchase? Now, mark you, gentlemen, what the law meant. The law meant obviously that a man has the right to go to a store or place of purchase and take it home; because the law gives a man the right to have a gun in his own house for his own protection, and in order to get it home it gives him that exception under this statute, that he may carry it home. 10 20

Now, in view of the defense in this case, you, gentlemen of the jury, may consider whether this man did honestly buy that gun that night and was on his way home from the place of purchase. The testimony is that he went north from Schuetzen Park—(most of you gentlemen, probably all of you, know where it is)—north two miles on the Boulevard to a place called Nungesser's, and then went down to Hoboken, and then went home. 30

You have heard the story of this other witness, this man who comes here, as you have heard his testimony, to substantiate the story of the defendant. You can believe it or not, as you please. You do not have to believe it, and you do not have to believe this other witness. It is for you to say whether you believe it or not.

Take this case, gentlemen, and I want to tell 40

Court's Charge to the Jury.

10 you now that the Court expects you to determine
this case on the evidence and the evidence alone.
You have got to help me in the administration of
criminal justice, and if you permit any outside
matter to enter into your minds and to let crime
go unpunished in this county you will have to join
with me in ruing the day.

I ought to say to you there are three things that
the Court must say to you: the defendant is pre-
sumed to be innocent. The presumption remains
with him until you by your verdict find him guilty.
The burden of proof is on the State. The defend-
ant is entitled to the benefit of any reasonable
doubt.

20 Swear an officer.

30

40

Opinion.

(Filed June 5, 1919.)

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1919.

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">WILLIAM TIETJEN.</p>	}	<p>Error to Hudson Quarter Sessions.</p>	10
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Argued before GUMMERE, Chief Justice, and Justices SWAYZE and TRENCHARD.

For Plaintiff-in-Error, ALEXANDER SIMPSON. 20

For the State, PIERRE F. GARVEN, Prosecutor of the Pleas.

The opinion of the Court was delivered by GUMMERE, C. J.

The plaintiff-in-error was convicted in the Sessions of the crime of unlawfully carrying a concealed weapon. His contention that the judgment brought up by the writ should be reversed rests upon a single ground, viz., that in drawing the jury for the trial of the cause the Court excused, as they were called, certain jurors, without specifying any ground for the judicial action. 30

It is stipulated by counsel that the jurors thus excused had on the previous day served upon a jury in a capital case, and that the verdict in that

Opinion.

10 case was one of acquittal. The plaintiff-in-error concedes that the excusing of a juror whose name has been drawn from the box, is a matter resting in the discretion of the trial court, and does not contend that the Court, in the exercise of this discretion, must express its reason for the judicial act. On the contrary, he admits that the principle controlling in matters of this kind is that laid down by this Court in *State v. Lang*, 75 N. J. L., p. 1, viz: that they must necessarily be left largely to the discretion of the trial judge; that unless it be made plain that he has abused this discretion, and that the defendant may have suffered injury thereby, the propriety of the judicial action cannot be challenged upon review. He asserts, however, that the reason which moved the Court to excuse these jurors was that they had joined in the rendition of a verdict of acquittal in the capital case above referred to; that such a reason affords no just ground for excusing them; and that in doing so the Court abused the discretion vested in it.

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30 This contention is without merit for two reasons: first, there is nothing in the case to support the presumption that the judicial action rested upon any such ground. In the absence of anything to the contrary it is not to be assumed that the excusing of these jurors had any relation to their conduct in the earlier case. Second, even if it be assumed that the Court was moved to excuse these jurors because of their conduct in the earlier case, it does not follow that the judicial discretion was improperly exercised. The presumption is that the act complained of was done

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Writ of Error.

in the proper performance of judicial duty, and the burden rests upon the defendant to overcome that presumption, by showing affirmatively that there was an abuse of discretion on the part of the Trial Court. *State v. Lang, supra.* No attempt was made to discharge that burden. 10

But even if we had reached a contrary conclusion on this question, it would not enure to the benefit of the defendant. He made no objection to the excusing of these jurors, and sat silent while the box was being filled up from members of the panel subsequently drawn. He went to trial before the jury which was finally selected, and took the chance of being acquitted by that jury. A defendant cannot submit to be tried without objection before a jury whose impartiality is not challenged, take the chance of being acquitted, and afterward be heard to complain of the method by which it was selected, in case the verdict goes against him. 20

The judgment under review will be affirmed.

