

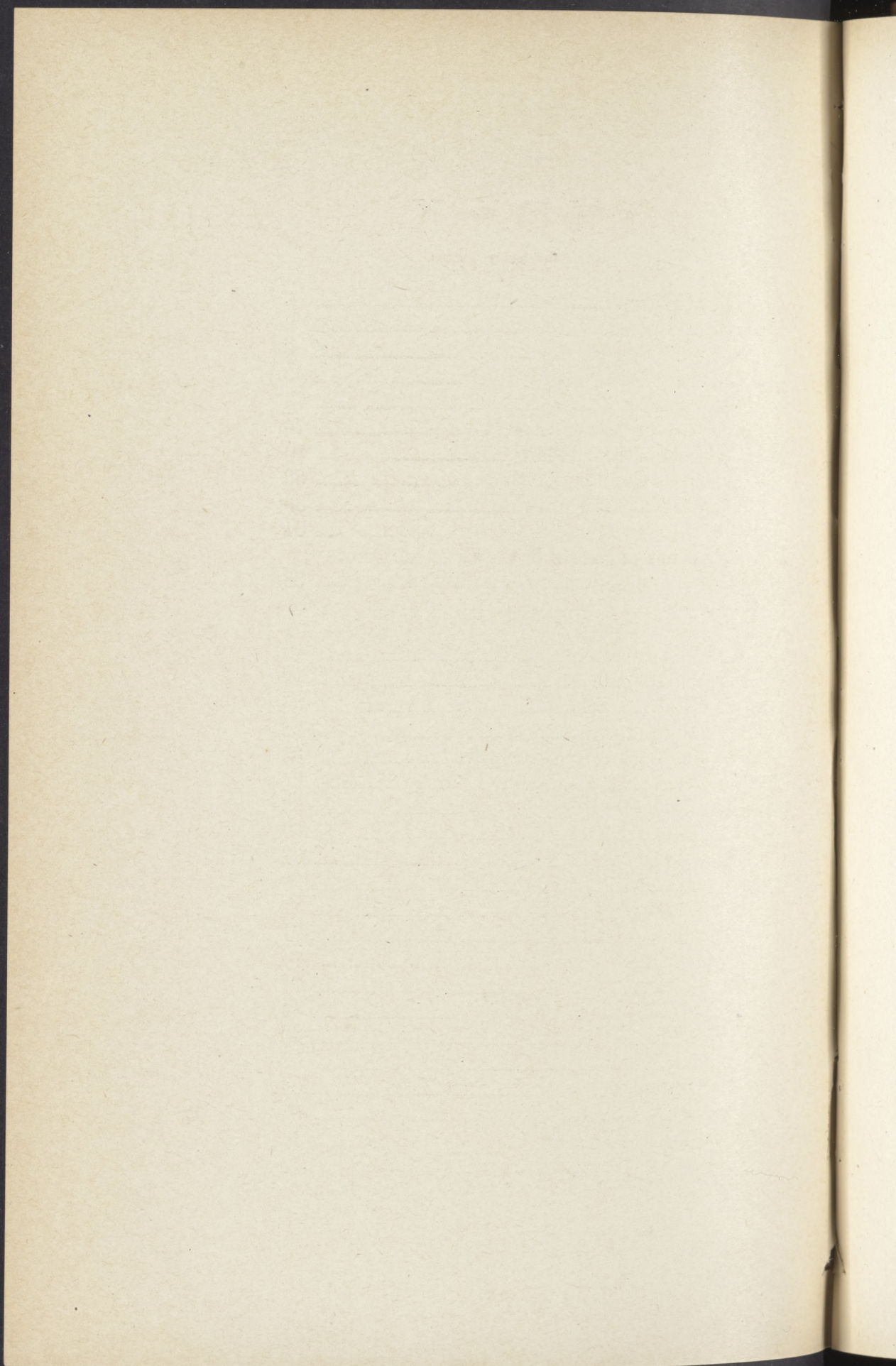
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New Jersey Supreme Court

WRIT OF ERROR

The State of New Jersey:

To: The Honorable Joseph A. Delaney,
(Seal) Judge of the Passaic County Court of
Quarter Sessions.

New Jersey, ss:

Greeting: Because in the record and proceedings and also in the giving of the judgment upon a certain indictment against Edward T. Benton, Jr., late of the City of Paterson, County of Passaic and State of New Jersey, for Embezzlement (pro ut the said indictment and several counts therein) whereof before you he has been indicted, and is thereof convicted in the County of Passaic, between the State of New Jersey and the said Edward T. Benton, Jr., as it is said, manifest error hath intervened to the great damage of the said Edward T. Benton, Jr., 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 Edward T. Benton, Jr., command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same to our New Jersey Supreme Court, at Trenton on the Seventeenth day of November, 1924, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and custom of New Jersey ought to be done.

Witness, Hon. William S. Gummere, Chief Justice

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Return to Writ

of the New Jersey Supreme Court, at Trenton, this
28th day of October, 1924,

Edward J. Kelliher,
Clerk.

Abram Klenert,
Attorney.

RETURN TO WRIT

STATE OF NEW JERSEY

10 Passaic County, to wit: Be is Rembered, That at
a Court of Quarter Sessions, held at Paterson, in and
for the said County of Passaic, on the Seventh day
of October in the year of our Lord one thousand nine
hundred and twenty-one, being the day on which
the Grand Jury heretofore summoned to come be-
fore the Court of Oyer and Terminer and now sitting
in and for said County, desires to present bills and
no Justice of the Supreme Court being present at
the Court House in said County, before the Honor-
able William W. Watson, Judge of the said Court of
20 Quarter Sessions in and for the said County of Pas-
saic, according to the form of the statute in that
case made and provided; by the oath of

- | | |
|-------------------------|---------------------------|
| 1. Francis X. Meegan, | 13. K. Von Haitinger, |
| Foreman. | 14. Carl S. Deans, |
| 2. John F. Carroll, | 15. Robert H. P. Ellis, |
| 3. Richard Boon, | 16. Abram Smith, |
| 4. Samuel Longbotham, | 17. George J. Hattersley, |
| 5. Adrian Bakker, | 18. George R. Holden, |
| 30 6. Christian Mennel, | 19. Harry C. Nightin- |
| 7. John Krantz, | gale, |
| 8. Rudolph Moller, | 20. Harry Klotz, |
| 9. Charles J. McAleer, | 21. Charles Titus, |
| 10. Charles E. Burke, | 22. Edward Flitercroft, |
| 11. James E. Radcliffe, | 23. J. Edwards Barbour. |
| 12. James J. Maher, | |

Return to Writ

good and lawful men of the said County of Passaic, duly summoned and then and there sworn and charged to inquire in behalf of the State of New Jersey in and for the said County of Passaic; it is presented in manner and form following, to wit:

The bills herewith presented are true bills.

Francis X. Meegan,
Foreman.

J. Willard DeYoe,
Prosecutor.

Court of Oyer and Terminer in and for the County of Passaic. September term, A. D., Nineteen Hundred and Twenty-One.

10

Passaic County, to wit: The Jurors of the State of New Jersey, in and for the body of the County of Passaic, upon their oath, Present, that Edward T. Benton, Jr., late of the City of Paterson, in the County of Passaic aforesaid, on the Twenty-fourth day of January, in the year of our Lord, nineteen hundred and twenty-one, with force and arms, at the City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, was the servant, agent and bailee of Anna Lee, and as such servant, agent and bailee was then and there entrusted with the care, custody and control of money to the amount of two thousand dollars, of the value of two thousand dollars; and on the twelfth day of March, A. D. 1921, of money to the amount of one thousand dollars, of the value of one thousand dollars; in all of the amount and of the value of three thousand dollars of the moneys, goods and chattels of the said Anna Lee, and that the said Edward T. Benton, Jr., being such servant, agent and bailee, so entrusted as aforesaid, did then and there fraudulently take, embezzle and convert the said moneys to his own use, contrary to the form of the statute in such case made and provided and against

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Return to Writ

the peace of this State, the government and dignity of the same.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said Edward T. Benton, Jr., on the twenty-fourth day of January, in the year of our Lord nineteen hundred and twenty-one, in the City of Paterson, aforesaid, in the County of Passaic aforesaid money to the amount of two thousand dollars, of the value of two thousand dollars; and on the twelfth day of March, A. D. 1921, money to the amount of one thousand dollars, of the value of one thousand dollars; in all of the amount and of the value of three thousand dollars of the moneys, goods and chattels of Anna Lee, then and there being found unlawfully did steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

20 Witness: Anna Lee.

J. Willard DeYoe,

Prosecutor of the Pleas.

Thereupon the said Court of Quarter Sessions did receive such Indictment and the Clerk of the said Court of Quarter Sessions did file the same in the said Court, and also did thereupon make entry thereof in the Minutes of said Court at the then session of said Court, and afterwards, to wit, at the April Term, A. D. nineteen hundred and twenty-four, of said Court of Quarter Sessions, holden at Paterson, in and for the County of Passaic aforesaid, to wit: 30 on the twenty-fifth day of April, A. D. nineteen hundred and twenty-four, at session thereof before the Honorable Joseph A. Delaney, Judge of said Court, in and for said County of Passaic, ac-

Return to Writ

According to the statute in such case made and provided, comes the said Edward T. Benton, Jr., in his own proper person, and now touching the premises in said Indictment above specified and charged against him, being asked in what manner he will acquit himself, says, he is not guilty and of this he puts himself upon the country, etc., and J. Willard De Yoe, Esquire, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let a jury come before the Judge aforesaid, at Paterson aforesaid, in the County of Passaic aforesaid, at a session of the Court of Quarter Sessions aforesaid, on the sixth day of October, being of the Term of September, A. D. nineteen hundred and twenty-four, of twelve good and lawful persons, each of whom shall be a citizen of this State, and a resident within the County of Passaic aforesaid, above the age of twenty-one years, and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said Edward T. Benton, Jr., to recognize upon their oaths whether the said Edward T. Benton, Jr., be guilty as in the said Indictment specified, or not guilty, because as well the said J. Willard De Yoe, Esquire, Prosecutor of the Pleas for the said County of Passaic aforesaid, who prosecutes for the State of New Jersey aforesaid, in this behalf, as the said Edward T. Benton, Jr., have put themselves upon the said jury, and the same day is given to the parties aforesaid, at the same place.

And Thereupon, on the sixth day of October, A. D. Nineteen Hundred and Twenty-Four, being as yet of the Term of September, of said Court, before the Court of Quarter Sessions aforesaid, holden by the Honorable Joseph A. Delaney, Judge as afore-

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Return to Writ

said, come as well the said J. Willard De Yoe, Prosecutor of the Pleas, aforesaid, who prosecutes as aforesaid, as the said Edward T. Benton, Jr., in his own proper person, and the jurors of said jury, by the Sheriff of the County of Passaic aforesaid, for this purpose empanelled and returned, to wit:

- | | | |
|----|------------------------|-------------------------|
| | 1. Mrs. Holly Probert, | 7. Leonard Moerkerk, |
| | 2. Albert Rhodes, Sr. | 8. Etta M. Francesco, |
| | 3. Leo G. Straus, | 9. William Robinson, |
| 10 | 4. Leo Voellmy, | 10. Leo Williams, |
| | 5. Gustave Feustel, | 11. Catherine Delancey, |
| | 6. Thomas Callahan, | 12. Lillian J. Ennis, |

also come, who to speak the truth of the matters within contained, being chosen, tried and sworn upon their oaths, say that the said Edward T. Benton, Jr., is guilty of the premises in the within indictment named and specified, in manner and form as by the indictment is charged against him.

20 And thereupon, on the twenty-fourth day of October, A. D. Nineteen Hundred and Twenty-four, it was demanded of the said Edward T. Benton, Jr., if he hath or knoweth anything to say whereof the Court here ought not upon the premises and verdict proceed to judgment against him, who nothing further says, unless as he has before said.

30 Wherefore, all and singular, the premises being seen and by the Court here fully understood, it is considered by the Court, and the sentence of the law is, that the said Edward T. Benton, Jr., shall be confined in the State Prison, at hard labor, for the maximum term of three years, and the minimum term of two years.

Joseph A. Delaney,
Judge.

Return to Writ

State of New Jersey, }
 County of Passaic. } ss.

I, John McCutcheon, Clerk of said County, and Clerk of the County Courts thereof, Do Hereby Certify, that the foregoing is a transcript of the record and proceedings in the case of Edward T. Benton, Jr., convicted of embezzlement, in our Court of Quarter Sessions, on the sixth day of October, A. D. Nineteen Hundred and Twenty-Four, as the same is taken from and compared with the original, recorded in Book of Records of the Court of Quarter Sessions, and now remaining on file and of record in my office.

10

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this seventh day of November, A. D. Nineteen Hundred and Twenty-four.

John McCutcheon,
 Clerk.

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Assignments of Errors

NEW JERSEY SUPREME COURT

The State of New Jersey, Defendant in Error, vs. Edward T. Benton, Plaintiff in Error.	}	On Error to the Court of Quarter Sessions in and for the County of Passaic.
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ASSIGNMENTS OF ERRORS

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New Jersey, ss.

Afterwards, to wit: before the Justices of our Supreme Court of Judicature, at Trenton, comes Edward T. Benton, by Abram Klenert, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

20

1. Because at the trial of the indictment one Anna Lee, a witness for the State, was permitted to testify to a conversation between her and the defendant respecting stock other than the subject matter of the indictment, which evidence was irrelevant, incompetent and immaterial. Counsel for defendant objected to the admission of said evidence, which objection was over-ruled; said ruling was erroneous and to the manifest injury of the defendant.

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2. Because the court at the close of the State's case, on a motion made by defendant's counsel, refused to direct the jury to render a verdict of not guilty on the ground that the State had failed to connect the defendant with a crime charged against

Assignments of Errors

him, and furthermore, that the State had failed to prove that the defendant was guilty of the crime charged against him beyond a reasonable doubt.

3. Because the court refused to grant the motion of defendant's counsel to acquit the defendant at the conclusion of the whole case.

4. Because on the evidence in the whole case the defendant suffered manifest wrong and injury in and under the whole of said evidence, and the defendant should have been acquitted. **10**

5. Because the verdict of the jury in said cause was contrary to law.

6. Because the verdict in said cause was rendered by the jury against the defendant, whereas by law it should have been given in his favor.

7. For the errors aforesaid, and for the other record in the errors preceding, as aforesaid, and in giving judgment and of sentence aforesaid, the said Edward T. Benton prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof. **20**

Abram Klenert,

Attorney for Plaintiff in Error.

PASSAIC COUNTY QUARTER SESSIONS

The State, vs. Edward T. Benton, Defendant.	}	Before: Hon. Joseph A. Delany, J. and a Jury.
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October 6, 1924.

10 Appearances:

Hon. J. Willard De Yoe,
 Prosecutor of the Pleas, For the State.
 Hon. Abram Klenert,
 For the defendant.

(A jury being empanelled and found satisfactory
 they were sworn.)

Mr. De Yoe opens for the State:

20 ANNA LEE sworn for the State.

Direct Examination by Mr. De Yoe:

Q. Where do you live? A. Seventy East Sixteenth Street, City.

Q. How long have you lived in the City of Paterson? A. I have lived in the City of Paterson for fourteen years.

Q. What is your trade, what is your business?
30 A. Silk ribbon weaver.

Q. Did you ever work for the Johnson-Cowdin Co.? A. I did.

Q. For how long did you work for them? A. About three years.

Q. Can you tell us about what time that was, when you were working for them? A. From, I

Anna Lee—direct

believe, nineteen hundred and seventeen until October, nineteen hundred and twenty.

Q. Who was their Superintendent while you were working there? A. Mr. E. T. Benton.

Q. Did you get acquainted with him? A. Through the Johnson-Cowdin people working there at that time.

Q. Did you at any time see Mr. Benton with reference to the purchase of shares of stock in the Johnson-Cowdin Co.? A. I did.

10

Q. Tell us the conversation between you and Mr. Benton in relation to the purchase of the stock of the Johnson-Cowdin Co.?

Objected to by Mr. Klenert as immaterial.

Objection over-ruled.

Defendant excepts. Exception allowed and signed and sealed accordingly.

