

vol 419 - 1907

New Jersey Court of Errors and Appeals

State of New Jersey,

Defendant in Error,

vs.

Emil Fiess,

Plaintiff in Error.

In Error

Brief.

BRIEF OF PLAINTIFF IN ERROR.

The writ of error in this cause brings up for review the conviction of the plaintiff in error in the Passaic County Quarter Sessions upon an indictment charging him with having received certain goods and chattels of the value of thirty (30) dollars, before that time unlawfully stolen, etc., he well knowing them to have been stolen and the affirmance of the same by the Supreme Court.

The entire record below is brought up and causes of reversal specified thereon under the provisions of sections 136 and 137 of our act regulating criminal procedure (Revision of 1898).

The specification of the causes for reversal will be found on pages 55, 56, 57 and 58. Causes 1, 2 and 3, relate to the admission of certain testimony. Causes 2 and 3 relate to the testimony of the value of the alleged stolen goods. This testimony was clearly incompetent because the witness did not first qualify as an expert of the value of the goods in question and secondly, because her testimony as to the value consisted only of mere guesses. Vide p. 23, lines 12 to 33 inclusive. The object of this testimony was to im-

pute guilty knowledge to the defendant in case he had purchased the alleged stolen goods, and on this account was of the utmost importance as a necessary element in the case. The fourth cause for reversal relates to the refusal of the Court to direct a verdict of acquittal at the close of the State's case. The 5th, 6th and 7th causes for reversal relate to the charge of the court to the Jury and the plaintiff in error insists that said charge was greatly prejudicial to him. The court started out with the erroneous proposition that the only two essential elements of the crime charged were, first, "that the goods were stolen and second, that "the defendant must know that they were stolen." (p. 46, l. 17-19). He omitted the most important element in the case and that was that before the jury could consider the question whether or not the defendant knew that the goods in question were stolen, they must first find that he bought or received the goods. The entire charge covering about five pages (pages 46 to 50) with the exception of the last few lines of the same proceeds upon the assumption that the defendant must have purchased the alleged stolen goods and that his testimony denying the same was untrue.

Plaintiff in error also insists that that part of the charge of the judge (page 46 lines 28-31) wherein he instructs the jury that they had "a right to infer from the circumstances surrounding the transaction as to whether or not the defendant **MUST HAVE KNOWN** that the goods were stolen" is erroneous. *State v. Goldman*, 36 Vr. 394, 397, 398.

In his charge the court also submits to the jury as an element in the case certain questions (page 49) put by counsel for defendant to the thief. This the plaintiff in error insists was contrary to law. Questions put by counsel are not evidence either for or against the defendant and

no element in the case whatsoever and therefore ought not and could not have been submitted to the jury. The only impression the submission of this question could have made upon the jury must have been to discredit the testimony of the defendant, and with that view could have only been submitted by the court to the jury. The trial court should not call the attention of the jury to particular testimony in such a way as to lead the jury to believe that the judge discredits the witnesses or their testimony. *Wilson vs. Hotchkiss*, 81 Mich. 172. 181.

The language upon that subject used by the court is as follows:—"Now, gentlemen of the jury, I may fail to recall exactly and accurately just what was said while the testimony was being given, but as I recall the testimony, this young woman was asked by counsel for the defendant whether, when she was selling these things, was not she asked by him, or did she not say to him, that her husband had pneumonia and that she was poor. It may be that I do not recollect that testimony accurately, but it looks very much as if I did recollect it accurately, when I say that question was asked of her at the time she was selling these goods, for what was the reason for asking those questions, or that kind of a question, at any other time: 'Didn't you say perhaps, as a reason for wanting to dispose of these articles that your husband was sick with pneumonia and that you were poor?' Well, the asking of a question does not necessarily bind the defendant, gentlemen of the jury, but in dealing with that part of the case you have a right to consider that element in it."

This part of the charge read in connection with what the court said to the jury immediately preceding the same in relation to the testimony of the defendant (page 49, lines 5-13) could not have left any doubt in the minds of the jury that the

court believed that the defendant was guilty. It was practically intimating to the jury that the testimony of the defendant was not to be believed and that he was guilty of the crime charged. This was error.

Hicks v. U. S. 150 U. S. 442.

Allesen v. U. S. 160 U. S. 203.