Writ of Error.

NEW JERSEY, to wit: 30

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature:

Greeting: For as much as in the records and proceedings and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between William Tietjen, plaintiff-in-error, and The State of New Jersey, defendant-in-error, manifest error hath 40

Writ of Error.

10 intervened to the damage of said plaintiff-in-
error, as is said; and we being willing that the
error, if any there be, should in due manner be
corrected, and full and speedy justice be done to
the plaintiff-in-error aforesaid, in this behalf
do command you, that you distinctly and openly
send under your hand and seal, the record and
proceedings aforesaid, with all things touching
and concerning the same, to our Judges of the
Court of Errors and Appeals in the last resort in
all cases, at Trenton, on the 28th day of June next,
together with this writ that the records and pro-
ceedings aforesaid being inspected, we may cause
to be further done thereon for correcting that er-
20 ror, what of right and according to the laws and
the custom of the State of New Jersey ought to
be done.

Witness, Edwin R. Walker, Esquire, our Chan-
cellor and President Judge of our said Court of
Errors and Appeals, at Trenton aforesaid, the
tenth day of June, nineteen hundred and nineteen.

THOMAS F. MARTIN,

Clerk.

Alex. Simpson,

30 Attorney for Plaintiff-in-Error.

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Return to Writ of Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE STATE
Defendant-in-Error,

v.

WILLIAM TIETJEN.
Plaintiff-in-Error.

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

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WM. S. GUMMERE,
C. J.

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Specification of Causes.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">WILLIAM TIETJEN. Plaintiff-in-Error.</p>	<p style="font-size: 3em; line-height: 1;">}</p> <p style="margin-left: 10px;">In Error. Assignments of Error.</p>
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The plaintiff-in-error in the above cause, having obtained an auxiliary certiorari alleging diminution of the record and having thereby brought up the out branches of the record by stipulation, and return of the writ, hereupon assigns for error the following grounds:

1. That the Court had no jurisdiction to try the defendant because the jury drawn to try the defendant was improperly drawn and the said Court could not be properly constituted without the jury regularly drawn according to law
2. Because the Judge at the trial of the said cause over the objection of the defendant did challenge and excuse certain jurors called from the general panel, which was drawn to try causes in the said Court at the said term, and thereby the plaintiff-in-error was deprived of due process of law and his right to be tried according to the law of the land.

Specification of Causes.

3. Because the said Court at and before the drawing of the said jurors who were empanelled to try him, did challenge and excuse six jurors, which said jurors had just before that time served in the trial of a cause where a verdict of acquittal had been rendered and the said Judge at the trial of the said cause did not give any legal reason for excusing of said jurors.

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4. That the said Judge at the trial of said cause refused to permit to serve certain jurors regularly drawn from the panel who were serving according to law for the trial of causes in the said Court, although tht said jurors nor any of them were challenged by the State or the defendant, and the defendant was entitled to have the said jurors serve, but the said Judge, denying the plaintiff due process of law, excused the said jurors and refused to allow them to serve at and upon the trial of the said plaintiff-in-error.

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ALEX. SIMPSON,
Attorney for Plaintiff-in-Error.

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Verdict of Jurors

3. Because the said Court did before the drawing of the said jurors who were empanelled in his Court, did challenge and excuse six jurors which said jurors had just before that time served in the trial of a cause where a verdict of acquittal had been rendered and the said Judge at the trial of the said cause did not give any legal reason for excusing of said jurors.

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4. That the said Judge at the trial of said cause refused to permit to serve certain jurors regularly drawn from the panel who were serving in the trial of another cause in the said Court, although the said jurors had not been excused by the Court or the Court and the defendant was entitled to have the said jurors serve, but the said Judge, being the plaintiff the process of law executed the said jurors and refused to allow them to serve at and upon the trial of the said plaintiff in error.

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ALEX. SIMPSON,
Attorney for Plaintiff in Error.