Joseph A. Delaney,

Judge. 20

A. I had gone to Mr. Benton in reference to this stock and I had told him I had five thousand dollars in the Paterson Savings Institution paying me three and one-half per cent, and if these stocks were offering a dividend of seven and one-half per cent it offered a better investment, and I asked him if I could take up fifty shares. He told me he would go into the matter with Mr. Cowdin, but he didn't think one employee could have that amount, but he would let me know later. In the meantime he had sent me home on account of labor trouble and I was home, I wasn't present when these stocks were bought. He had told me that day, he had given me his home address and says to save me embarrassment from

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Anna Lee—direct

coming to the mill, I was to come to his house and he would keep me informed about the stock, which I did. He told me he had seen the firm and he had arranged to get thirty shares, and Saturday I was to go in for my pay, which I did, and he told me to draw the money and be present on that following Monday and Mr. Leonard Cowdin would be there with the stock. He gave me the stock and that is the last I have been in the mill only at times to draw my pay. In the meantime he kept in touch with me on account of this trouble between the Union and myself to let me know how the firm stood and because they had promised to give me—

10

Q. Don't go into all that detail. You got your stock? A. I did.

Q. Did he say anything to you about any other money or investment? A. Yes, sir; he did.

Q. What?

20

Objected to by Mr. Klenert.

The Court:

Q. What was the conversation, if any, further?

A. At my home he had asked me whether I still had the two thousand dollars in the bank and I said yes. He said I have already made one good investment for you in advising you to take these thirty shares, and if you will trust me I will do as good for you by buying D. L. & W. I am not certain because I don't know whether the said bonds, stocks or securities, but they were D. L. & W. securities, and he said that would be a better investment than the Johnson-Cowdin because if at any time I wanted to borrow money on them I could. Of course, I be-

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Anna Lee—direct

lieved in him and gave him the two thousand dollars for that purpose.

Q. Did he give you anything or say anything?

A. Yes, sir; he gave me a piece of paper which he called a note. I asked him why he was giving me a note and he said it is simply a receipt to show that I have this money of yours. I might get run over and I might die suddenly and you might come forward and say I had two thousand dollars, but you would have nothing to show for it. By accepting this note it covers you until I see a chance to get these securities when the market is right. He said if anything happens to me suddenly it would go in my estate as a note and my wife would have to cover it.

10

Q. Have you got that note here? A. I have.

Mr. De Yoe: I offer the note in evidence.

Note admitted in evidence and marked exhibit S-1 for the State.

20

Q. After you had given him that two thousand dollars, what further conversation did you have with him? A. In the meantime the Johnson-Cowdin people had sent me a notification of their annual stockholders' meeting and Mr. Benton had asked me to give him this here form of proxy they sent and which I was to make out to Mr. John Cowdin or the other Mr. Cowdin and he said it was not necessary to make out the proxy in favor of them, that they wanted the chance to vote, and if I did not want to go myself to the meeting I should give him the proxy and he would go in my behalf and look after my interest. Believing in him I made out this proxy to him or he made out one form and made it to

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Anna Lee—direct

himself. He went to this meeting, but they didn't call the meeting.

10 Q. Did he report back? A. He phoned from New York for his wife to tell me that they wouldn't hold a meeting, that there was something crooked and probably the firm would try to get in touch with me but if they did, for me to get in touch with him first. When he came back he said I went to the city but the firm did not hold the meeting. They had no right to call that meeting and he said they had got themselves in wrong, and he said there was something that proved to him that they were going to use me for some purpose. He went and the meeting wasn't held. The following day or a day or two later Mr. Cowdin did come to see me at my home, but I happened to be at the store and he saw Mr. Lee.

Q. Never mind what he told Mr. Lee. A. He told him—.

20 Q. Were you present? A. I was not present when Mr. Cowdin called.

Q. You didn't hear anything? A. I did not.

30 Q. When was the next? A. Mr. Benton came around to my home and said that the Johnson-Cowdin people were on the verge of bankruptcy and he was informed by a good friend, and he said that Mr. Griggs, that is, young lawyer Griggs, was on very friendly terms with him, that he knew him very well, and he knew he was interested in my affairs and said as a friend to me he should advise me to sell this stock, and I was satisfied with it because shortly afterwards I had received dividends, a little over two months I had had the stock and I did not quite believe it, but I still believed in Mr. Benton.

Q. Just tell what was said and done? A. He told me I should give him this stock, endorse it and

Anna Lee—direct

give it to him and he had arranged with Mr. Griggs with the firm to buy it back which I did. He came back and said Mr. Griggs wanted me present when that stock was sold, so I went and Mr. Benton schooled me as to what to say if Mr. Griggs should ask any questions. He says if Mr. Griggs asks you if you owned this stock don't answer him until you see me give you the signal. If you see me nod yes say yes, and if I shake my head say no. Mr. Benton had the stock and handed it to Mr. Griggs, and Mr. Griggs asked me if I owned that stock. I looked at Benton and he nodded "yes" and I said yes. He asked me if that was my signature, and Benton interrupted me before I could answer and he said I handed you these stocks, Mr. Griggs, is that necessary. He said, I am asking you if that is your signature. I said, Yes, sir. He said, please step up to the desk and sign again, which I did.

10

Q. Then what happened? A. Then Mr. Griggs handed me a check of the Johnson-Cowdin firm for three thousand dollars. They had bought back the stock. Mr. Benton said, let me see that check, and he looked at it and he said, it is alright, your signature is to it, meaning Mr. Griggs. Mr. Griggs said, I wish my signature was as good as Johnson-Cowdin. Mr. Benton said to me, I will tell you what I want you to do. We will have this cashed right here in this bank, and I was very nervous, and he said, you are nervous, I will take care of that money for you until we get in a safe place. He said, I want you to take two thousand of this and put it on a checking account in the United States Trust Company, and one thousand of this I will get and I will put that in D. L. & W. with what I already have, that will be enough for one investment. Leave the

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Anna. Lee—direct

two thousand in his checking account until I call for it when I see something equally as good we will put the two thousand with that. I told Mr. Benton I had a small checking account in the Citizens' Trust Company and there was no reason for opening another account, so I put this two thousand dollars in there, the other thousand I didn't handle at all after I handed him the three thousand. From time to time he came to my home and had me at his home, and I met him at his home coming from New York, and he said he had been to the market and things were slow. He said he had gone for his own benefit and would have bought for me if the market was right, but the market had to be right to buy. To me it was Greek. And at times at our home we had the same conversation. He called on me at our house and ate at our table, and in the course of conversation he would say the same thing. In May he came to me and said he just received word his father was dying in Washington and as his affairs were such that he could not get at his money, would I make out a check for two hundred and fifty dollars, that he had to go very suddenly and on his return would pay it back. He came back and made no effort to pay the two hundred and fifty, and on this day he came and borrowed this two hundred and fifty dollars to go to Washington that was when he handed me a note which he called only a receipt of the thousand dollars he had taken on March nineteenth to add to the first two thousand dollar investment. That was the first I had seen that, and that was two months later. He made that out for three months, a shorter term, because he didn't think it would take that long for the market to clear.

~~Anna Lee—direct~~

Mr. De Yoe: I offer that note in evidence.

Note admitted in evidence and marked Exhibit S-2 for the State.

Q. When next did you see Mr. Benton? A. He and his wife came to our home about the middle of June. I don't remember the day. They had dinner with us and he told me then he was going to Washington. The doctors here in Paterson weren't doing him any good. He had to go to Washington to be under his own physician, a Doctor Thomas, that he was the only one that could help him, that for me not to worry, that he would be back. When he left here he owned nothing. He rented the house completely furnished from Mr. Hamilton. That was the first thing that caused me to become suspicious. 10

Mr. Klenert: I ask that that be stricken out.

The Court: Strike it out. 20

A. He told me he had seen Mr. Hinchliffe about getting a house for him to be ready when he returned to Paterson. I can't say the date, but that was the middle of June. Sometime later Mr. Benton came to my home and asked me to give him one hundred and twenty-five dollars, that he was going to Washington.

Mr. Klenert: I object to it on the ground that it has no relation whatever to this case. Objection sustained. 30

Q. Did you see Mr. Benton after that? A. No, I did not. I asked him some pointed questions and I never saw him again.

Anna Lee—direct

Q. Do you know whether any conversation took place at that time with reference to the stock? A. Yes, sir.

Q. What was the conversation that took place with reference to the stocks or bonds of the D. L. & W.?

Objected to by Mr. Klenert.
Objection sustained.

10 Q. What other conversation, if any, took place between you and Mr. Benton at that time? A. I don't know. When he asked me for this one hundred and twenty-five dollars—

The Court:

20 Q. We don't want anything in reference to the one hundred and twenty-five dollars. A. I told him it was about time he had given me something to show for the money I had given to him to invest in D. L. & W. bonds, and up to the present time I had not seen it and he said, I had not given him the money to invest, that I had loaned him that money. I told him I had never loaned him any money, that I had given him money to invest in D. L. & W. bonds and he told me I had no right to request what he had done with that money until he failed to meet the interest on these notes. This was the last or next to the last day of June and he was to come that afternoon and that was the last I seen of him.

30 Q. Has he come back to Paterson to live since that time? A. He has not.

Q. Do you know where he has been living? A. As far as I knew, he has been in Maryland and Washington.

Anna Lee—cross

Q. You have been down there and seen them there? A. Yes, sir; I did.

Cross Examination by Mr. Klenert:

Q. How long have you lived in Paterson? A. About fourteen years.

Q. You attended Public School? A. In Paterson?

Q. Anywheres? A. I certainly did; yes, sir.

Q. You can read and write? A. Yes, sir. 10

Q. There is no doubt about that at all, is there? A. Not a bit.

Q. You knew that was a promissory note? A. Not when I accepted it.

Q. Read it? A. That is right. I did not understand anything about notes.

Q. You understood the English language? A. I did.

Q. When it says here, Paterson, January twenty-fourth, nineteen hundred and twenty-one. Six months after date I promise to pay to the order of Anna Lee, two thousand dollars at the U. S. Trust Company and value received, interest at six per cent, signed by Edward T. Benton, you knew what that meant? A. I accepted it as a receipt, to me it meant a receipt. 20

Q. It says six months after date I promise to pay you at the United States Trust Company, that is not a receipt? A. To me it was at the time, I accepted it. 30

Q. You read it? A. Certainly.

Q. You understood what it meant? A. Now I do. To me at the time it was a receipt for two thousand dollars.

Anna Lee—cross

Q. In other words, it was what you were to receive for two thousand dollars? A. For what I was to receive, he received the two thousand. That is why I accepted that.

Q. You can understand what that meant? A. Yes, sir.

Q. When was he to deliver this stock to you?

A. As soon as he found the market right to buy.

Q. There was no certain time? A. No.

10 Q. And that went along for three months until he came to you for more money? A. About that.

Q. Are you sure? A. I am, January twenty-fourth, nineteen hundred and twenty-one.

Q. When was the next time he got money from you? A. March nineteenth, nineteen hundred and twenty-one.

Q. Are you sure as to the date? A. About.

20 Q. When he spoke to you about borrowing another thousand dollars, why didn't you say, why, Mr. Benton, where is the stock you were to buy for the first two thousand? A. I still believed in him.

Q. You had sufficient confidence in him to loan him money? A. I never loaned him anything.

Q. Never? A. If you were a friend of his and respected him as such, or if you were a friend of mine and accepted me as such, when your father were dying I would loan you two hundred and fifty dollars.

30 Q. Two hundred and fifty dollars, that was as a friend, you were a friend of his? A. I accepted him as such if I gave him the money.

Q. When it came to three thousand dollars, that was business? A. I would take it as business if the man promised to invest it.

Q. You knew he was not in the investment business? A. Yes, but as he said I knew nothing of

Anna Lee—cross

business, but he did. He passed himself off as a man of affairs and I took his word for it.

Q. You were employed by Johnson-Cowdin? A. Yes, sir.

Q. What about the Union? A. Why, if you want the story, I had trouble with the union—.

Q. You were working there when the Union was out? A. No, it was not out, just a personal matter.

Q. You and Mr. and Mrs. Benton were quite friendly? A. Yes, sir.

Q. You visited the Bentons and they visited you? A. Certainly, if they were not in my confidence they could not have done what they did. I accepted them as friends.

Q. You were friendly? A. Yes, sir.

Q. You knew the straightened circumstances the Bentons were in at that time? A. I did not.

Q. You knew he was out of work? A. I was out of work too.

Q. You knew he was sick? A. I was sick, too.

Q. You knew he was very ill? A. I knew he was sick.

Q. Very sick? A. I don't know. I only have his word for it.

Q. Did you know his father did die? A. I don't know only that he told me he did.

Q. Did you find out afterwards it was true? A. Yes, sir.

Q. He paid the two hundred and fifty dollars? A. Yes, sir.

Q. He didn't give you a scratch of the pen for that? A. He did what?

Q. Any sort of a receipt or anything? A. He gave me a piece of paper along with the check he sent.

Anna Lee—cross

Q. He sent you a draft from Washington for the two hundred and fifty dollars? A. Yes, sir.

Q. At the time you loaned him the two hundred and fifty dollars, did he give you any receipt? A. No, sir.

Q. Just his word, and he repaid that, and you have nothing to show for that? A. Yes, sir.

Q. He was honest, then? A. He was, when?

10 Q. Wasn't that honest when he paid back the two hundred and fifty dollars?

Objected to by Mr. De Yoe.

Objection sustained.

Q. You communicated with the Bentons when they went from here? A. I did.

20 Q. You knew they were going? A. I knew they were going and expected them back. I didn't know they were going when they did go. I was to see them and they were gone.

Q. You didn't know when they were going? A. I expected them to leave a couple of days later.

Q. It was just a matter of a couple of days. You knew they were leaving Paterson? A. I knew they were leaving Paterson.

Q. They didn't sneak out without your knowing it? A. At the time; yes, sir.

Q. One or two days before? A. Yes, sir.

30 Q. You knew they were leaving Paterson for good, didn't you? A. I did not.

Q. Didn't they make you a present of some flowers before they left? A. They brought a fern over for me to take care of.

Anna Lee—cross

Q. They told you then they were leaving Pater-son? A. They were to come back again. They were going there because he said he was a sick man and had to be near his own doctor, but they were coming back.

Q. Did you at any time ask Mr. Benton or write to the Bentons for the D. L. & W. stock? A. No.

Q. Why not? A. Because I knew at that time I had been swindled.

Q. When did you know that? A. I knew it when he left town, but I didn't know it up to the last interview I had with him. 10

Q. You wrote to them in a friendly way? A. Certainly, I didn't want them to become suspicious. I wanted the man for embezzling me.

Q. Are you telling the truth? A. I am.

Q. So that when you wrote to Mrs. Benton you never at any time mentioned the fact that he owed you some shares of stock, or your money back? A. I did mention that he had invested my money in the last letter I had written after I appeared before the Grand Jury. 20

Q. And you told them the same story you are telling now? A. My story was true.

Q. And you wrote to them about what he had done with your money? A. That I had let him have, yes, sir; that is true.

Q. Why didn't you write before, when you were friendly with them? A. I knew what manner of man I had to deal with, and I wasn't going to rouse his suspicions. 30

Q. You wrote three or four nice friendly letters to him? A. I did not; I don't know as they were so friendly. At no time did I write to Mr. Benton.

Q. You were doing just a little clever work your-

Anna Lee—cross

self? A. Naturally, when I had that type of man to deal with.

Q. You thought he was a very poor type? A. He is.

Q. You know that now? A. Yes, sir.

Q. You didn't know that then? A. No.

Q. When did it change? A. At the last interview I had.

10 Q. When do you mean, after you had been to the Grand Jury? A. No, before he left town.

Q. Did you then say to him, where is my stock? A. I did.

Q. In the presence of whom? A. Just him and I.

Q. Didn't you ever ask Mrs. Benton or say anything to her about your stock? A. It wasn't necessary.

20 Q. When you had three thousand dollars coming to you it wasn't necessary? A. My dealings were with Mr. Benton, not Mrs. Benton.

Q. You didn't speak to her about her husband owing you three thousand dollars worth of stock? A. Whatever had been spoken about at times she was present, but I never addressed her personally. I mean, it was Mr. Benton I had my business with.

Q. You went to see a lawyer about this? A. I did.

Q. When? A. Right after they had left town.

30 Q. When was that? A. I can't tell you. I don't remember, but just after.

Q. When did you see the lawyer? A. They left town in June, and in July, the early part of July, after they left the last of June.

Q. Is that your signature? A. That is.

Anna Lee—cross

Q. Dear Mrs. Benton. Had company over the Fourth, came Friday morning and left today, which kept me so busy I couldn't find time to answer your letter. I hope Mr. Benton is feeling much better. I could see he was quite sick last Tuesday and really didn't expect you to get down to see us before leaving. A. Before leaving.