Am. and Eng. Ency. of Pleadings and Practice, Vol. 11, page 319.

For the causes aforesaid the plaintiff in error respectfully asks that the judgment be reversed.

GUSTAV A. HUNZIKER,
WILLIAM S. STUHR,

Counsel with Plaintiff in Error.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,

Defendant in Error,

vs.

EMIL FIESS,

Plaintiff in Error.

Error to

Supreme Court.

Brief for Defendant in Error.

This case is before the Court on writ of error and bill of exceptions. The latter, however, seems to have been abandoned, as there has been no assignment of error thereon. Instead, the entire record has been returned and causes for reversal have been served pursuant to Section 137 of the Criminal Procedure Act. There are a number of these, none of which appears to have any special merit.

The defendant was indicted for receiving stolen goods, knowing them to have been stolen. At the time laid in the indictment, he kept a store at No. 123 Main street, in the city of Paterson, where he dealt in jewelry, diamonds, antiques and curios. On the day in question, Lizzie McCarthy, sixteen years old, sold the defendant a ring and a pin, which she had stolen from her employer. She received two dollars and fifty cents for the ring and twenty-five cents for the pin. The ring was of gold, with a small diamond setting, and was worth about

twenty dollars. The pin was worth about the same. She sold the articles to the defendant in person in his store, which, she said, looked like a "hock-shop." Upon the trial the defendant denied that he bought the articles and endeavored to prove an *alibi*. The only evidence in support of the latter was his own testimony.

The first three causes for reversal relate to the admission of evidence. The objectionable testimony was descriptive of the defendant's store and of the character and value of the stolen jewelry. How anything could be more pertinent to a charge of "receiving" is difficult for me to understand.

Neither do I understand how the court could have directed a verdict. Its refusal to do so is the basis of the fourth reason for reversal. There was evidence to show that the defendant ought to have known that the articles were stolen. Property, of the value of forty or fifty dollars, had been offered for sale at two dollars and seventy-five cents, and that, too, by a sixteen year old girl who was poor and needy, and whose excuse for the possession and disposal of the articles was manifestly false. All the circumstances would naturally suggest to a reasonably prudent business man that he was dealing with a thief, or at least with a person of doubtful honesty.

The fifth, sixth and seventh causes for reversal relate to portions of the Judge's charge.

The first was an instruction of the jury in the principles which were to govern them in determining the question of the defendant's guilty knowledge. The fact of his having received the goods was not enough, so they were told, but it must be shown that he at the time knew them to have been stolen; and, in order to determine this question, the jury was to do the only thing possible in cases of this kind, that is to say, consider all the circumstances, conditions and appearances attending the transaction. From these, the fact of guilty knowledge was to be found—inferentially, of course—if found at all. That is the way cases of this kind are always determined; the condition of a man's mind, the question of his personal knowledge, cannot, in the absence of some declaration by himself, be ascertained in any other way.

In the next place the Court tried to deal with a very remarkable question put to the thief by the defendant's counsel. It will be remembered that the defense was an *alibi*; the defendant claimed that on the day of the alleged sale he was not in Paterson, but was in the city of New York for two or three successive days. In the face of this defense, it was a great surprise to hear the defendant's attorney ask the thief if "she did not *say to the defendant* [who was supposed to be in New York] as a reason for wanting to dispose of these articles, that she wanted the money, that her husband was sick with