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5. That the said Judge at the trial of said cause refused to permit to serve certain jurors regularly drawn from the panel who were serving in the trial of another cause in the said Court, although the said jurors had not been excused by the Court or the Court and the defendant was entitled to have the said jurors serve, but the said Judge, being the plaintiff the process of law executed the said jurors and refused to allow them to serve at and upon the trial of the said plaintiff in error.

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New Jersey Court of Errors and Appeals

THE STATE,
Defendant-in-Error,

v.

WILLIAM TIETJEN,
Plaintiff-in-Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

The plaintiff-in-error was convicted of the crime of carrying a concealed weapon and sentenced to one year. The only error urged for reversal is that the Trial Judge excused certain of the jurors. The writ of error did not bring this up, but brought up the formal return. A certiorari was then issued and the State stipulated that if testimony were taken thereunder it would appear that six of the jurors had been excused by the judge who had not been challenged by the State or the defendant, and that these jurors had previously served upon a jury which had acquitted a defendant of the crime of murder. The plaintiff-in-error has brought up the outbranches of the record by the stipulation and urges that it appears that the Court had excused six of the jurors, and, therefore, that the defendant did not have his legal rights. It is undoubtedly the law that a judge acting within his discretion can excuse the jury without giving a reason therefor, but it is insisted and the authorities to this effect are

found collected in 24 Cyc., 261, holding that it is uniformly held that whether a jury shall be excused is a matter resting within the sound discretion of the Court, the exercise of which will not be interfered with unless it clearly is shown to have been abused to the actual prejudice of the complaining party. Within proper lines, therefore, it could not be objected to that the judge excused the jury, but in this case the plaintiff-in-error urges that the practical effect of the judge excusing the jurors who had acquitted the day before, was to serve notice on the trial jury that an acquittal of a defendant was a matter to be punished by a judge.

In the case at bar, the excusing of the jurors was not done by reason of illness or incapacity, but was done without stating any reason, and apparently excused the jurors because they had rendered a verdict of acquittal. Although the cases hold that within the discretion of the Court jurors can be excused, yet one of the cases cited, *Commonwealth v. Payne*, 54 Atl., 998, a Pennsylvania case, holds that though a juror can be excused at the trial or beforehand, it is also within the sound discretion of the Court, though in the latter case the actions and reasons for it should be stated in open court so that the fact that the excusing is judicially passed upon and found to be sufficient, should appear upon the record. All these cases seem to deal with cases where the juror applies to be excused or some one for him, but none of these cases seem to justify the arbitrary excusing of a juror by the Court.

The plaintiff-in-error, therefore, urges that as a matter of common sense, it must be apparent, and the cases are all collected in the notes to 24 Cyc., 261, and I cannot find that any of the cases jus-

tify the more arbitrary excusing of a juror by the judge, simply because the jury had acquitted a defendant the day before. The actual effect, of course, as any one familiar with trial work knows, is that the jurors, if they have acquitted and are excused in the presence of the other jurors, the impression goes forth that it is wrong to acquit, and under these circumstances it can hardly be said that the defendant would be tried by a fair and impartial jury, because the jurors being impressed by the action of the Court would naturally take it to mean that it was wrong to acquit a defendant. Under these circumstances, therefore, it cannot be said that the excusing of a juror openly in the presence of a jury that was drawn for service on that panel was not an arbitrary exercise by the Court of its power, and for this reason the defendant below did not have a fair trial and it is respectfully submitted that the judgment below should be reversed.

ALEX. SIMPSON,
Attorney for Plaintiff-in-Error.

New Jersey Court of Errors and Appeals.

<p style="text-align: center;">THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> WILLIAM TIETJEN, <i>Plaintiff-in-Error.</i></p>	}	<p style="text-align: center;">In Error to Supreme Court.</p>	<p>10</p>
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BRIEF FOR THE STATE.

Facts.

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The plaintiff-in-error, hereinafter called the defendant, was convicted in the Hudson Quarter Sessions of the crime of unlawfully carrying concealed weapons.

In the drawing of the jury for the trial of the cause the trial judge excused, as they were called, certain jurors of the regular panel. No reason for this was assigned by the trial judge; no objection to this course was made by counsel for defendant and no challenge on behalf of the State was made against the persons thus excused.

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A writ of certiorari, in aid of the writ of error, was taken in this case for the purpose of bringing up such extraneous matter as would show the facts, above indicated, attending the drawing of the jury.