Q. You knew they were leaving? A. Certainly, but not when they did. He was to call before they left.

Q. When did he call last before leaving? A. This day I spoke of, when he said he was going to Washington and wanted one hundred and twenty-five dollars. **10**

Q. You knew he was very sick and couldn't call? A. I had to believe he was sick.

Q. Couldn't you see the man was very, very sick? A. Got to my house in a way.

Q. What way? A. He was able to leave town that same night. **20**

Q. In what way? A. He got there on a truck or some kind of a delivery wagon. Wagner's wagon is how he got there.

Q. I would like to have seen you, but wanted to get some cleaning done and my spare bed aired before anyone slept in it. It has been terribly hot here. Hen is not working. Finished last Wednesday and is all broke up over it, work was bad, he couldn't make over sixty dollars a week. Then down here "The fern is doing nicely," but that is the fern they left you. They didn't sneak out as you would have the court and jury think? A. They did. **30**

Q. Without your knowing anything about it? A. They did.

Anna Lee—cross

Q. What did you mean when you said "really didn't expect you to get down to see us before leaving."? A. I was expecting them to get down.

Q. You say, "I hope Mr. Benton is feeling much better. I could see he was quite sick last Tuesday etc."? A. That is written to Mrs. Benton.

Q. Why didn't you correspond with Mr. Benton?
A. Why should I?

10 Q. Because he is the man that promised to deliver the three thousand dollars worth of stock?

A. When he had my confidence he was in town here. He was in town and I could speak to him and talk to him.

Q. Do you think that is the way a person would do if a man owes him some stock, that they would speak to him and not write to him? A. I did speak to him about it.

Q. After he left Paterson? A. After he left Paterson I knew he had swindled me.

20 Q. Why didn't you write to him? A. His letters wouldn't be of much use. He wouldn't commit himself after he left town.

Q. You knew all this? A. I supposed it, guessed it.

Q. But you couldn't understand a promissory note? A. Certainly I could, but didn't see why I should be given a note. I had him explain it.

30 Q. Why did you take it? A. Because it was explained to me if anything should happen to him I could get my money, and I accepted it.

Q. Why didn't you say, I don't want any note, Mr. Benton. I want my stock or my money back.
A. If I had known then what I know now, I would have.

Anna Lee—cross

Q. You wouldn't have loaned this money? A. I did not loan it.

Q. Hoping Mr. Benton is well again, I will close, with best wishes from us to both yourselves. Sincerely, Anna Lee. You were on good terms? A. I wrote to his wife.

Q. That was written on July sixth, nineteen hundred and twenty-one, over a month after they left Paterson? A. I have answers from her letters that I have written to her here. 10

Q. There was a friendly feeling between you and Mr. Benton? A. Not Mr. Benton.

Q. Why didn't you write to her or him and ask him for bonds and stocks? Why didn't you put it in this letter of July sixth?

Objected to by Mr. De Yoe.

Objection sustained.

Q. You wrote again? A. I do. 20

Q. You remember when? A. Yes, sir.

Q. When? A. I don't just remember when it was, sometime or other in answer to a letter I received.

Q. You received letters from Mrs. Benton? A. Yes, sir.

Q. Friendly? A. Yes, sir; but of a nature that I couldn't hardly bother the man, as at different times he was too sick and the doctor wouldn't permit him to be worried with business. 30

Q. Did you go down there to see? A. No, I didn't.

Q. Why not? A. I hadn't the money.

Q. You still had a couple of thousand dollars in

Anna Lee—cross

the bank? A. Not to spend in that way. I had to use it to live on.

Q. Wasn't it worth while to go down? A. I didn't believe the man was there.

Q. You received letters from him right along? A. That is not true. I never received a letter from him.

Q. You knew they were living in Washington? A. I did not.

10 Q. Didn't you send letters there? A. Yes, sir.

Q. The letters did not come back? A. No, they didn't come back.

Q. Whatever you wrote you got a reply, didn't you? A. Maybe so. I don't know whether I received a reply each time.

Q. You got a number of letters? A. About three in all.

20 Q. Until what time? A. Up until December thirteenth. The last letter was mailed to me from Washington.

Q. What year? A. Nineteen hundred and twenty-one.

Q. After you had been to the Grand Jury? A. Yes, sir.

Q. And after he had been indicted? A. I don't know. I didn't know he was. I supposed he was.

Q. You never went down there to see him or Mrs. Benton about your stock? A. I didn't go down.

30 Q. You say the reason was you didn't have the money? A. Not for that purpose.

Q. Didn't you think it was worth while?

The Court: Mr. Klenert, we have been all over this testimony and she has answered it several times.

Anna Lee—cross

Q. When did you make up your mind you had been tricked? A. The last day of June, nineteen hundred and twenty-one.

Q. When you wished them anything good and wrote them friendly letters, you didn't mean them at all? A. No, the next Grand Jury didn't sit until the following term and I couldn't get my case before them until September, and so as not to give them a chance to get away I wrote.

Q. That is the reason you wrote these friendly letters, so they couldn't sneak or skip until the grand jury had indicted them? A. Yes.

Q. Why didnt you go down there and have them arrested? A. It was out of my hands. It was in the hands of the Prosecutor.

Q. Did you see the State about it? A. I did.

Q. And they never did anything about it? A. They did.

Q. Two years afterward they did? A. That is up to the State, I can't answer that question.

Q. You did write again? A. Yes, sir.

Q. Is that your signature? A. It is.

Q. Paterson, New Jersey, July ninth, nineteen hundred and twenty-one. Dear Mr. Benton:— A. Pardon me, that is Mrs. Benton.

Q. That is Mr. Benton, isn't it? Look at it. A. Yes, sir.

Q. Just a few lines. Received check O. K., seven P. M. in the evening. That is the money you loaned him? A. The two hundred and fifty.

Q. He never gave you the scratch of a pen for that? A. No, sir.

Q. We are very sorry to hear you are so sick. A. He had written he was.

Q. You are so sick, but we thought you would

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Anna Lee—cross

surely get relief after seeing your own doctor. The weather we are having must be against you too. It is terribly hot again, get no rest even with sleeping on dining room floor. Hope you at least have a cool place where you are staying and be yourself again. Haven't any news to write you. Expect to hear from you soon again. Best wishes to you both from Hen and myself. When you said before that that was not for Mr. Benton you were wrong. It is not for Mrs. Benton, is it? A. Probably not.

10

Q. Is there any doubt about it? A. No, it is Mr. Benton's.

Q. You wrote him "I am sorry to hear you are so sick."? A. I suppose that is in answer to the little scrap of paper about the two hundred and fifty dollar check.

Q. Not a word about owing you any bonds? A. I told you the reason why.

20

Q. Everything you said in here in a kindly way you didn't mean it, you were not sincere? A. Yes, in a human way.

Q. Why didn't you say, what about my stock? A. He was too sick, according to Mrs. Benton's letter; he was too sick to be bothered.

Q. You didn't mean it when you said, I am Sincerely yours? A. Probably not.

Q. You did write again after that? A. I don't remember the time. If the letter is there I have written it.

30

Q. That is your letter? A. Yes, sir.

Q. Your name? A. Yes, sir.

Q. Your signature? A. Yes, sir.

Q. Written by you? A. Yes, sir.

Q. Paterson, New Jersey, August twenty-second.
Dear Mrs. Benton. Received your letter and mine

Anna Lee—cross

was mailed two days before. I haven't heard from Mr. Benton. Hope this terrible hot weather is gone. Cannot think of any reason for him not keeping his word. Mr. Lee and I picked ten quarts of wild blackberries last week. He is not working and we took advantage of it by gathering all the wild fruit we could. Hope to hear from you and Mr. Benton that you are in better health. Not a mention of stocks or bonds there? A. No, but I did mention I am sorry he didn't keep his word.

10

Q. That is when the note had gone to protest, wasn't it? A. Yes, sir.

Q. You had put the note into the bank? A. I had given the note to Mr. Dumont, my attorney and advisor at the time.

Q. It was put into the bank? A. He had done that.

Q. When did you take it there? A. The early part of July, shortly after he left town. He left the last day of June and the early part of July I went to see Mr. Dumont, and he told me then I had been swindled. He said, you come down with me to the bank and see if he had an account there, as he had told me he did.

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Q. To put the note in for collection?

Mr. De Yoe: I object to the question. She has answered it already.

Objection sustained.

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Q. The note was protested? A. If this is a protest; yes, sir.

Q. You knew then that Mr. Benton failed to pay that note in six months? A. Certainly I knew he failed.

Q. If Mr. Benton had paid the note at that time

Anna Lee—cross

you would have been satisfied if he had paid the note?

Objected to by Mr. De Yoe.

Objection sustained.

Q. You went down to collect this money? A. I went to collect this money? No. I went there for advice.

10 Q. If the note had been paid you would have been satisfied?

Objected to by Mr. De Yoe.

Objection sustained.

Q. You wanted your money, that was all you wanted when you went to the lawyer? A. I wanted my money or the investment, either one.

Q. Did you say you wanted the investment? A. I didn't say either one.

20 Q. I mean to the lawyer? A. I told my lawyer the story. I didn't say I wanted either one. He knew I didn't have either one and there was no chance of my getting it from a man of that type.

Q. You say you gave him the thousand dollars, when, at what time? A. March nineteenth, nineteen hundred and twenty-one.

30 Q. Have you any record to show that? A. My record is taken from this time set for the Johnson-Cowdin meeting. The day I gave him that money he had to break the investment of the Johnson-Cowdin, and that was on March nineteenth.

Q. You drew it out of the bank, didn't you, the thousand dollars? A. No, that came out of the check of the Johnson-Cowdin when they bought back the stock.

Anna Lee—cross

Q. What date was that? A. March nineteenth, nineteen hundred and twenty-one.

Mr. Klenert: This shows there was a special meeting to be held in March, nineteen hundred and twenty-one.

Mr. De Yoe: I object to Mr. Klenert using that letter.

The Court: The witness was using it for the purpose of refreshing her memory, that is all, and the letter may not be used.

10

Q. What is the date of the letter you have out?
A. The letter is dated February fourteenth.

Q. Is there anything there about March nineteenth? A. This letter is dated February fourteenth. I told you Mr. Benton had been there to attend the meeting with my proxy.

Q. I am asking you about the letter? A. This date is the twenty-first of March, and that is so.

20

Q. Where does it say the twenty-first of March?
A. Annual meeting of stockholders. That second notification Mr. Benton took.

Q. Is there anything in that letter? A. Not in this letter, no.

Q. What letter have you that says March nineteenth? A. Mr. Benton had that letter and never returned it. But the notification was —.

Q. Just a moment. I didn't ask any question. How many letters did you receive from Mr. and Mrs. Benton? A. I never received any from Mr. Benton, except the "Thanks. Will hear from me later."

30

Q. How many did you receive from Mrs. Benton?
A. I received these.

Anna Lee—cross

Q. You kept them all? A. Yes, sir.

Q. Did you keep any copies of letters you wrote?

A. One.

Q. Which one? A. The last one I wrote.

Q. That was after the indictment was found?

The Court: So she said, yes.

Q. You left the Johnson-Cowdin mill in October, nineteen hundred and twenty? A. Yes, sir.

10 Q. Wasn't this the custom or practice there, when you gave up working in that place to surrender their stock, cash them in? A. I don't know what the custom was.

Q. That was only for employees, that stock? A. So I understood.

Q. That was the reason they took it up, cashed it in? A. I didn't understand that.

Q. Isn't that the reason they called you in, because you were no longer employed there? A. No.

20 Q. Are you sure of that? A. I am sure of that.

Q. Have you any letter to that effect? A. I had a letter stating Benton had been there with my proxy and they didn't call the meeting on account of not notifying all the stockholders.

Q. Yes, they had notified all not employed there to bring in the stock? A. No.

30 Q. Didn't you go to him and say, here you got this stock for me, you cash it in because you didn't know anything about business? A. No, I didn't know anything about business.

Q. Isn't that the reason? A. No.

Q. You went down to Mr. Griggs's office with Mr. Benton? A. Yes, sir: I did this time.

Q. When Mr. Benton nodded you nodded? A. I did.

Anna Lee—redirect

Q. When he said yes you said yes? A. Yes, sir.

Q. Why? A. Because he had my confidence. I believed in him at that time.

Q. Did you speak to your husband about it? A. Certainly I spoke to him about it.

Q. Before you had given the money to Mr. Benton or afterward? A. Before I gave it to Mr. Benton.

Q. Did you speak to your husband about it? A. Yes, sir; he knew Mr. Benton had promised to buy this stock. 10

Q. Did you speak to your husband about giving Mr. Benton the money? A. Yes, sir; I did.

Q. How long after? A. The same day.

Q. Mr. Lee never was present when you handed money over to Mr. Benton? A. No.

Q. Was Mrs. Benton present? A. It was between Mr. Benton and myself.

Q. You had spoken to Mrs. Benton in the house after the loan of the money? A. Yes, sir. 20

Q. Did you at any time in her presence say Mr. Benton owed you some stock? A. I didn't need to say it.

Q. Did you, yes or no? A. No, she knew it.

Q. Did you ever tell her at any time you had given Mr. Benton two thousand dollars at one time and one thousand dollars another time, for which he was to invest in D. L. & W. securities for you? A. She knew it.

Q. Did you say so? A. I didn't think it was necessary. 30

Re-Direct Examination by Mr. De Yoe:

Q. Did Mr. Benton ever say in your presence and in the presence of your husband and his wife he was going to buy stock and bonds for you of the

Anna Lee—recross

D. L. & W. when the market was right? A. He did.

Re-Cross Examination by Mr. Klenert:

Q. When? A. Different interviews when he was at our home, and when he was at his home.

Q. When? A. At his home and at my home.

Q. At Mr. Benton's home? A. Yes, sir.

10 Q. What did he say? A. That he had been to New York City. He said, I came from New York this morning and the market is not right to buy, but don't worry, things will clear. It is alright.

Q. Was your husband present then? A. Yes, sir.

Q. But you don't remember when? A. I don't know.

Q. June? A. Probably in June, maybe April. It has occurred all in those two or three months.

20 Q. Your husband never said, well, we want the stock or the money back? A. My husband left it to me.

Q. He never said that in your husband's presence? A. What, that we want the money back?

Q. Or the stock? A. I expected to get the stock.

Q. Did you ever say it, yes or no? A. Of course I had asked for my stock.

30 Q. Did you in the presence of your husband or Mrs. Benton? A. Certainly not, but we all had conversation on it at these meetings at our homes.

Q. When? A. I don't remember the dates.

Re-Direct Examination by Mr. De Yoe:

Q. Do you remember up to what day you were on the pay roll of the Johnson-Cowdin people? A. Up until the last of the year, just before the begin-

Henry Lee—direct

ning of the new year. That was the latter part of December, nineteen hundred and twenty.

Re-Cross Examination by Mr. Klenert:

Q. The latter part of December, nineteen hundred and twenty? A. Yes, sir; I believe so.

Q. The latter part of December? A. Somewheres around there, the beginning of January or the latter part of December.

10

HENRY LEE, sworn for the State.

Direct Examination by Mr. De Yoe:

Q. You are the husband of the last witness on the stand? A. I am.

Q. Did you know Mr. Benton, the defendant in this case? A. I do.

Q. How long have you known him? A. From November until June, about six months, I guess.

20

Q. Did they ever call at your house? A. They were there very often.

Q. From the month of October, nineteen hundred and twenty, until they left town, about the first of July, nineteen hundred and twenty-one, about how many times were they at your house? A. That would be a hard thing for me to say. I could say he was there a dozen times anyway.

Q. Was his wife with him on any occasion? A. Not on all occasions, but she was often with him.

30

Q. Did you hear any conversation between Mr. Benton and Mrs. Lee on any of these occasions they were at your house? A. On all occasions I was at his house and he was at mine.

Henry Lee—cross

Q. How many occasions were you at his house?

A. I was there three times or five times, I believe.

Q. During that period? A. Yes, sir.

Q. What were these conversations about you heard? A. About Mrs. Lee would ask him about her securities, her bonds. He would say he couldn't buy these like you go to the market and buy your groceries. There is periods when the market is right to buy and that period is not now. The market is, I can't say his exact words, but the market wasn't right to buy.

10

Q. How many times did you hear him say that to Mrs. Lee during the period I have mentioned, October to July? A. I don't believe he left our house without telling her. Not from October, of course, but since he had our money he never left our house, or she never left his house he didn't say he would have these soon now, or he had just been down to New York and he would soon give her these stocks, bonds or securities.

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Cross Examination by Mr. Klenert:

Q. What stocks, bonds or securities? A. I believe they were to be D. L. & W.

Q. How did you come to believe that? A. That is what he said.

Q. Why do you say that, stocks, bonds or securities? A. Because stocks, bonds and securities was generally mentioned.

30

Q. Wasn't anything said about the D. L. & W.? A. D. L. & W. securities was generally used. I don't know whether that means stocks or bonds.

Q. When did you first learn he had received the money? A. Always the day after he had received it. I was never let know before.

Henry Lee—cross

Q. When was the first time? A. I can't tell you exactly.

Q. Why not? A. In the first place, there has been a slight mistake. I never worked down there where they said.

Q. Who made that mistake? A. I don't know. I think it was said—you are leaving me with the impression that I was down at Johnson-Cowdin's. I wasn't.