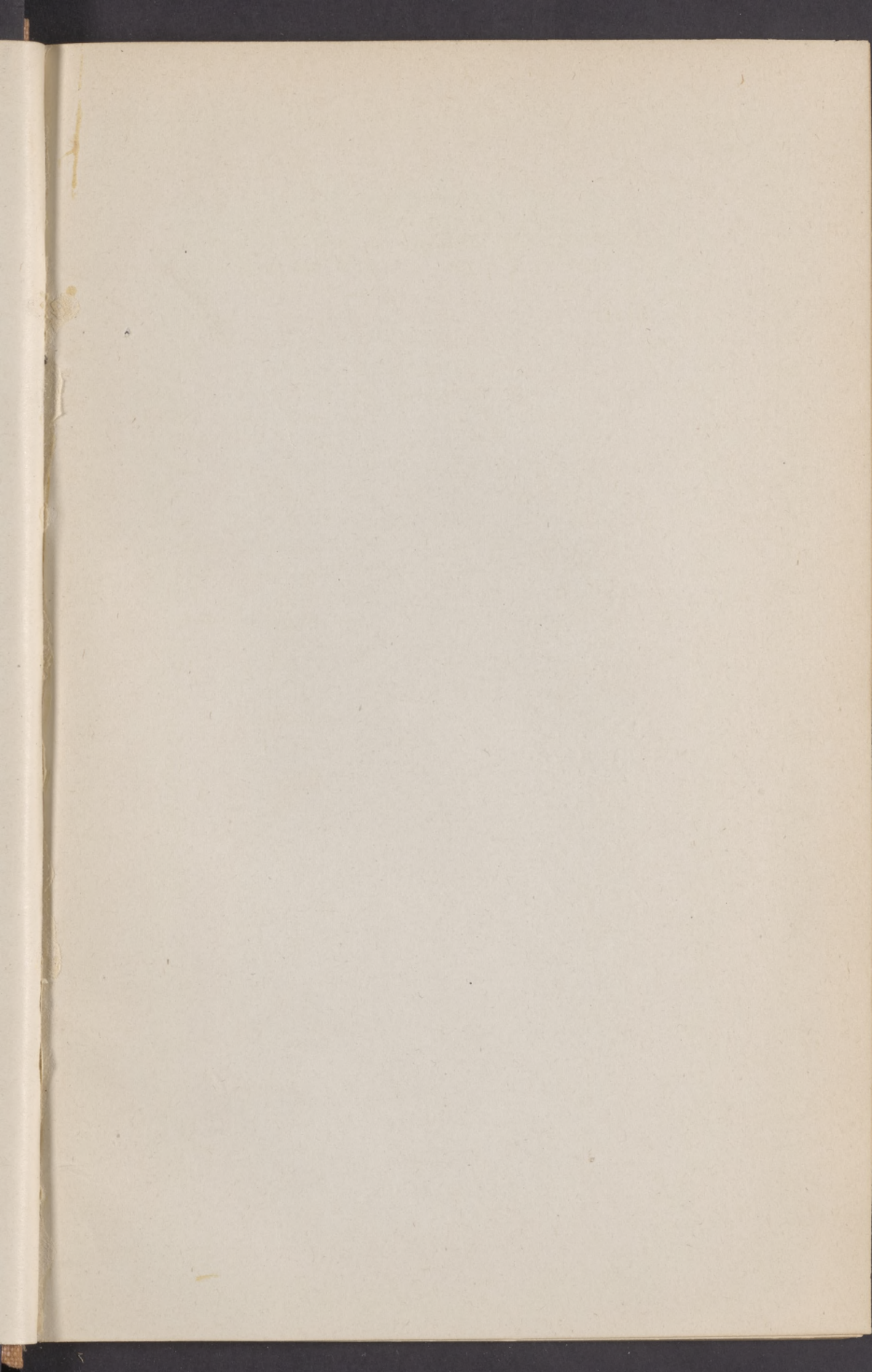
pneumonia, and that she was poor?" And the only comment made by the Court upon this strange inquiry was favorable to the defendant. All that was said was that the asking of such a question did not necessarily bind the defendant, but in dealing with that part of the case the jury had a right to consider that element in it.