Under the certiorari these facts were stipulated by counsel for the defendant and the State. It was also stipulated as follows:

"It is contended by counsel for the plaintiff-in-error that by taking testimony under a writ

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of certiorari which has been allowed in aid of the writ of error in this cause, he can establish that the jurors thus excused by the trial judge had on the previous day served on a jury in the trial of an indictment for murder which rendered a verdict of acquittal.

10 "For the purpose of this writ of error it is hereby further stipulated and agreed that testimony establishing these facts could have been adduced, and, subject to its competency and relevancy, such testimony is admitted as though actually taken under the said writ of certiorari."

This stipulation appears in the printed case, pages 12-13.

There were no objections taken at the trial.

The judgment of the Hudson Sessions was affirmed in the Supreme Court, and is here on writ of error issuing out of this Court.

20 There is only a formal return to the writ of error, and no certificate of the whole record.

There were neither assignments of errors nor specifications of causes for reversal served on the State. In the printed case, however, there appear four specifications of cause.

These make one point of objection, and that is directed to the Court's conduct in excusing the jurors in the manner described in the stipulation.

30 For an account of what the Court actually did in this connection we are confined to the stipulation. There is no other reference to it in the record.

At the trial counsel for defendant evidently did not deem the Court's conduct of sufficient gravity to make it the subject of any objection.

POINT.

The excusing of jurors is discretionary with the trial judge. The stipulated facts do not indicate any abuse of this discretion.

Gummere, C. J., in *State vs. Lang*, 75 N. J. L., 1, at page 6, says: 10

“Matters of this kind arising during the course of the trial must necessarily be left largely to the discretion of the trial judge, and *unless it be made plain* that he has abused this discretion and that the defendant may have suffered injury thereby, the propriety of this action cannot be challenged upon review.”

And in *Aaronson vs. State*, 56 N. J. L., 9, Beasley, C. J., found it to be not erroneous for the trial judge to excuse “certain jurors.” 20

Patterson vs. State, 48 N. J. L., 381, at 385.

Nor does it anywhere appear that the defendant suffered any manifest wrong or injury, or that he was prejudiced in maintaining his defense upon the merits.

“No judgment given upon an indictment shall be reversed for any error, except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits.” 30
Sec. 136, Crim. Proc. Act.

The third assignment of error refers to the number of jurors excused by the Court as six. There is nothing in the record to indicate the number of jurors. The language of the stipulation is “certain jurors.”

The allusion in the stipulation to the fact that “the jurors thus excused by the trial judge had on the previous day served on a jury in the trial of 40

an indictment for murder which rendered a verdict of acquittal," for aught that appears of record, is entirely gratuitous. There is nothing to show that this previous service was in the mind of the Court at the time of the drawing of the jury sub judice, any more than there is anything to show that the jurors excused had in the previous case been guilty of such dereliction as to render it unconscionable for the trial judge to tolerate their continuance as jurors.

In a California case where the Court did actually excuse an entire jury because of an acquittal which that jury had rendered, the Appellate Court said:

"Ordinarily a Court would not be justified in discharging a jury because it had returned a verdict which did not meet with the approval of the Court. But the verdict might be such as to convince the Court that the jury purposely and willfully disregarded the evidence and returned a verdict in violation of their sworn duty. Under such circumstances the Court would not only be justified in discharging the jurors, but it would be its duty to do so. The judge of the Court below seems to have been of the opinion that the verdict was such as to justify the action taken, *and in the absence of any showing to the contrary we must presume in favor of the action of the Court.*"

People vs. Murray, 85 Cal., 350; 24 Pac., 666.

Where, as in the present case, there is nothing on which to predicate even a suspicion of indiscretion on the part of the Trial Judge; and where, as in the present case any imputation of judicial abuse must of necessity be arbitrary and without basis in the record, the appellate tribunal will not set aside a judgment of conviction by indulging any presumptions of impropriety against the Court below. 10

Respectfully submitted,
PIERRE P. GARVEN,
Prosecutor of the Pleas,
Counsel for the State,
Defendant-in-Error.

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Where, as in the present case, there is nothing on which to predicate even a suspicion of impropriety on the part of the Trial Judge; and where, as in the present case, any imputation of judicial abuse must of necessity be arbitrary and without basis in the record, the appellate tribunal will not set aside a judgment of conviction by indulging any presumptions of impropriety against the Court below.