Q. What are you trying to tell us? I haven't mentioned Johnson-Cowdin at all. A. I understood you mentioned Johnson-Cowdin. 10

Q. I am trying to find out from you the first time you remember being told by your wife that he had this two thousand? A. I can tell you in January, but I can't tell you the date.

Q. The early part or the latter part? A. I imagine about the middle. I can't tell you the date of anything.

Q. Did you ever say anything to Mr. Benton about these securities? A. Yes, sir; I have asked him. 20

Q. When? A. When he was at my house and I asked him at his house.

Q. This was when? A. This was different times during these months.

Q. You never asked him to return the money, didn't you? A. No, I didn't.

Q. Why didn't you say, if you can't invest that give us back our money? A. I didn't trust my judgment against a man of affairs like Mr. Benton. 30

Q. Did you know your wife had a promissory note? A. I knew she had a paper.

Q. Didn't you ever see the note? A. Certainly.

Henry Lee—cross

Q. When? A. The day after he gave her the first one, the next one I didn't see until two months.

Q. You read English? A. Yes, sir.

Q. You were taught here in the public schools of Paterson? A. Yes, sir.

Q. Did you ever see a promissory note before? A. No.

Q. How old are you? A. Forty-nine.

10 Q. You never had occasion to see a promissory note? A. No.

Q. You understand the English language? A. I do, but I never had any occasion to have any doings at all like that.

Q. You know what this means, "Six months after date I promise to pay to the order of Anna Lee, two thousand dollars at the United States Trust Co."? A. You have just read it to me? I can't see it as a note.

20 Q. You read this the day after she received it? A. That is a receipt.

Q. Where does it say anything about a receipt? A. It doesn't say.

Q. You don't want us to believe you were so ignorant you did not know this was a promissory note?

A. I can't see where a note could come into it where Mrs. Lee—.

Q. Never mind about that. When was the next time you heard your wife had given money to Mr. Benton? A. That I believe was in March.

30 Q. In March, your wife told you in March she had loaned him another thousand dollars? A. I believe to invest. To the best of my knowledge it was in March.

Q. That was also for an investment? A. Yes, sir.

Henry Lee—cross

Q. Didn't it occur to you peculiar he would get another thousand dollars when he hadn't delivered the stock for the first two thousand? A. It did.

Q. Did you say anything to him? A. To her, not to him.

Q. You were her husband? Didn't you want to protect your wife? Why didn't you go down to Benton and say, where is my stock? A. I told you I didn't trust my judgment against a man of affairs like Benton.

Q. Did you think it was alright? A. A man at the head of, the manager of the concern like the Johnson-Cowdin firm, I couldn't trust my judgment against him.

10

Q. He wasn't in the Johnson-Cowdin place at that time? A. He had held that position.

Q. At that time he wasn't there? A. At that time he was out, whether connected with the firm or not, I don't know. That was his business.

Q. He was sick? A. He might have been sick but he didn't show it to me. He didn't look any sicker then.

20

Q. You knew he was sick? A. I told you I didn't think so.

Q. Did you ever give anybody a promissory note? A. No, I never did. I never had any dealings with notes, bonds, stocks or anything.

Q. Has anybody ever given you a promissory note? A. No, I told you twice.

Q. Your brother? A. No.

30

Q. Your brother gave you one? A. I have no promissory note.

Q. Did your brother ever give you a promissory note? A. He never gave me any note of any kind.

John L. Griggs—direct

Q. Did you ever write to Mr. Benton? A. I never corresponded with him in any way.

Q. Why not? A. Why should I write to him?

Q. Didn't your wife loan this money to Mr. Benton and tell you nothing? A. She did nothing of the kind. She loaned no money to Benton.

Q. She never did? A. Well, she loaned the two hundred and fifty dollars to bury his father.

Q. He paid it back? A. Could a man do less?

10 Q. Did he pay it back? A. He did sure, could a man do less?

JOHN L. GRIGGS, sworn for the State.

Direct Examination by Mr. De Yoe:

Q. What is your business? A. I am a lawyer.

Q. You are connected with the Paterson National Bank, are you? A. Yes, sir.

20 Q. Holding what position? A. Vice-President.

Q. Did you ever see this man Benton before?

A. Yes, sir.

Q. Did you ever tell Mrs. Benton that the Johnson-Cowdin Company was in financial straits in any way and might go into bankruptcy? A. No, sir.

Mr. Klenert: I would like to have these letters written by Mrs. Lee marked for identification.

30

Letters written by Mrs. Lee marked Exhibit D-1, D-2, and D-3 for identification respectively.

John L. Griggs—direct

State Rests.

Mr. Klenert: I move for a direction of verdict on the grounds that there is no evidence here that makes out the crime of embezzlement. The evidence appears in the case for the sake of argument that this money was handed over to the defendant in the case and she accepted promissory notes for it. There is no evidence whatever when he was to buy certain stock, except her own uncorroborated testimony. It seems to me as the case stands that if any crime, I don't admit there was any crime, but if there was any crime, it would be receipt of money under false pretenses and not embezzlement. I want it understood I am not admitting anything, but for the sake of argument I make these statements. He was not an agent, servant, or employee of Mrs. Lee, as I said before, if there was any crime that could be charged against this defendant, assuming that what she says is true, it would be a charge of receiving money under false pretenses.

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The Court: If she instructed him or he said he would take her money to buy stock for her and didn't buy it, and if he appropriated that money to himself, wouldn't that be embezzlement?

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Mr. Klenert: But that is not the case here.

The Court: Your motion is denied.

Defendant excepts. Exception allowed and signed and sealed accordingly.

Joseph A. Delaney,
Judge.

Edward T. Benton—direct

(Mr. Klenert opens for the defendant.)

EDWARD T. BENTON, JR. sworn for the defendant.

Direct Examination by Mr. Klenert:

- 10 Q. Where were you living in January nineteen hundred and twenty-one? A. Eighty-four Seventeenth Avenue.
- Q. Where were you employed at that time? A. I had no employment.
- Q. Where had you been employed just prior to that? A. As manager of the Johnson-Cowdin Co., Inc.
- Q. How long had you been employed by them? A. One year.
- Q. Did you know Mrs. Anna Lee? A. Yes, sir.
- 20 Q. Was she employed in Johnson-Cowdin? A. Not at that time.
- Q. At any time? A. Yes, sir.
- Q. Were you and the Lees friendly and on intimate terms? A. Yes, sir.
- Q. Mrs. Lee says in the month of January she gave you two thousand dollars for you to invest in stocks or bonds of the D. L. & W. Railroad Company. Is that true? A. No, sir.
- 30 Q. Is it true that you told her the Johnson-Cowdin Company were about to go into bankruptcy and she had better cash in the stock in that company? A. No, sir.
- Q. She did hold some stock there? A. Yes, sir.
- Q. You did go to Mr. Griggs's office to collect it for her? A. Yes, sir.

Edward T. Benton—direct

Q. Did you ever tell her when you nodded to her she was to bow, and when you shook your head she was to say no in Mr. Griggs's office? A. No, sir.

Q. Did you ever tell her to say yes when you said yes and to say no when you said no? A. No, sir.

Q. When was it that stock was cashed in? A. March nineteenth or twentieth.

Q. What? A. March nineteenth.

Q. When was it she first loaned you this two thousand dollars? A. January twenty-fourth. **10**

Q. She had loaned you two thousand dollars before the Johnson-Cowdin stock was cashed in? A. Yes, sir.

Q. What was said when she loaned you the two thousand dollars? A. She said she would gladly loan it to me after getting six per cent interest instead of the four.

Q. Where was that money? A. In the Savings Institution. **20**

Q. Upon what sort of an arrangement or agreement did you get the two thousand dollars? A. On my note for six months at six per cent interest.

Q. Was anything said at that time about stocks or bonds that you were to buy for her account? A. Absolutely no.

Q. When was the next time she loaned you any money? A. In the month of March.

Q. How much was that? A. One thousand dollars. **30**

Q. Where did she get that from? A. That was part of the three thousand dollars paid for the Johnson-Cowdin stock at the paying teller's window at Mr. Griggs's bank. It was handed to Mrs. Lee.

Q. What was the arrangement about that one-

Edward T. Benton—direct

thousand dollars? A. That was to be paid as evidenced by a note at six per cent.

Q. I show you the two thousand dollar note; is that your signature? A. Yes, sir.

Q. Was that note handed to Mrs. Lee at the time she handed you the two thousand dollars? A. Yes, sir.

Q. Does that state the full agreement made at that time?

10

Mr. De Yoe: I object to it. The note speaks for itself.

A. This is the full agreement.

Q. On May twenty-fifth there is a note for a thousand dollars? What was that given for? A. For the thousand dollars I borrowed from Mrs. Lee the day the Johnson-Cowdin stock was transferred to the firm and the check given to her by Mr. Griggs. He gave her three thousand dollars and this is a part of the three thousand dollars.

20

Q. Was that in May? A. In March.

Q. You see the note is dated May twenty-fifth? A. No, sir; I put the date March twenty-fifth. I probably put it down May, that is the only reason.

Q. Are you sure this was given the same day? A. I gave it the same day.

30

Q. Was anything said about the investment of this thousand dollars in stock and bonds of the D. L. & W. Railroad Company or any other company at that time? A. Absolutely not.

Q. What was the condition of your health about May or June? A. Very precarious.

Q. How long were you ill? A. I am not well yet.

Edward T. Benton—direct

Q. How long were you home? A. Seriously ill for over a year.

Q. Did you have a death in your family in the month of June or July nineteen hundred and twenty-one? A. My father.

Q. When? A. June the seventh, nineteen hundred and twenty-one.

Q. Had the loaning of this money anything to do with that? A. Yes, sir.

Q. Had you been in correspondence with the Lee family here after you left Paterson? A. One letter I was able to write. 10

Q. Who carried on the correspondence with them? A. My wife.

Q. You received letters from Mrs. Lee? A. I received one.

Q. Did you ever at any time receive any letter demanding from you stocks or bonds for the money she had given you on these two different occasions? A. No, sir. 20

Q. Did she or anybody for her ever come to you demanding or asking for the shares of stock? A. No, sir.

Q. Where did you reside after you left Paterson? A. I went one week with my brother at Tacoma Park, Maryland, until I secured an apartment at Thirteen twenty-four Euclid Street. On the thirteenth day of July, nineteen hundred and twenty-one, and I remained in that apartment until the fifth day of January nineteen hundred and twenty-two. 30

Q. What was the state of your health during all that time up to this last year? A. Very bad.

Q. Could you write? A. No, sir, I was too nervous, I couldn't write.

Edward T. Benton—direct

Q. Were you under the doctor's care? A. Yes, sir.

Q. Under what circumstances did you leave Paterson? Did you skip at night as the prosecutor said, or leave in open day-light? A. In an orderly manner. I left the house at a quarter after eight and took a train on the Erie a little after nine.

Q. What day did you leave? A. The twenty-ninth of June.

10 Q. Had you spoken to the Lees about going? A. Oh, yes.

Q. Did the Lees know it? A. Very well.

Q. How did they know it? A. I called at the Lees on Tuesday, our leaving was on Thursday. I called at the Lees Tuesday.

Q. Did you tell them you were leaving? A. I went over on a delivery wagon right from my house so I could get there without walking and I saw Mrs. Lee.

20 Q. Couldn't you walk at that time? A. Not very well.

Q. Did you leave you new address with the Lees? A. Yes, sir; and at the post office.

Q. Did you receive communications from them at various times? A. I received one.

Q. And your wife? A. Numerous ones.

Q. While in the company of Mr. and Mrs. Lee, did they one or the other or either ask you or demand from you any shares of stock? A. No, sir.

30 Q. Or the money they had given you to invest for her? A. No, sir.

Q. Was there ever any mention made by you that the market was bad and that it was impossible for you to purchase stock at fair rates at that time? A. No, sir.

Edward T. Benton—cross

Q. Was anything ever said about the stocks for the money they had given you? A. There could not be.

Q. Was there? A. There was not.

Q. Was there any conversation at all about this money in the presence of your wife? A. Yes, sir.

Q. How frequently? A. I could not say how frequently, more than once.

Q. When was the first time that you ever knew Mrs. Lee had accused you of embezzling her money and had given it to you to invest for her? A. When I was approached by Mr. Shaw at Silver Springs, Maryland, when I was approached by Mr. Shaw. 10

Q. That was the first time you knew you had been indicted? A. Absolutely so.

Q. Was there any difficulty for anybody to ascertain your residence? A. None whatever.

Q. Did you leave any forwarding address? A. At the Post Office Department here. 20

Q. When you left Washington what then? A. The same method was followed.

Q. You received the letters from Mrs. Lee, a number of them? A. Yes, sir.

Q. Up to what time? A. I think the last letter was November fourteenth, something like that. It was shortly after November.

Cross Examination by Mr. De Yoe:

Q. You left your address with whom? A. The Post Office Department. 30

Q. Where were you living at the time you were brought back from Maryland? A. Silver Springs.

Q. How long had you been living there? A. Seventeen months.

Edward T. Benton—cross

Q. Did you notify your landlord that you were leaving town? A. Yes, sir; you mean here.

Q. Paterson? A. Yes, sir.

Q. You were very friendly with the Lees? A. Yes, sir.

Q. How did you come to discover she had two thousand dollars in the bank? A. I didn't make any such discovery.

10 Q. How did you find out she had money in the bank? A. Mrs. Lee disclosed that herself.

Q. When? A. To me?

Q. When? A. When she gave me her check for two thousand dollars when I gave her my note.

Q. Was that the first time you had met Mrs. Lee? A. No, sir.

Q. Didn't you know she had two thousand dollars in the bank? A. I did not know she had it.

Q. Did she tell you? A. She said she had had it.

20 Q. When was the first she told you she had it? A. In the month of September.

Q. What year? A. Nineteen hundred and twenty.

Q. She came to you on that occasion for what? A. To subscribe to a part of an allotment of one hundred thousand dollars which had been sent to the mill for subscription among the employees.

Q. In order to do that they had to get the stock through you? A. No, sir.

30 Q. Mrs. Lee made an application to you? A. They were made direct to the firm.

Q. Did you make the application for her to the firm? A. No, sir.

Q. Didn't she come to you and tell you she had

Edward T. Benton—cross

five thousand dollars and wanted you to get five thousand dollars' worth for her? A. She made no such declaration. She asked if she could have thirty shares.

Q. Didn't she ask if she could have fifty shares?

A. She did not.

Q. What did you tell her? A. I told her I would take it up with Mr. Leonard Cowdin, who was the one through whom the stock could be subscribed for.

10

Q. Did you take it up with him? A. I did.

Q. Did you report back to her? A. I did.

Q. What did you tell her? A. She said she would take the thirty shares.

Q. Did you get the shares for her? A. I did not.

Q. Did you go with her? A. They were delivered to her by Mr. Cowdin at the mill.

Q. In your presence? A. In my presence.

Q. And she delivered them a check for three thousand dollars? A. Not to me, she delivered it to Mr. Cowdin.

20

Q. Didn't she ask you about the investment of that stock, whether it was good stock? A. I think she asked me if it was a safe investment.

Q. Didn't you talk about other investments at that time? A. Oh, no.

Q. She only asked you about that one? A. Yes, sir.

Q. Do you know what time the stock was delivered to her? A. I think shortly after her subscription was recorded.

30

Q. Do you remember her granting a power of attorney for the stockholders' meeting? A. Do I remember her getting it?

Edward T. Benton—cross

Q. Yes. A. No, sir.

Q. Did she say anything to you about it? A. She said that Mr. Cowdin had been to her and wanted her to sign a proxy.

Q. What did you tell her then? A. I didn't give her any advice except this: Mrs. Lee, I think you should be present and represent your stock holding.

10 Q. What else happened about that stock? Come on, tell us. A. I will answer any question, sir.

Q. Didn't you ask her to make out the proxy in your favor? A. I made no such request. It was her suggestion.

Q. What did you say? A. As long as I was not manager of Johnson-Cowdin I would act as her proxy.

Q. The proxy was made out to you? A. Yes, sir.

Q. And you attended the meeting? A. I did.

20 Q. And reported back to her? A. I did, that there was no meeting held.

Q. Didn't you give her instructions as to what she should do if they came to see her? A. Instructions, I might have suggested if they had another meeting she should attend.

Q. Didn't you tell her to communicate with you? A. No, sir. She saw me very nearly every day.

Q. You were calling at their house and they were calling at your house? A. Yes, sir.

30 Q. Did you ever talk to her about stocks and bonds? A. At no time.

Q. Did you ever before that time or at that time invest any money in stocks and bonds? A. I did not.

Edward T. Benton—cross

Q. Did you or your wife ever own any D. L. & W. stocks or bonds? A. No, sir.

Q. You went to New York frequently during that period? A. From the twenty-fifth of January to the last of June, well, not frequently.