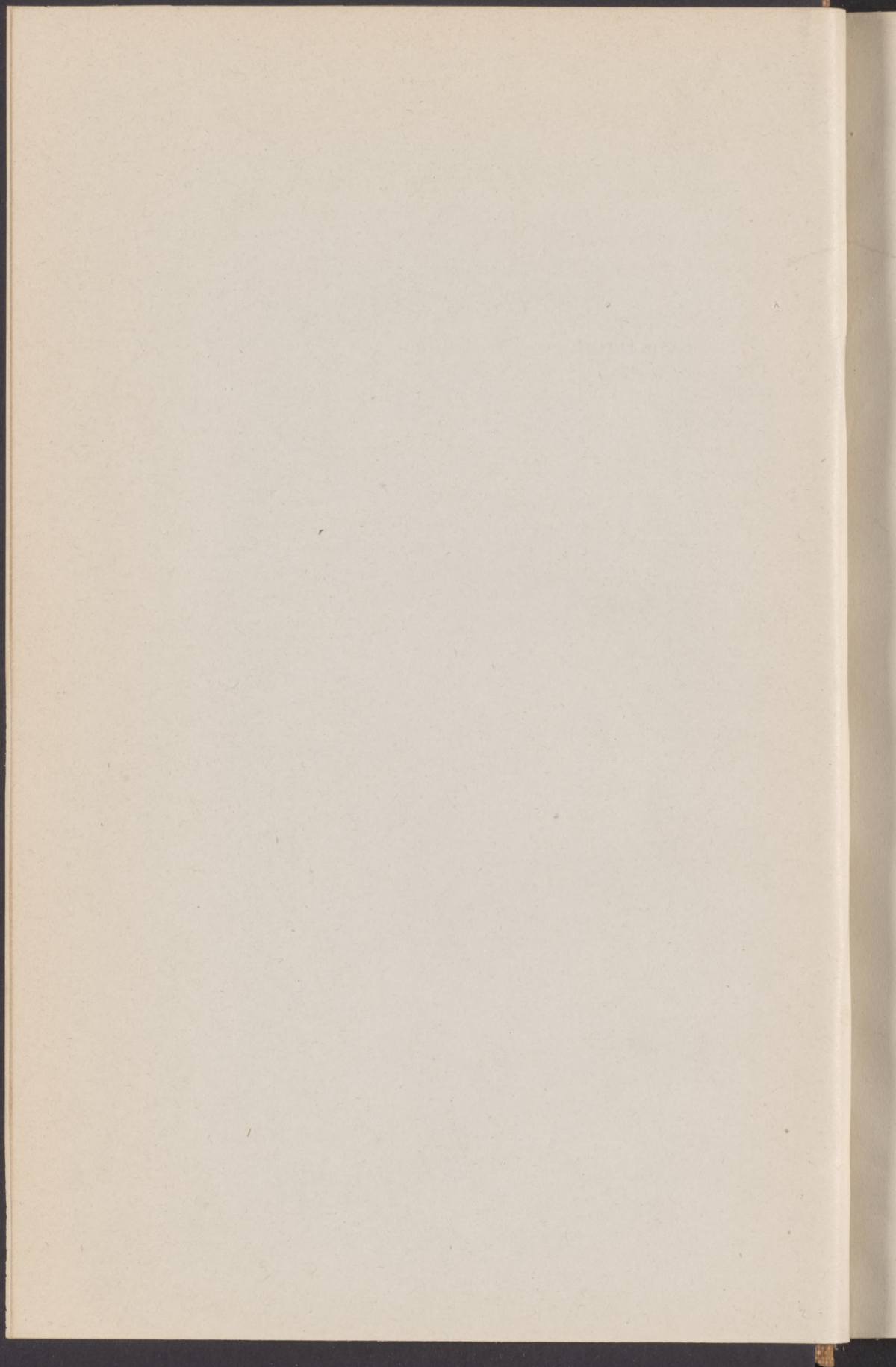
The portion of the Judge's charge which is relied upon as the seventh cause for reversal was distinctly qualified by the Court after the jury had retired. The jury was recalled and the language excepted to was expressly repudiated and the jury distinctly told to disregard it altogether. I do not suppose, therefore, that this last assignment will be further pressed.

These embrace all the criticisms of the proceedings below, and the judgment of conviction should be affirmed.

Dated November 16th, 1906.

EUGENE EMLEY,
Prosecutor of the Pleas.