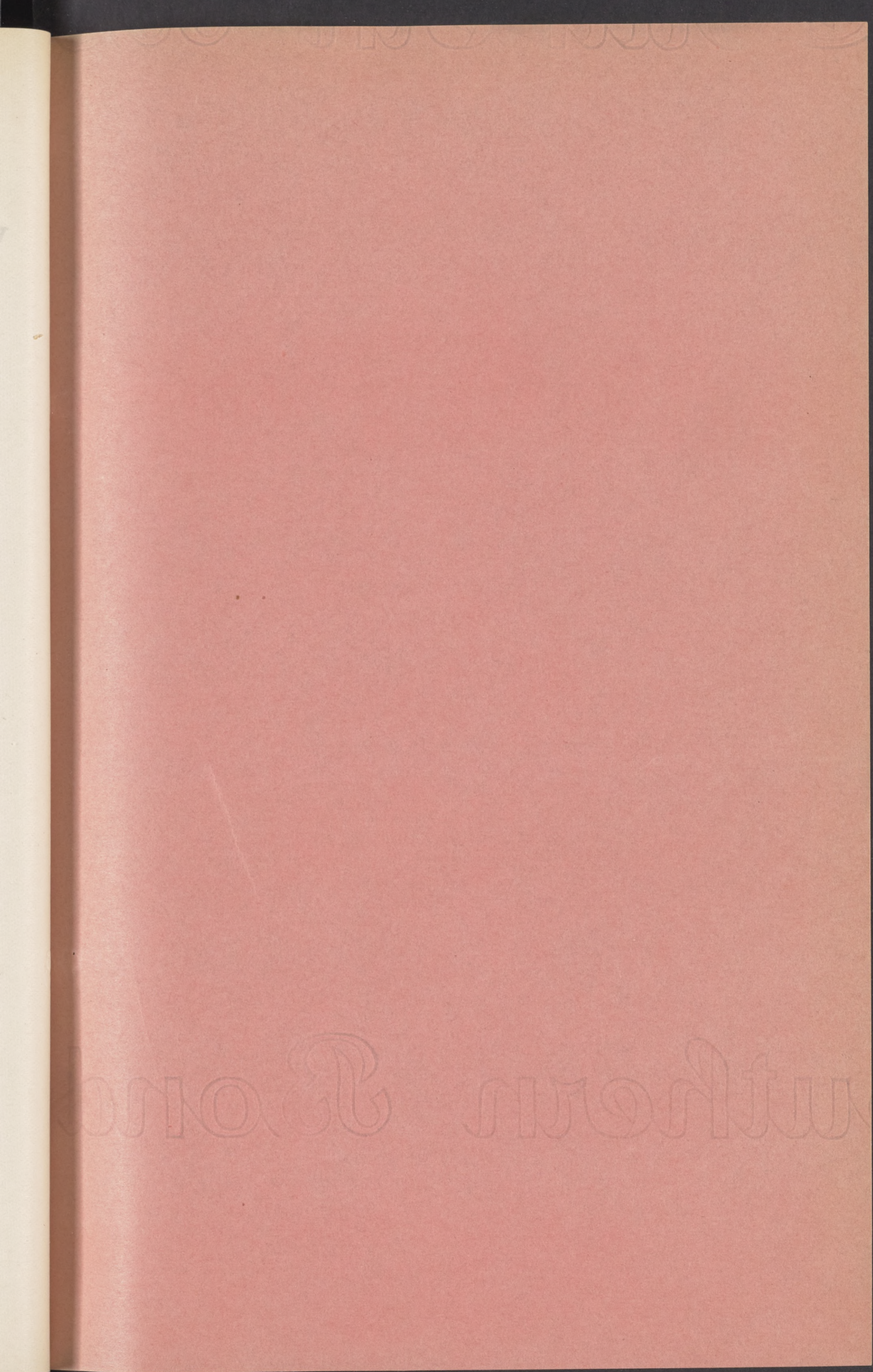
Respectfully submitted,

FRANK B. GARDNER,

Attorney at Law,

Chicago, Ill.

Defendant in Error.



Southern Bond