Q. Didn't you when you came back from New York, go to her house on several occasions? A. I don't know about just after coming from New York. I had been to her house on various occasions.

Q. Do you ever remember going to New York and coming from New York the same afternoon and going to her house? A. That is possible. 10

Q. Did she ask you about the investments and securities? A. Not at any time.

Q. You say you borrowed the two thousand dollars? A. Yes, sir.

Q. What did you tell her? A. Told her of my domestic need and of illness and necessities of my father.

Q. What, when you borrowed the two thousand dollars? A. I had been taking care of him for five years. 20

Q. Did you tell them you didn't have anything or wasn't worth anything? A. I don't think I made any representations.

Q. Didn't you tell her you were not worth anything and didn't have anything? A. I did not tell her that.

Q. Did you tell her you wanted it on account of your father's sickness? A. No, sir; not entirely. 30

Q. What else? A. I said my needs in the next six months would be such that I would probably need two or three thousand dollars.

Q. Did you tell her what the needs were? A.

Edward T. Benton—cross

I just told you one of the needs was the illness of my father.

Q. What was the other need? A. He had been paralyzed for five years.

Q. What was the other need? A. My domestic needs, household expenses and trying to locate myself in a new position.

Q. That is all that was said at the time she loaned you the two thousand dollars? A. Absolutely.

10 Q. Didn't you say to her at the time you arranged this two thousand dollar loan, at the time you borrowed this two thousand dollars she had, didn't she mention stock and that was going to be an investment and that you knew of a good investment and could get this for her? A. I did not.

Q. At the time you borrowed this money your wife had money in the bank? A. She might have had some, sir.

20 Q. Were you not living at that time on the money your wife had deposited in the bank? A. I was just after leaving Johnson-Cowdin and had some money due me from them through Mr. Griggs. Mr. Griggs drew the agreement of separation.

Q. That was money deposited in your wife's account in the bank? A. That was the first money.

Q. That was the first money you used? A. No.

Q. You had not used it all up at the time you borrowed this money? A. Very near.

30 Q. You didn't have any bank account? A. Yes, sir.

Q. Where? A. In Mr. Griggs's bank.

Q. Do you remember how much money you had there? A. I had just paid out five hundred dollars I think the morning of the twenty-fourth.

Edward T. Benton—cross

Q. What did that leave you? A. I think about seventy-five dollars, something like that.

Q. The next time you borrowed, you say in March, a thousand dollars of her? A. Yes, sir.

Q. Did you tell her what that was for? A. It wasn't necessary to tell her. She proffered that to me. She knew my necessities.

Q. How does it come you went with her to Mr. Griggs's office to get this stock cashed? A. She had asked me to help her sell it and said that the Cowdins had refused to take it from her. I told her I would. And I did. I had a talk with Mr. Griggs and he probably with Mr. Cowdin, and they agreed to take Mrs. Lee's stock, and said for Mrs. Lee to come to Mr. Griggs's office.

10

Q. You had her sign that stock so you could go down and get the check? A. I did not attempt that. I might have gone with her to Mr. Griggs's but I did not take a signed certificate of stock to Mr. Griggs.

20

Q. Wasn't the stock signed at the time you went into Mr. Griggs's office the day Mrs. Lee went down with you? A. Yes, sir; she might have signed it prior to leaving the house, but never was that down to Mr. Griggs's office prior to that time.

Q. Were you not down the day before? A. No, sir.

Q. Didn't you tell her to sign that certificate before she went? A. I think I might have suggested it.

30

Q. When she got down didn't she sign it again? Didn't Mr. Griggs have her sign it again? A. I don't recall, but could have been produced here to show.

Edward T. Benton—cross

Q. Did you have a talk with her about what she should do with reference to it? A. Just to qualify as the transferer and stock owner.

Q. That is what you told her? A. Yes, sir; that is all.

Q. Then Mr. Griggs gave her that check for the stock? A. I think he passed the check in at the teller's window.

Q. Didn't he give her the check? A. He didn't hand it to me, he gave her the check.

10 Q. Didn't this transaction take place upstairs in his office? A. Downstairs in the bank.

Q. In his office? A. Yes, sir.

Q. After she got the check, after it was handed to her, didn't you ask her to see the check? A. No, sir.

Q. You never did? A. No, sir.

20 Q. Did you go with her to the cashier's office or into the bank to get the check cashed? A. Mr. Griggs was about six feet from the window and he stepped from his office to the teller's window and she received her money.

Q. Why didn't you tell her to take the check and deposit it? A. I had nothing to do with the check when it left my hands.

30 Q. When did you speak to her and tell her you wanted a thousand dollars? A. When she was on her way to deposit it in her account she says to me she knew I had wanted three thousand dollars and here is a thousand you can have. She says, you can give me your note for it.

Q. And you gave her the note? A. Yes, sir.

Q. Right then and there? A. The reason I didn't give it to her right there —

Q. Where did you go to write the note? A. I think when I went home.

Edward T. Benton—cross

Q. Where? A. Eighty-four Seventeenth Avenue.

Q. You knew she had every confidence in you?

A. Yes, sir.

Q. Why didn't you tell her when she was going to loan the money to you that she should go to see her lawyer to see if it was all right? A. She had advanced no such theory to me and I had no dishonest intentions when I borrowed the money, nor have I now.

Q. On that same day, on the nineteenth day of March, nineteen hundred and twenty-one, you went with her to your house and made out a note? A. No, sir; I didn't say that.

Q. Where did you write it? A. I went to my home and made up this note and then went to her house and gave it to her.

Q. That was on the same day you got the money on the nineteenth day of March? A. Yes, sir.

Q. Tell me then how it comes you dated this note May twenty-first, nineteen hundred and twenty-one?

A. There can only have been one reason I did that. I put in there May instead of March.

Q. I think you said it was the nineteenth day of March. Why did you date it the twenty-fifth day of March? A. I said this money was cashed on the nineteenth day of March, it was gotten on that day.

Q. Then you told us you went directly home and wrote up the note and brought it over to her. If it was the nineteenth day of March, why did you date it the twenty-fifth? A. I cannot tell you.

Q. Did you have any business dealings with her on the twenty-fifth day of May, nineteen hundred and twenty-one? A. I may have.

Q. Can you recall any? A. No, sir.

Q. Will you look at that check and tell me if that is your signature on the back? A. Yes, sir.

Edward T. Benton—cross

Q. Now do you recall? A. The twenty-fifth day of May? Yes, sir.

Q. You did have a transaction? A. I got two hundred and fifty dollars from her.

Q. That is the check which gave you the two hundred and fifty dollars? A. Yes, sir.

Q. You borrowed that? A. Yes, sir.

Q. What did you tell her then? A. That I would pay her back not later than the tenth day of July.

10 Q. That was on the twenty-fifth day of May? A. I am answering what that was on.

Q. I am asking you was that on the twenty-fifth day of May that you got that check from her? A. Yes, sir.

Q. Then you did have a transaction with her on the twenty-fifth day of May? A. Yes, sir.

20 Q. Tell me after you have looked at that check whether it is not a fact on the twenty-fifth day of May, when you got that money from her, you drew that note? A. No, sir.

Q. Isn't that so? A. I think not.

Q. You think not? A. I am sure of it.

Q. You did send her back the two hundred and fifty dollars you borrowed from her? A. Yes, sir.

Q. Do you remember the date when you sent it back to her? A. The seventh of July or eighth.

30 Q. This letter of July ninth, nineteen hundred and twenty-one, marked Exhibit D-2 for identification, addressed to you "Dear Mr. Benton" is an acknowledgment of having received that money back? A. Yes, sir; the money was sent by a New

Edward T. Benton—cross

York draft from the Commercial National Bank, Washington, D. C., on the seventh or eighth of July, nineteen hundred and twenty-one.

Q. This is the only letter you have received from her since you left Paterson? A. The only one.

Q. You wanted to borrow one hundred and twenty-five dollars more? A. No, sir.

Q. Didn't you ask for one hundred and twenty-five dollars more and wasn't that the time she told you she wanted to know where the stock was? A. 10
No, sir; I never made any such application to Mrs. Lee.

Q. Didn't you make an application to her for one hundred and twenty-five dollars before you left for Washington? A. I did not.

Q. Didn't you promise at that time you were coming back and you never came back? A. I expected to come back to Paterson.

Q. I mean, before you left for Washington you asked her for one hundred and twenty-five dollars and didn't she tell you to come in the presence of her husband and talk it over? A. She made no such request, but I made no such request myself. 20

Q. Didn't she tell you on that occasion she wanted the stocks and bonds, and didn't you then tell her you borrowed on a promissory note? A. Never at any time had she discussed stocks with me or I with her.

Q. You had no account with the United States Trust Company? A. No, sir. 30

Q. You never had one? A. No, sir.

Q. How is it you made these notes payable at the United States Trust Company? A. I was sick at the time and my wife had an account at the

Edward T. Benton—cross

United States Trust Company, and was attending to the business for me.

Q. Did you have any account at all up to that time? A. Yes, sir; I did have in Mr. Griggs's bank.

Q. At the time the next note was given, which you say was March nineteenth, did you have any account in the United States Trust Company? A. No, sir.

10 Q. Did you have any account then in any bank in the city of Paterson? A. No, sir.

Q. Where did you deposit the two thousand dollars you got? A. I did not deposit it.

Q. Where did you deposit the one thousand dollars? A. I did not deposit it.

Q. Was it deposited in any place at your request? A. No, sir.

Q. Was it deposited in your wife's account? A. Not at my request, but part of it was.

20 Q. Part of the two thousand dollars was in your wife's account and part of the one thousand was in your wife's account? A. Yes, sir.

Q. You were foreman of the Johnson-Cowdin mill for how long? A. One year.

Q. Where did you work before that? A. With the Sherman Service, Inc., New York City, for a little more than a year.

Q. Where were you before that? A. The Department of Justice, Investigation Bureau.

30 Q. The United States Department of Justice? A. Yes, sir.

Q. In what capacity? A. As an investigator.

Q. How long were you an investigator? A. I entered during the war and left by resignation just eleven days before the armistice.

Edward T. Benton—cross

Q. Before that where were you employed? A. I was a real estate operator.

Q. For yourself? A. No, I sold property for others.

Q. What people were you connected with in the real estate business? A. Anyone who had property for sale that paid a commission.

Q. You had no office yourself? A. No, sir.

Q. Where were you engaged in business before that? A. In Mexico. 10

Q. How long were you in the real estate business? A. Three or four years prior to that.

Q. And before that you were where? A. In the State of Shihuawa and San Luis.

Q. What was your business down there? A. Mining.

Q. How long were you in that business? A. About seven years.

Q. All the time in Mexico? A. No, sir.

Q. You were in business all that time in Mexico? 20
A. No, sir, that is, I didn't remain in Mexico, I was back frequently.

Q. Yes, but you were connected up down there?
A. Yes, sir.

Q. Who were you connected with? A. Myself and associate in developing. We had a little mine.

Q. What kind of a mine? A. Lead and silver.

Q. And you were one of the promoters? A. There were three of us. It was not promoted. 30

Q. You were working at it for seven years, the three of you? A. I was in that business for seven years. I did not work on it. I was called to Mexico to work it at various times during the seven years.

Q. When not working the mine what were you

Edward T. Benton—cross

doing? A. More than likely tending this end of it with my partner.

Q. What was this end of it? A. Financing.

Q. Who were the partners you were financing with? A. Edward Gardner and Charles Friend.

Q. Who were they? A. They put their cash into it.

Q. How were you attending to financing? A. I said I was there attending to the finances. They were financing it.

10 Q. You were just in their employ? A. I was an equal owner.

Q. What was your part in financing it? A. To see that we had sufficient money to develop it.

Q. You were to see that the cash was furnished? A. They were to see to that. I was to tell them when we needed more money.

Q. You never attempted to get other people interested? A. No, sir.

20 Q. And that is all you did, when you came up here to the North from Mexico? A. Yes, sir; that is all.

Q. What was the salary you got at the Johnson-Cowdin at this time? A. Seventy-five hundred dollars a year.

30 Q. And besides that you had a settlement, didn't you, from Mr. Griggs? A. No, sir; that was a sixty-day notice which I provided for by verbal agreement with Mr. Cowdin. There was a verbal agreement. There never was a written agreement between the firm of Johnson-Cowdin and myself. It was provided that when I withdrew from their services I was to have sixty days pay or notice. They elected to give me the sixty days pay the

Edward T. Benton—cross

Saturday I resigned, which was December fourth, nineteen hundred and twenty.

Mr. Klenert: I offer exhibit D-2 for identification in evidence.

Exhibit D-2 for identification admitted in evidence and marked Exhibit D-2 for the defendant.

Re-Direct Examination by Mr. Klenert:

10

Q. On either one of these occasions, when you received money from Mrs. Lee, was it your intention to embezzle money from her?

Objected to by Mr. De Yoe.

Objection sustained.

Q. Have you ever been convicted of a crime? A. No, sir.

Q. When is the first time you have ever heard you had been indicted for any crime in Passaic County?

20

Objected to by Mr. De Yoe.

The Court: We have covered that, Mr. Klenert. He said when Mr. Shaw went out to this place to get him.

Q. What date was that, I am not sure we asked that? A. April of this year.

30

Q. April, nineteen hundred and twenty-four?
A. Yes, sir.

Nina Benton—direct.

NINA BENTON, sworn for the defendant.

Direct Examination by Mr. Klenert:

Q. You are the wife of the witness who was just on the stand? A. Yes, sir.

Q. You lived in Paterson in nineteen hundred and twenty? A. Yes, sir.

Q. Did you know Mrs. Lee? A. Very well.

Q. Were you on intimate terms with them? A. Very friendly.

Q. You visited? A. Yes, back and forth.

Q. Do you recall in the month of January that your husband received two thousand dollars from her? A. Yes, sir.

Q. Did Mrs. Lee speak to you about it? A. No, it was not with me. My husband told me he had received the money from Mrs. Lee.

Q. Did Mrs. Lee ever say anything about it? A. No, she did not discuss money with me.

Q. Did she at any time at your house or at her house in your presence say to Mr. Benton, the defendant in this case, that she had loaned him the two thousand dollars for the purpose of investing it in D. L. & W. stocks and bonds or any other kind of stocks or securities? A. I never heard stocks mentioned.

Q. Were any other securities mentioned by her? A. It was simply borrowed money, a loan.

Q. Was anything said as to what your husband had given her for that loan? A. I knew he gave her a note.

Q. Did you learn that from her or him? A. He told me.

Nina Benton—direct

Q. Did you know anything about the loan of a thousand dollars in March? A. Yes, sir, I heard of it later.

Q. From whom? A. Mr. Benton.

Q. Did she ever say anything about it? A. No, sir.

Q. How often did she come to your house, about? A. I cannot say exactly, quite often in the evening, sometimes in the morning and she would stay all day, bring her crocheting and we would sit on the porch and she would stay all day.

10

Q. How long did that go on? A. Up to about a few days before we left Paterson.

Q. When did you leave? A. June twenty-ninth, nineteen hundred and twenty-one.

Q. Up to that time had she ever said to you or your husband in your presence that she was waiting for some stocks or bonds for the money she had loaned him? A. No, sir.

Q. Are these some of the letters received from her, you know her handwriting? A. Yes, sir.

20

Q. Did you answer these when you received them? A. Yes, sir.

Q. Up to what time did you communicate with her? A. The last letter I received from her was in November, nineteen hundred and twenty-one. I replied to that but didn't hear from her. Later on in December I wrote her another letter because we had changed doctors and there was a slight improvement—

30

Q. Well, don't go into that. Did you inform Mrs. Lee you were leaving Paterson at the time? A. Yes, sir.

Q. How long before you left Paterson? A. I cannot say exactly but she knew it at least a week

Nina Benton—direct

before because I asked her if she would take care of a fern for me.

Q. What time of the day did you leave Pater-son ? A. We left town at a quarter past eight in the morning.

Q. What was Mr. Benton's physical condition at that time and prior to that time? A. He had been ill and shortly before we left had been hard-ly able to walk.

10 Q. What was the trouble with him? A. The doctors didn't seem to know here.

Q. Where did you go from here? A. To Wash-ington.

Q. Did you leave your address with Mrs. Lee? A. Yes, sir.

Q. From there how long did you stay in Wash-ington? A. Until July of nineteen hundred and twenty-two and then we moved to Maryland.

Q. To what place? A. Silver Springs.

20 Q. How far is that from Washington? A. About a mile from the district line, from the heart of Washington, ten miles.

Q. Mr. Benton's family lived there quite a length of time, didn't they? A. All their life. They were very well known.

Q. So that any letter addressed to Washington would reach you? A. Yes, sir.

30 Q. Did Mrs. Lee ever at any time either orally or in writing say to you that your husband had gotten money from her on two different occasions for the purpose of investing it in stocks or secur-ities? A. She never mentioned any stocks or se-curities to me.

Q. In writing? A. I never received any writ-ing about stocks.

Nina Benton—cross

Q. Or in words? A. No.

Q. What was Mr. Benton's physical condition we will say up to May of this year or earlier? A. He has not been able to do anything, any work. I have been making the living.

Q. Tell us about his physical condition, what was it?

Objected to by Mr. De Yoe as immaterial.
Objection sustained.

10

Q. Could he write? A. I have always done his writing.

Cross Examination by Mr. De Yoe:

Q. Your husband had what is called nervousness? A. That is what the doctor termed it.

Q. You sent over your fern to Mrs. Lee to take care of for you? A. Yes, sir.

Q. Why? A. I expected to return when I sent it to her.

20

Q. It was never given to her? A. No.

Q. You know about your husband borrowing this money from Mrs. Lee? A. Yes, sir, she had discussed it with Mr. Benton about letting him have the money.

Q. You were not present? A. No.

Q. You know he got the money? A. Yes, sir.

Q. After he got the money did he give it to you to deposit it in the bank? A. Yes, sir.

30

Q. What bank did you deposit it in, the United States Trust Company? A. I think so.

Q. When you got the thousand dollars or rather when he got the thousand dollars he gave it to you to deposit it in the bank? A. Not all of it.

Anna Lee—direct

Q. How much did he give you to deposit in the bank? A. I cannot say.

Q. But you deposited it in the United States Trust Company? A. Yes, that was where I banked.

Defendant Rests.

10 ANNA LEE, recalled for the State.

Direct Examination by Mr. De Yoe:

Q. Did Mr. Benton ever ask to borrow from you the sum of one hundred and twenty-five dollars? A. He did.

Q. Can you tell us what date that was? A. The day he left, I believe either the twenty-ninth of June or the thirtieth, the last of June.

20 Q. I show you a check dated May twenty-fifth nineteen hundred and twenty-one. Whose signature is that on the check? A. That is mine.

Q. What date did you give him that?

Mr. Klenert: The check speaks for itself.

Q. Do you know whether or not you were given that note on that day? A. Yes, sir, I was given that note on that day, the twenty-fifth day of May nineteen hundred and twenty-one, yes, sir.

30 Q. At the time you gave the check? A. Yes, sir.

(At this time a recess was taken until 2 P. M.)

Anna Lee—cross

ANNA LEE, recalled for the State.

Direct Examination continued by Mr. De Yoe:

Q. You have testified he applied to you for the loan of one hundred and twenty-five dollars? A. Yes, sir.

Q. Did you tell us what date that was? A. Either the twenty-ninth or thirtieth of June.

Q. Did you loan him the money? A. I did not.

10

Cross Examination by Mr. Klenert:

Q. What time of the day was it? A. In the morning.

Q. What time? A. I can't say exactly.

Q. Didn't he leave on the twenty-ninth? A. I cannot say whether he left. I didn't see him leave.

Q. You knew he had left? A. I didn't know he had left until I had gone to see Mr. Hamilton, that was later.

20

Q. When? A. I can't tell you just when, sometime later.

Q. Was it July, August, September, when? A. Shortly after.

Q. How long? A. Maybe a week or two weeks, no, it was longer than that.

Q. How do you fix the twenty-ninth or thirtieth of June? A. Because I had gone to see Mr. Dumont a few days later.

30

Q. Your lawyer? A. Yes, sir.

Q. Did you tell him about these notes? A. I told him the whole story.

Edward Hamilton—direct

Q. Was that the day when the notes came due?

A. No, long before.

Q. How long before? A. The first note as you call it wasn't due until the twenty-fourth of July and I had seen Mr. Dumont the beginning of July.

Q. You don't know just what day it was, do you? A. No.

Q. And he wanted one hundred and twenty-five dollars? A. Yes, sir.

10 Q. And you wouldn't give it to him? A. No.

EDWARD HAMILTON, sworn for the State.

Direct Examination by Mr. De Yoe:

Q. You are the landlord and owner of the premises occupied by the defendant, Mr. Benton? A. I had control of the premises.

20 Q. You were in charge for the landlord? A. Yes, sir.

Q. You attended to the collection of the rent? A. Yes, sir.

Q. Did Mr. Benton give you any notice when he left the City of Paterson? A. No, sir, not before he left.

Q. What was the first you knew? A. After I got a letter with a key through the mail.

30 Q. How long after was that? A. My memory is a little hazy but I would say two or three days.

Cross Examination by Mr. Klenert:

Q. They wrote you a letter you say. Did they give you their address? A. No, sir, I never have been about to learn his address.

John L. Griggs—direct-cross

Q. Did you ever ask anybody where he was?

A. Yes, two different people.

Q. Did you ask Mrs. Lee? A. She came to ask me.

Q. Did you ask Mrs. Lee? A. No, I did not.

Q. She came to ask you? A. She did.

Q. What did she ask you? A. If I knew where the Bentons had moved to.

Q. Did she tell you she was receiving letters right along? A. No, she rang my door bell and—

10

Q. Did she tell you she didn't know where the Bentons lived? A. It was within three, four or five days possibly after they left.

Q. Did you ever go to see her again after that?

A. No, I never knew the woman.

JOHN L. GRIGGS, sworn for the State.

Direct Examination by Mr. De Yoe:

20

Q. Did you cash a check made to the order of Mrs. Lee in the sale of the Johnson-Cowdin stock?

A. My bank did.

Q. Did you go with her to the cashier's window to get the check cashed? A. No.

Q. Who went with her? A. Mr. Benton.

Q. Who had the money from the cashing of the check? A. Mr. Benton.

30

Cross Examination by Mr. Klenert:

Q. Did you walk right over with them? A. No.

Q. How do you know that? A. I saw them from where I sat.

John L. Griggs—redirect

Q. From where you stood? A. Sat.

Q. Do you remember when that was? A. That was March nineteenth, nineteen hundred and twenty-one.

Q. How do you know that? A. I know that because I had sent for Mr. Benton to pay the bank some money he owed them.

Q. How do you remember the date so well? A. His note was due in the bank.

10 Q. You have refreshed your memory since? A. Yes, sir.

Q. Otherwise you could not remember these things? A. Oh, yes.

Q. Do you remember what became of the money after that? A. No, I saw Mr. Benton walking out of the bank with the money in his hands.

Q. All of the money? A. I cannot say that.

Q. You don't know whether it was a thousand or three thousand? A. No, sir.

20 Q. What was Mr. Benton's physical condition at that time? A. He was a big man. I would have passed him by.

Q. Why do you say you would have passed him by? A. I wouldn't have recognized him.

Q. Why wouldn't you recognize him? A. Because he had lost approximately seventy-five or eighty pounds.

Re-direct Examination by Mr. De Yoe:

30 Q. You saw him last when he was in Paterson? A. Yes, sir.

Q. Since he has been away he has lost that weight? A. Since I saw him last he is a different man.

Q. When he was in your office on the nineteenth of March was he in good physical condition so far as you could observe? A. Yes, sir.

Mr. Klenert: I wish to renew my motion at this time on the same ground I advanced before.

The Court: Your motion is denied.

Defendant excepts. Exception allowed and signed and sealed accordingly.

Jos. A. Delaney, 10
Judge.

(Mr. Klenert sums up for the defendant.)

(Mr. De Yoe sums up for the State.)

CHARGE

The Court then charged the jury as follows:

The Court: Ladies and Gentlemen of the Jury, the State charges the defendant with the commission of the crime of embezzlement in that he did on divers dates as the servant, agent, or bailee of one Anna Lee, receive from the said Anna Lee, in all, the sum of three thousand dollars with the express understanding and undertaking that the money was to be invested by him for her in certain securities in the Delaware, Lackawanna and Western and that instead he appropriated the money to his own use.

The defendant says it is true he received the three thousand dollars from Mrs. Lee but the three thousand dollars he received from Mrs. Lee was a loan.

We have here a question of fact for your determination. You must arrive at your conclusion in this controversy from the evidence adduced before you on the witness stand, and as you are the sole judges of the question of fact the Court will not enter into a discussion of the evidence.

It becomes my duty, however, to lay down the rules of law applicable to cases of this character which you will apply to the evidence and which will aid you in coming to your conclusion.

The defendant is presumed to be innocent of this charge and this presumption continues until the State established his guilt beyond a reasonable doubt.

Reasonable doubt is not a mere possible doubt. It is that state of the case which after the entire comparison and consideration of all the evidence

Charge

leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

If this defendant borrowed his money from Mrs. Lee, and it was advanced as a loan by Mrs. Lee to this defendant, of course, he must be acquitted of this charge. If on the other hand you are satisfied from the evidence that the defendant obtained this money from Mrs. Lee as the State alleges, then your verdict will be one of guilty.

10

I may say in passing that we are not to be swayed by the oratory of counsel or suggestions made about the possible conclusion you might come to, but you must determine this issue wholly, as I have indicated, from the evidence adduced before you on the witness stand.

You are the judges, as I have suggested of the question of fact. You are to determine both from hearing the testimony of the witnesses and the observation of the witnesses who is telling the truth.

20

I have been requested to charge you specially as follows:

1. Before you can convict the defendant it is incumbent upon the State to prove that the defendant took the amount of two thousand dollars at one time and one thousand dollars at another time, with intent to embezzle and defraud Mrs. Lee, and the State must prove beyond a reasonable doubt otherwise the defendant must be acquitted.

30

2. If the defendant was loaned the money by the complainant and she received his promissory note therefor, the defendant is entitled to be acquitted even if the said notes were not paid when due.

Charge

That is true. If it was a loan as I have indicated of course the defendant is guilty of no crime and must be acquitted.

I will now leave this matter in your hands for your determination.

(The jury then retired.)

10 Mr. Klenert: I respectfully except to that part of your Honor's charge wherein the Court said "If on the other hand you are satisfied from the evidence that the defendant obtained this money from Mrs. Lee as the State alleges then your verdict will be one of guilty."

Exception allowed and signed and sealed accordingly.

Jos. A. Delaney,
Judge.

20 I hereby certify that the foregoing record constitutes the entire record of the proceedings had upon the trial of the cause wherein the State of New Jersey is complainant and Edward T. Benton, defendant.

In witness whereof, I have set my hand and seal hereunto this 6th day of February, 1925.

Jos. A. Delaney,
Judge.

Exhibit S1**EXHIBITS****EXHIBIT S-1**

\$2000. Paterson, N. J., Jan. 24, 1921.

Six months after date I promise to pay to the order of Anna Lee Two Thousand Dollars at United States Trust Company.

Edward T. Benton, Jr.,
84 17th Avenue.

Value received—Interest 6%.

No. Due July 25, 1921.

10

United States of America }
State of New Jersey } ss.

On the 25th day of July, in the year of our Lord, one thousand nine hundred and twenty-one, at the request of United States Trust Company, of Paterson, New Jersey, I, Wayne Dumont, Notary Public, duly commissioned and sworn, residing in the City of Paterson, and State of New Jersey, did present the original Note, hereto annexed for \$2000, dated, Paterson, New Jersey, Jan. 24, 1921, at the United States Trust Company, of Paterson, New Jersey, to the Teller thereof, and of him demanded payment, who refused to pay the same, saying that the maker thereof was not there, and had left there no funds for that purpose.

20

Whereupon, I, the said Notary, at the request aforesaid, did Protest, and by these presents do publicly and solemnly Protest, as well against the Drawer and the Endorsers of the said Note, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the said Note.

30

Exhibit S-2

Thus done and Protested, in the City of Paterson aforesaid, in the presence of John Doe and Richard Roe, witnesses In Testimonium Veritatis.

(L. S.)

Wayne Dumont,
Notary Public.

EXHIBIT S-2

\$1,000.

Paterson, N. J., May 25th, 1921.

10

Three months after date I promise to pay to the order of Anna Lee One thousand Dollars at the United States Trust Company of Paterson, N. J.

E. T. Benton, Jr.

Value received. Interest 6%.

No. Due Aug. 25, '21.

United States of America } ss.
State of New Jersey }

20

On the twenty-fifth day of August, in the year of our Lord, one thousand nine hundred and twenty-one, at the request of United States Trust Company, of Paterson, New Jersey, I, Wayne Dumont, Notary Public, duly commissioned and sworn, residing in the City of Paterson, and the State of New Jersey, did present the original Note, hereto annexed for \$1000. and interest, dated, Paterson, New Jersey, May 25th, 1921, at the United States Trust Company, of Paterson, New Jersey, to the Teller thereof, and of him demanded payment, who refused to pay the same, saying that the maker thereof was not there, and had left there no funds for that purpose.

30

Whereupon, I, the said Notary, at the request aforesaid, did Protest, and by these presents do publicly and solemnly Protest, as well against the

Exhibits S-2, S-3, D-1

Drawer and the Endorsers of the said Note, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and the interest already incurred, and to be hereafter incurred, for want of payment of the said Note.

Thus done and Protested, in the City of Paterson aforesaid, in the presence of John Doe and Richard Roe, witnesses In Testimonium Veritatis.

(L. S.)

Wayne Dumont,
Notary Public.

10

EXHIBIT S-3

No. Paterson, N. J., May 25th, 1921.

The Citizens Trust Company 55-64

Pay to the order of E. T. Benton, Jr., Two Hundred fifty Dollars.

Anna Lee.

\$250. Charge Book No. 23511.

Endorsed: E. T. Benton, Jr.

20

EXHIBIT D-1

Paterson, Aug. 2nd, 1921

Dear Mrs. Benton.

Received letter and molds, which came two days before.

Have not heard from Mr. Benton. I hope this terrible hot weather we've been having has not made him worse. Cannot think of any other reason for him not keeping his word.

30

Mr. Lee and I picked ten quarts of wild blackberries last week.

He is not working and we are taking advantage of it by gathering all the wild fruit we can.

Exhibits D-2, D-3

Glad to hear that you will return to Paterson so soon and hope nothing happens to prevent your

Things look rather blue to us at present. The silk business has not picked up to any extent.

Hoping to hear from you and Mr. Benton and that you are both in better health,

I am Yours Resp't

Anna Lee.

70 E. 16th St.

10

EXHIBIT D-2

Paterson, N. J., July 9th, '21.

Dear Mr. Benton.

Just a few lines. Received check O. K. 7 P. M. last evening.

We are very sorry to hear that you are so sick for we thought that you would surely get relief after seeing your own doctor. This awful weather that we are having must be against you too.

20

It is terrible here. Can't get any rest even with sleeping on the dining room floor.

I hope you at least have a cool place where you are staying and you will soon be yourself again.

Haven't any more to write, but expect to hear from you soon again.

Best wishes to you both from Hen and myself.

I am Sincerely,

Anna Lee.

70 E. 16th St.

30

EXHIBIT D-3

Paterson, N. J., July 6, '21

Dear Mrs. Benton.

Had company over the Fourth. They came Fri-

81
Exhibit D-3

day morning and left to-day which has kept me so busy I couldn't find time to answer your letter.

I hope Mr. Benton is feeling much better. I could see that he was quite sick last Tuesday and really didn't expect you to get down to see us before leaving. I would like to have seen you but I wanted to get some cleaning done and my spare bed aired before any one slept in it.

It has been terrible hot here and like you I feel all in.

Hen isn't working. Finished last Wednesday and is all broke up over it. His work was so bad that he couldn't make over \$16.00 a week. He worked that hard last week trying to make the looms run you could see the flesh drop off of him.

Well, let us hear from you soon for I really haven't anything to write about.

The fern is doing nicely so far. I think it has grown some. I do hope I have luck with it.

Do you know Hazel's address for I have those crochet books of hers and would like to return them. I've copied the butterfly yoke on the cover of one, which is very pretty.

Hoping that Mr. Benton is well again and that you feel rested I'll close with best wishes from us both.

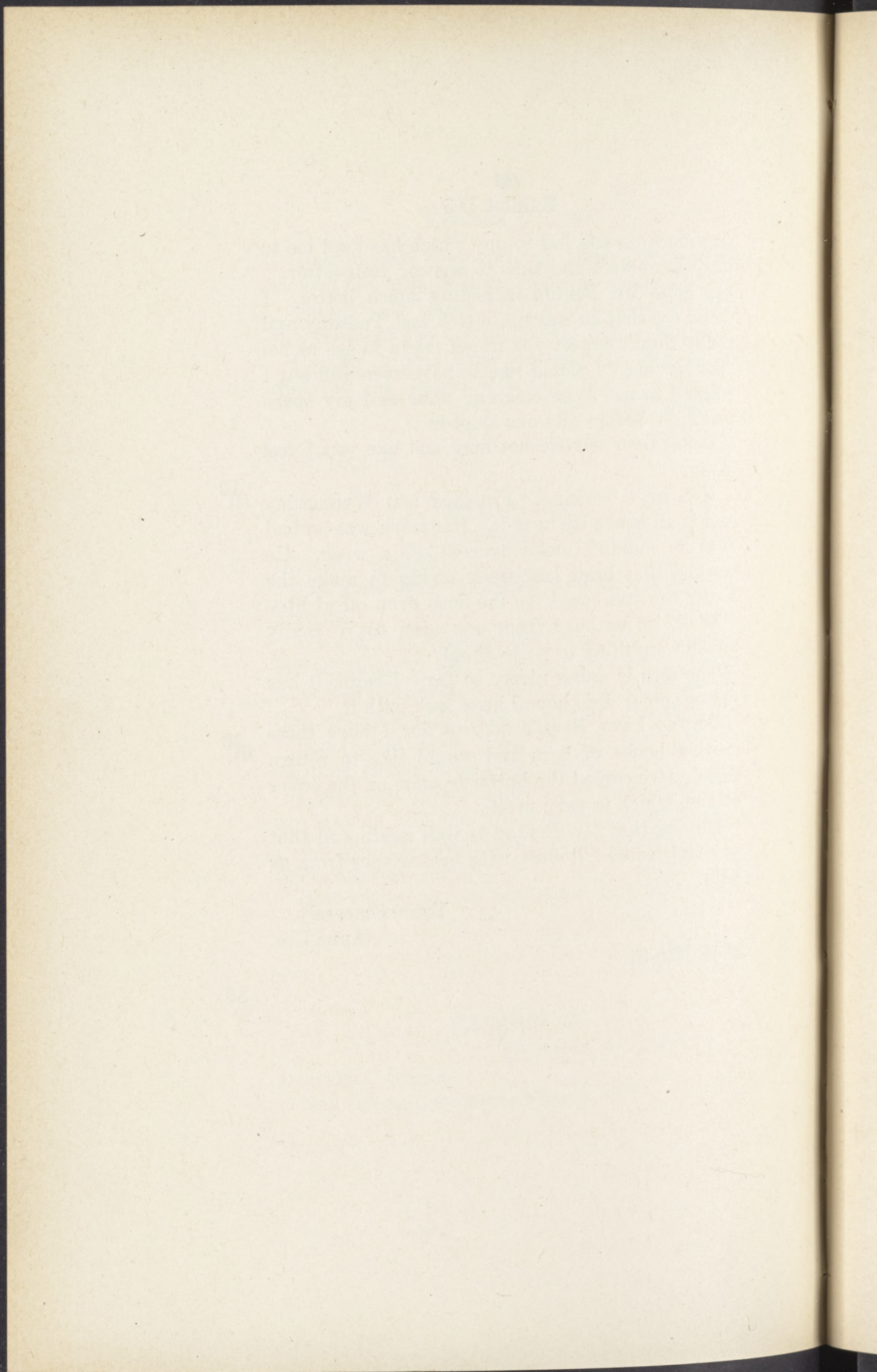
Yours Sincerely,
Anna Lee.

70 E. 16th St.

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(Filed May 5, 1926)

NEW JERSEY SUPREME COURT

 No. 14, Oct. T., 1925

The State

vs.

Edward T. Benton, Jr.,

) Error to Passaic
) Quarter Session

 For plaintiff in error, Abram Klenert.

10

 For the State, J. Willard DeYoe, Prosecutor of
 the Pleas.

PER CURIAM

The defendant in this case was convicted on an indictment charging him with embezzling moneys belonging to one Anna Lee.

The first ground upon which the plaintiff in error seeks a reversal of this conviction is directed at the alleged illegal admission of testimony of Anna Lee. Our examination of this testimony leads us to the conclusion that it was properly admitted.

20

The second contention is that the trial court erroneously refused to direct the jury to acquit the defendant. This motion, we think, was properly refused, there being testimony to support the contention of the State that the defendant was guilty as charged.

The last ground for reversal argued by counsel for the defendant is that the verdict of the jury was against the weight of the evidence. No assignment nor reason, however, has been filed raising this question.

30

The judgment under review will be affirmed.

NEWJERSEY SUPREME COURT

State of New Jersey, Defendant in Error, vs. Edward T. Benton, Jr., Plaintiff in Error.	}	On Appeal from Supreme Court
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ORDER OF AFFIRMANCE OF JUDGMENT

10 This cause having been duly argued at the October Term, 1925, of this Court by Abram Klenert, of counsel for the Plaintiff in Error, and J. Willard De Yoe, of counsel for the Defendant in Error; and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court—

20 It is thereupon, on this 18th day of May, in the year of our Lord, one thousand nine hundred and twenty-six, Ordered and adjudged that the judgment of the Court of Quarter Sessions, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

J. Vincent Barnitt,

Attorney for Defendant in Error.

Entered May 18, 1926.

30 A true copy,
 Edward J. Kelleher,
 Clerk.

New Jersey, ss:

The State of New Jersey:

(L. S.) To: The Honorable Chief Justice and other Justices of our Supreme Court of Judicature. Greeting,

Because in the record and proceedings and also in the giving of the judgment upon a certain indictment against Edward T. Benton, Jr., late of the City of Paterson, County of Passaic and State of New Jersey, for Embezzlement (pro ut the said indictment and several counts therein) whereof before you he has been indicted, and is thereof convicted in the County of Passaic, between the State of New Jersey and the said Edward T. Benton, Jr., as it is said, manifest error hath intervened to the great damage of the said Edward T. Benton, Jr., 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 Edward T. Benton, Jr., command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same to our Court of Errors and Appeals, to be held at Trenton on the twenty-sixth day of June, 1926, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and custom of New Jersey ought to be done.

Witness, Edwin R. Walker, Esquire, Our Chancellor and President Judge of our said Court of

Errors and Appeals at Trenton aforesaid, the seventh day of June, in the year of our Lord Nineteen Hundred and Twenty-six.

Thomas F. Martin,
Clerk.

Isadore V. Klenert,
Attorney.

A true copy,
Thomas F. Martin,
Secretary of State.

10 Presented in open court this day of
June, 1926, and the Clerk will make proper return
thereof.

Wm. S. Gummere,
Presiding Judge.

20

30

ASSIGNMENT OF ERRORS

NEW JERSEY COURT OF ERRORS AND
APPEALS

<p style="text-align: center;">The State of New Jersey, Defendant in Error, vs. Edward T. Benton, Jr., Plaintiff in Error.</p>	}	<p>On Error to the Chief Justice and other Just- ices of our Supreme Court of Judicature</p>	10
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New Jersey, ss.

Afterwards, to wit: before the Chief Justice and other Justices of our Supreme Court of Judicature, at Trenton, comes Edward T. Benton, by Isador Klenert, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

1. Because at the trial of the indictment one Anna Lee, a witness for the State, was permitted to testify to a conversation between her and the defendant respecting stock other than the subject matter of the indictment, which evidence was irrelevant, incompetent and immaterial. Counsel for defendant objected to the admission of said evidence, which objection was over-ruled; said ruling was erroneous and to the manifest injury of the defendant. 20

2. Because the court at the close of the State's case, on a motion made by defendant's counsel, refused to direct the jury to render a verdict of not guilty on the ground that the State had failed to 30

connect the defendant with a crime charge against him and furthermore, that the State had failed to prove that the defendant was guilty of the crime charged against him beyond a reasonable doubt.

3. Because the court refused to grant the motion of defendant's counsel to acquit the defendant at the conclusion of the whole case.

10 4. Because on the evidence in the whole case the defendant suffered manifest wrong and injury in and under the whole of said evidence, and the defendant should have been acquitted.

5. Because the verdict of the jury in said cause was contrary to law.

6. Because the judgment of the Supreme Court in said cause was contrary to law.

7. Because the verdict in said cause was rendered by the jury against the defendant, whereas by law it should have been given in his favor.

20 8. For the errors aforesaid, and for the other record in the errors preceding, as aforesaid, and in giving judgment and of sentence aforesaid, the said Edward T. Benton prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

Isadore Klenert,

Attorney for and of Counsel
with Plaintiff in Error.

New Jersey Court of Errors and Appeals

The State of New Jersey, Defendant in Error, vs. Edward T. Benton, Jr., Plaintiff in Error.	}	On Error to the Supreme Court, Trial at Passaic Quarter Sessions
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BRIEF OF DEFENDANT IN ERROR

STATEMENT OF FACTS

The writ of error brings up for review a judgment of the Court of Quarter Sessions of Passaic County.

The indictment charges the defendant, Benton, with embezzling \$2,000.00 on January 24th, 1921, and \$1,000.00 on March 12th, 1921.

Benton was a man of wide experience. He says (61) that he, with others, was operating a lead and silver mine in Mexico for about seven years, and when not in Mexico at the mine, was (62) attending to the finances of it. After that (61) he was a real estate operator, and then during the War was with the Investigation Bureau of the Department of Justice, and after that was (60) with the Sherman Service, Inc., of New York City for over a year, when (60) he came to Paterson as Superintendent of the Johnson-Cowdin silk mills.

The complaining witness was a woman of no business experience. She (10) was a silk ribbon weaver, working for Johnson-Cowdin & Co. when Benton was the superintendent. She be-

came acquainted with him while he was superintendent of the Johnson-Cowdin silk mills.

The company was selling stock to the people working for them, and she went to the defendant Benton to ask about buying shares of the company's stock. She says (11, L 20-35; 12, L 1-15) that she told Benton that she had \$5,000 in the Paterson Savings Institution. He promised to take up with Mr. Cowdin the purchase of the stock for her and gave her his home address and told her to call there in reference to the stock, which she did; he told her that he had arranged for her to have thirty shares of the stock. She got the stock at the mill. This occurred in or about the month of December, 1920. The stock cost her \$3,000.00.

In the month of January, 1921, Benton came to her home and asked her if she still had the \$2,000.00; she said that she had, and he said that he had made one good investment for her in the Johnson-Cowdin stock and that he wanted to make another for her in D. L. & W. This was about January 24th, 1921 (77-X S-1).

She let him have the money, and to cover up his purpose he gave her a note for \$2,000 and told her that this was a receipt for her money, so that if he died before he got the securities, she would get her money. About this time, he was discharged by the Johnson-Cowdin Company, and after his discharge (13, L. 20-35) he asked Mrs. Lee for a proxy on the stock to vote at a meeting of the stockholders of the Company. This she gave him, but there was no meeting of the stockholders held.

In the month of March, 1921, he advised Mrs. Lee, who appeared to be dependent upon his advice, on business matters, to sell her stock, 30 shares of the Johnson-Cowdin Company, stating that they were on the verge of bankruptcy, and she consented. He negotiated (14-15) the sale of her stock for \$3,000.00. The stock was sold March 19th, 1921. He said at the time (15, L. 30-35) "I will take one thousand dollars and put it in D. L. & W.; leave the two thousand dollars in a checking account until I can see something equally as good, when I will call for it." He did not give her at the time anything to show for this \$1000.00. On May 25th, 1921, he borrowed of her \$250.00. This was a loan which he borrowed on account of his father's death, and at that time he gave her a note for the \$1,000.00, stating that it was a receipt for the \$1,000.00 for three months, and further stating that he would wait for a market that was right.

In June, 1921, (17, L. 20-30) he asked for another loan of \$125.00 as he was going to Washington. This she refused to loan him. She says (20, L. 30; 21, L. 1-2) "I knew nothing of business, but he did. He passed himself off as a man of affairs and I took his word for it."

The defendant now seeks to set aside his conviction on the grounds:-

(a) That there was error on the admission of evidence.

(b) That the verdict was against the weight of evidence.

(c) That the Court refused to direct a verdict.

The State insists:-

I.

THE TESTIMONY OBJECTED TO WAS PROPERLY ADMITTED.

The question objected to was:-

“Q. Tell us the conversation between you and Mr. Benton in relation to the purchase of the stock of the Johnson-Cowdin Co.?”

The testimony shows that the stock was purchased on the advice of the defendant Benton (11-12), and with his assistance, and that upon his false representation (14) that the Johnson-Cowdin Company was on the verge of bankruptcy she (15) with his assistance sold the stock, and at the very day she sold the stock he got from her \$1,000.00 of the money upon the representation that he was going to purchase other securities for her.

The testimony shows the relation of trust and confidence of Mrs. Lee, the complaining witness, to the defendant. It further shows that in this manner he learned the amount of money she had and the scheme on his part to get this money from her.

It was not for the purpose of showing any other crime, but for the purpose of showing her dependency upon him in business transactions, his professing to work for her interests when at the same time he was scheming to get her money for his own personal use.

The cases cited in the defendant's brief do not apply to the case at bar.

In the case of *Ryan vs. State*, 60 N. J. L., 552, the State attempted to prove that the defendant had committed some other crime which was not set forth in the indictment.

In *Bullock v. State*, N. J. L. 557, the State attempted to prove a crime not charged in the indictment. The same applies to *Clarke v. State*, 47 N. J. L., 556; *State v. Raymond*, 53 N. J. L., 260; *Stiles v. State*, 59 N. J. L., 310, and *Leonard v. State*, 60 N. J. L., 8.

II.

THE VERDICT OF THE JURY WAS NOT AGAINST THE WEIGHT OF EVIDENCE.

Mrs. Lee, the complaining witness, had testified as above set forth, that the defendant Benton had obtained first \$2,000.00 in January, 1921, and \$1,000 in March, 1921, upon the representation that he was going to invest the same for her in D. L. & W. securities; that he repeatedly stated when he called at her home that the reason why he had not bought the securities was that the market was not right to buy.

He denies (45, L. 25-28; 46, L. 28-32) that anything was said to her about stocks or bonds; that no mention (48, L. 30-35) was ever made by him that the market was bad and that it was impossible to purchase stock at a fair rate at that time, and that nothing was said (48, L. 5) about stocks for the money she had given him. He admits that

he called frequently at Mrs. Lee's home (52, L. 28-35), but says that he never talked with her about stocks or bonds and that she never (53, L. 10-20) asked about investments and securities.

The defendant, Benton, is contradicted by Henry Lee, who corroborates the testimony of his wife.

Mr. Lee says Mrs. Lee would ask him, Benton, (38, L. 5-35) about her securities, her bonds. He would say he couldn't "buy these like you go to the market and buy your groceries; there is periods when the market is right to buy and that period is not now; the market is, I can't say his exact words, but the market wasn't right to buy."

Mr. Lee in answer to the question:

"Q. How many times did you hear him state that to Mrs. Lee during the period I have mentioned, October to July? A. I don't believe he left our house without telling her. Not from October, of course, but since he had our money he never left our house, or she never left his house that he didn't say he would have these soon now, or he had just been down to New York and he would soon give her these stocks, bonds or securities."

On cross examination (39, L. 20-30) Mr. Lee says that he asked Mr. Benton about these securities when he was at Lee's house and also when he was at Benton's house. This was at different times during these months.

The giving of the notes was of no importance because he told her they were receipts, so that if

anything happened to him before he got the securities, she would get her money (18, L. 5-10; 16, L. 20-30). She says for the money she gave him for investment March 19, 1921, he did not give her a note until May 25th, 1921, when he told her it was a receipt for her \$1,000.00. He emphatically stated (46, L. 25-30) the note for \$1,000.00 was given the same day he got the money, March 19, 1921, but as a matter of fact, it was not given until two months later (57, L. 10-20; 58, L. 10-25).

Two witnesses contradict the story of the defendant, and the weight of evidence was against the defendant.

III.

THERE WAS NO ERROR ON THE JUDGE'S REFUSAL TO DIRECT A VERDICT AT THE CLOSE OF THE CASE.

This case presented a question of fact to be determined by the Jury.

The testimony of Anna Lee, Henry Lee and John L. Griggs, if true, made the defendant guilty of embezzlement. It was a question for the jury to determine the facts and also who was telling the truth.

If there is any testimony which supports the charge laid in the indictment, the Jury and not the Court must determine guilt or innocence.

(State v. Plough, N. J. L., 245.)

Whether the facts relied upon by the State are more consistent with innocence than guilt, is for the jury to determine.

(State v. Fauce, 91 N. J. L., 333.)

There is no error on the trial of this cause which prejudiced the defendant in maintaining his defense upon the merits, and the judgment therefore should be affirmed.

Respectfully submitted,

J. VINCENT BARNITT,
Prosecutor of the Pleas and of
Counsel with the Defendant in Error.

New Jersey Court of Errors and Appeals

The State of New Jersey, Defendant-in-Error, vs. Edward T. Benton, Jr., Plaintiff-in-Error.	}	In Error to Supreme Court
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BRIEF OF ISADORE KLENERT,
 Attorney for and of Counsel with
 Plaintiff-in-Error

PRELIMINARY REMARKS

The writ of error in this case brings up for review the conviction of Edward T. Benton, Jr., in the Passaic Quarter Sessions of the crime of embezzlement and the judgment of affirmance in the Supreme Court. The indictment (Case, p. 3) charged Benton of having embezzled on January 24, 1921, money belonging to one Anna Lee to the amount of \$2000.00, and on March 12, 1921, having embezzled money belonging to said Anna Lee of the amount of \$1000.00; the position taken by the State during the trial was that said Anna Lee had paid over said respective sums of money to Benton upon his representing to her that he would invest the same for her in bonds or stock or securities of the Delaware, Lackawanna and Western, and that instead of so doing Benton had converted said sums of money to his own use. The contention of Benton was, that said respective sums of money were loaned to him on the dates here before mentioned, and said loans were evi-

denced by the making and delivering by Benton to said Anna Lee of two certain promissory notes in the usual form. See Exhibits S-1, top of page 77 of Case, and S-2, page 78 of Case. At the times said Anna Lee paid over said respective sums of money to Benton, and received from him said notes, no one was present, save said Anna Lee and said Benton. The notes are in the usual form, and strongly support the contention of Benton that said sums of money were mere loans to him. His contention is further supported by the friendship existing between the Benton family and the Lee family. The only corroboration of the State's position, testified to by Anna Lee, is the testimony of her husband, narrating conversations held by Benton in his presence with said Anna Lee, weeks after said respective sums of money had been paid to Benton. None of these conversations formed any part of the *res gestae*; none of these conversations contained any admissions on the part of Benton as to what he had said to said Anna Lee at the time of receiving either of said sums of money; and all of said conversations, as testified to by Anna Lee's husband, were remote and from the mouth of an interested witness.

Our position is that the jury was not justified, under the evidence in the case and the rules of evidence applicable thereto, in finding Benton guilty of the crime of embezzlement.

At the trial of the cause the court admitted, over objection of Benton's counsel, testimony concerning stock purchased by Benton for said Anna Lee from Johnson-Cowdin Co., which was not only il-

legal, but was also highly harmful to Benton, and especially so because it was introduced at the very beginning of the State's case, thereby impressing the jury prejudicially against Benton before the issue at trial was gone into.

From these preliminary remarks we take up the Assignments of Errors, or such of them as we will touch upon, in the order that they are set down in the State of the Case. (Case, page 8.)

I.

AT THE TRIAL ANNA LEE, A WITNESS FOR THE STATE, WAS ILLEGALLY PERMITTED TO TESTIFY TO CONVERSATIONS BETWEEN HER AND THE DEFENDANT, RESPECTING STOCK OTHER THAN THE SUBJECT MATTER OF THE INDICTMENT, WHICH EVIDENCE WAS IRRELEVANT, INCOMPETENT AND IMMATERIAL: THIS EVIDENCE WAS ADMITTED OVER OBJECTION OF COUNSEL AND WAS INJURIOUS TO DEFENDANT.

Question: Tell us the conversation between you and Mr. Benton in relation to the purchase of the stock of the Johnson-Cowdin Co.

Objected to by Mr. Klenert as immaterial.

Objection overruled.

Defendant excepts. Exception allowed and signed and sealed accordingly. (Testimony of Anna Lee, (Case, p. 11, l. 10, &c.).

Then follows answer to this question, beginning on page 11, line 21, and continuing with interruptions and further questioning to the bottom of page 16 of Case.

The whole conversation between Anna Lee and Benton, as testified to by Anna Lee, continuing over said pages, was highly prejudicial to defendant. This stock had nothing whatsoever to do with the subject matter of the indictment. Anna Lee testified concerning the said Johnson-Cowdin Co. stock, in effect, as follows; that she went to Mr. Benton in reference to this stock, as she had money in the Paterson Savings Institution, paying only 3½ per cent and as the stock paid a dividend of 7½ per cent, and that she asked Benton, who was superintendent for the Johnson-Cowdin Co. whether she could get fifty shares; that Benton told her that he did not think one employee (she at that time worked for the Johnson-Cowdin Co.) could have fifty shares, but that he would see her later; that he obtained for her thirty shares of stock of that company and gave it to her; that shortly after she received the stock the Johnson-Cowdin Company had sent her a notification of their annual stockholders' meeting and that Mr. Benton had asked her to give him a proxy to vote at that meeting, as she did not wish to go; that she gave him the proxy, but that they didn't call the meeting; that Benton afterwards phoned from New York for **his wife** to tell her that they would not hold a meeting, that there was something crooked and probably the firm would get in touch with Benton, but if they did not, that she should

get in touch with Benton; that the following day or a day or two later, Benton came around to her home and told her that the Johnson-Cowdin people were on the verge of bankruptcy and that he, Benton, had been advised by a good friend of his, that she should sell her stock; that she was satisfied with the stock because shortly after she received it she had received dividends on it; that Benton told her she should give him the stock, as he arranged with Mr. Griggs, the attorney for the company, to buy the stock back; that she went with Benton to Mr. Griggs' office because he had told her that Mr. Griggs wanted her present when the stock was sold; that Benton had schooled her as to what to say if Mr. Griggs should ask her any questions * * * "If you see me nod yes, say yes, if I shake my head, say no"; that following said schooling she departed herself as Mr. Benton instructed her, surrendered said stock and received a check from the Johnson-Cowdin firm for the amount she paid for the stock; that the check given her was signed by Mr. Griggs; that Benton looked at the check and upon seeing Mr. Griggs' signature upon it, said "It is all right, your signature is to it," meaning Mr. Griggs; and that Mr. Griggs replied, "I wish my signature was as good as Johnson-Cowdin."

Of course this testimony, at the very starting of the case in all probability created the impression in the jurors' minds that Benton had purposely deceived Anna Lee in respect to the Johnson-Cowdin stock and in respect to their financial condition; and that having deceived her in this respect, the atmosphere was then created for the jury to

believe that he would deceive her in other respects. In other words, this alleged misrepresentation on his part, illegally admitted in evidence, laid the foundation for the State's case.

From the following citations, it is evident that the testimony in question was inadmissible and its admission worked harmful and reversible error.

Ryan vs. State, 38 Atl., 672.

Illegal evidence will work a reversal except where it is clear that it cannot have harmed the exceptant.

The general rule is that the State may not, for the purpose of showing that a defendant would be likely to commit the crime charged against him, prove that he had committed other crimes, although of like nature.

Bullock vs. State, 47 Atl., 62.

Where testimony tending to impress on the minds of the jury a conviction of the natural propensity of the accused to resort to extreme violence on slight provocation is improperly admitted, to remove its effect it must be formally and emphatically expunged from the record before the testimony is closed and the summing up of counsel is commenced.

Clark v. State, 47 N. J. L., 556.

The State cannot offer testimony to prove that the defendant committed an offense not charged, for the purpose of showing that he

would be likely to commit the offence charged.

State v. Raymond, 63 N. J. L., 260.

Upon the trial of the prisoner for setting fire to a building with intent to defraud the insurers, evidence showing that upwards of five years previously several buildings, in which the prisoner had some interest and which were burned, is irrelevant, and an instruction by the court to the jury, that such evidence could be considered on the questions, whether the fire in issue was accidental, and whether the prisoner had a motive or intent to defraud anybody at the time that fire occurred, is erroneous, when there is no logical relation between the former fires and the present one, except that they may have all resulted from the criminal disposition of the prisoner.

Meyer v. State, 59 N. J. L., 310.

Upon the trial of an indictment that charged that the defendant knowingly and unlawfully and without license prescribed medicine for one John Craig, evidence that he had prescribed for other persons is illegal, its only effect being to show that he habitually did those things, for the doing of which, in a particular instance, he had been indicted.

Leonard vs. State, 60 N. J. L., 8.

The state, for the purpose of showing that the defendant would be likely to commit the

crime charged in the indictment, cannot offer testimony to prove that he committed other crimes, although of a like nature.

II.

THE VERDICT OF THE JURY IN CONVICTING BENTON WAS AGAINST THE WEIGHT OF THE EVIDENCE AND GIVES RISE TO THE INFERENCE THAT IT WAS THE RESULT OF MISTAKE, PASSION, PREJUDICE OR PARTIALITY AND SHOULD BE REVERSED.

This argument takes up Assignments of Errors Nos. 4 and 6.

State vs. Harpowitz, 120 Atl., 40.

To justify a court in setting aside a verdict in a criminal case on the ground that it is against the weight of the evidence, the verdict must so clearly appear that it is against the weight of the evidence as to give rise to the inference that it is a result of mistake, passion, prejudice or partiality.

State vs. Fischer, 117 Atl., 519.

By virtue of chapter 349, Laws of 1921 (page 951), where the plaintiff in error brings up the entire record with his writ of error, as provided in the Criminal Procedure Act, and assigns as error that the ver-

dict was against the weight of evidence, if it shall appear to the appellate court from a consideration of the entire evidence that such verdict was against the weight of the evidence, the court will reverse such verdict and award a new trial; but if from such consideration it appears that such verdict was not against the weight of the evidence, the court will not go further and consider an assignment that it does not appear from the evidence that the defendant was guilty beyond a reasonable doubt.

When Anna Lee made the first payment of \$2000.00 to Benton, he gave her a note (Case, p. 13, ls. 3, &c.). The note, as heretofore stated, was in the usual form, (Exhibit S-1, Case, p. 77), payable six months after date to the order of said Anna Lee and signed by Benton, and bore interest at the rate of six per cent. Anna Lee testified, on cross examination, (Case, p. 19) that she had lived in Paterson fourteen years, had attended the public schools there, could read and write and understood the English language and that she read the note; but insisted both on her direct examination and on her cross examination that she accepted it as a receipt. She evidently knew that she was getting a note as she testified (Case, p. 13, l. 5):

I asked him why he was giving me a note, and he said it is simply a receipt to show that I have this money of yours. I might get run over and I might die suddenly and you might come forward and say that I had \$2000.00 that you had nothing to show for. By accepting this note it covers you until I

see a chance to get the securities when the market is right. He said **if anything happens to me suddenly it would go in my estate as a note and my wife would have to cover it.**

Benton testifies that the \$2000.00 was a loan, that she, (Anna Lee) said she would gladly loan it to him after getting six per cent interest instead of three and one-half; that she loaned it to him on his said note for six months bearing interest at six per cent; and that nothing was said about stocks. He likewise testifies in regard to the \$1000.00 payment of money (Case, p. 45).

A reading of the testimony will show that the Benton family and the Lee family were on very friendly terms.

Furthermore, the letters written by Anna Lee to Mrs. Benton on July 6, 1921, July 9, 1921, and August 2, 1921, were couched in the most friendly terms, and the utter absence therein of any reference or any request for stocks or securities seems most significant.

Anna Lee's husband (Case, p. 37, lines 10, &c., and pages following), testified that they, meaning the Bentons, were very often at his house; that he heard the conversations between Mr. Benton and his wife at his home on all occasions, and that he and his wife were at the Bentons' house three or five times; and that (Case, p. 38) on all those occasions he, meaning Benton, never left "our"

house, or she, meaning his wife, never left Bentons' house without Benton saying to her that she would have her stoks, bonds or securities soon. He further testified that he would not learn of Benton's receiving the money until always a day after he had received it, and that his wife never let him know before. He further testified that he had seen and read the notes.

Nina Benton, wife of defendant, testified that she was on intimate terms with Anna Lee (Case, p. 64) and that she knew from her husband concerning both payments of money and that her husband gave notes in both cases to Anna Lee; that during their numerous conversations together, Anna Lee never mentioned to her that she had loaned to Mr. Benton money for the purpose of investing in D. L. & W. stocks and bonds or securities; that no securities were mentioned; that the payments by Anna Lee to her husband were simply borrowed monies, loans; that (Case, p. 65) Anna Lee would come to her house quite often in the evening, sometimes in the morning and she would stay all day, bring her crocheting, and they would sit on the porch together; and that this occurred until a few days before the Bentons left Paterson, which was on June 29, 1922; and that during that time Anna Lee had never said to her husband in her presence that she was waiting for stocks or bonds.

It would seem to us, after a careful perusal of the testimony in the case, that both transactions, as clearly evidenced by the two notes, Exhibits S-1 and S-2, were purely loans by Anna Lee to Ben-

ton; that after she had made the loans she discovered that he was in poor financial condition; that then she saw her mistake in loaning the money, and endeavored to reimburse herself through the aid of the criminal courts. Her husband naturally assisted her in that endeavor. But it must be borne in mind that a jury in considering the silent evidence of the negotiable instruments, read by Anna Lee and accepted by her from Benton, on two separate occasions, months apart, must have been swayed by prejudice or partiality, when they believed her story in regard to the circumstances under which she accepted them. Not only is her story subject to the highest scrutiny, but her conduct during the whole period is also subject to such scrutiny. She continues her friendship with the Bentons and even writes most friendly letters to them after, to use her own language, she knew she had been swindled. She knew that she had been swindled the last, or the next to the last day of June, 1921 (Case, p. 18, l. 29, &c.); she also knew that the Bentons were going to leave town; she states that before they left, the Bentons brought over a fern for her to take care of and told her that they were going away because Mr. Benton was a sick man and in order to be near his doctor, that they were coming back (Case, top of p. 23).

Benton testifies (C., p. 48, l. 12) that he called at the Lees on Tuesday and told Anna Lee that he was leaving on Thursday, and that he left his new address with both the Lees and at the Post Office; that his wife received numerous letters from Anna Lee. Mrs. Benton (C., p. 65, l. 30) testified that she informed Mrs. Lee that they were leaving Paterson

at least a week before, and asked her to take care of her fern, which Mrs. Lee did.

At the time he left Paterson, Mr. Benton's physical condition was such that he was unable to work.

It is a most singular circumstance, that Mrs. Lee, after being swindled out of \$3000.00, as she claims, with full knowledge that the swindler was going to leave town, would not immediately have gotten in touch with her attorney, or gone before some Justice of the Peace or the City Recorder and sworn out a complaint against Benton and had him put under bond.

Instead of so doing, she has the two respective notes sent to the United States Trust Company (the bank at which they were payable) for collection, and causes them to be protested, and after said notes are not paid for lack of funds, goes before the Passaic County Grand Jury and has the defendant indicted.

We insist that a careful perusal of the testimony brings one to the belief that the bond story, or stock story, or security story, whatever you wish to call it, was an afterthought and was injected into the two transactions for the purpose of endeavoring to recover bad loans.

Anna Lee was a silk ribbon weaver; evidently accumulated her money after arduous years of toil, and the jury was evidently prejudiced because Benton, the superintendent of the Johnson-Cowdin Co. for which she was working as a silk weaver, should have, under the circumstances, borrowed the money from her. By her own testimony, she accepted the notes with her eyes open.

We insist that the verdict of the jury was a result of passion, prejudice and partiality.

Furthermore, Anna Lee testifies that while she was working for the Johnson-Cowdin Co., Benton was a superintendant there in their silk mill (C., p. 11), and that she knew he was not in the investment business (C., bottom of page 30). She evidently paid the monies over to him as loans for the sake of obtaining six per cent instead of three and one half per cent on her investment. She had confidence in him and in his ability to repay her, because he was the superintendent of the large silk mill in which she was but a weaver. This we take it is the true motive and the true reason for her loaning the money to the defendant.

III.

THE TRIAL COURT ERRONEOUSLY REFUSED AT THE CLOSE OF THE STATE'S CASE TO DIRECT THE JURY TO RENDER A VERDICT IN FAVOR OF DEFENDANT, AND ERRONEOUSLY REFUSED TO GRANT DEFENDANT'S MOTION TO ACQUIT DEFENDANT AT THE CLOSE OF THE WHOLE CASE.

This argument takes up Assignments of Errors Nos. 2, 3 and 5.

The motion at the close of the State's case appears on page 43 of the record, and the motion at the close of the whole case on page 73 of the record.

These motions were made upon the same theory and may be properly argued with the Fifth Assignment of Error, that the verdict of the jury was contrary to law.

In this argument we will not repeat the evidence which has already been discussed heretofore in our brief.

It would seem to us after a perusal of the entire testimony, that if defendant, Benton, committed any crime, it was the crime of receiving money under false pretences and not of embezzlement.

The State's testimony is in effect that Anna Lee parted with her money upon receiving, not, as she believed, receipts for the same, but promissory notes, and that she parted with her money under the false pretences made to her by Benton, that he was taking her money to invest in stocks or other securities, and was giving to her as a token, receipts that he held said monies in trust to be invested for her, whereas, the true facts were that he took said monies with no intention of investing them in stocks for her, and gave her at the time he took them, promissory notes, payable designated months after date, with interest, in the usual form.

For the above reasons, we respectfully submit that the conviction of the defendant should be reversed.

Isadore Klenert,
Attorney for and of Counsel with
Plaintiff-in-Error.