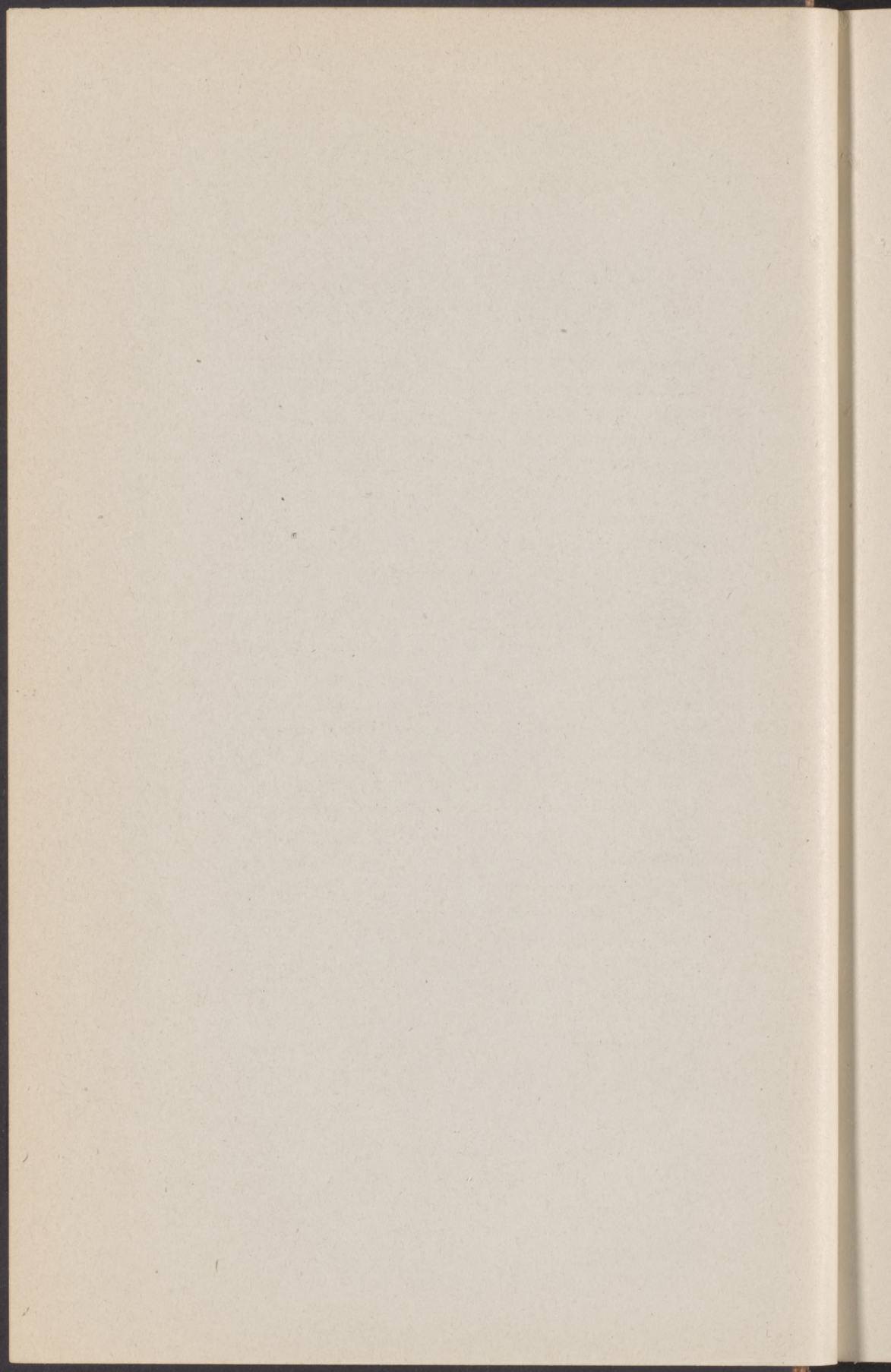
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The State of New Jersey to the
Chief Justice and Other Justices of
[SEAL] our Supreme Court of Judicature,
Greeting :

Forasmuch as in the record and proceedings,
and also in the giving of judgment upon a certain
indictment against Emil Fiess, late of the city of
Paterson, in the County of Passaic, for having un- 10
lawfully received certain goods and chattels, to
wit, one diamond ring of the value of twenty-five
dollars and one diamond stick pin of the value of
five dollars, the property of Eliza Hornung, then
and there well knowing the same to have been un-
lawfully stolen, taken and carried away (pro ut
the said indictment), which was in our
said Supreme Court of Judicature, before
you, between Emil Fiess, plaintiff, and State 20
of New Jersey, defendant in error, man-
ifest error hath intervened, to the great damage
of the said Emil Fiess, as is said ; we being willing
that the error, if any there be, should, in due man-
ner, be corrected, and full and speedy justice done
in this behalf, do command you, that if judgment
be thereupon given and affirmed, then you dis-
tinctly and openly send, under your seal, the
record and proceedings aforesaid, with all things
touching the same, to our Judges of our Court of
Errors and Appeals in the last resort in all causes,
at Trenton, on the fourth Tuesday of July instant, 30
together with this writ, that the record and pro-
ceedings aforesaid being inspected, we may cause
to be further done thereupon, for correcting that

II

error, what of right, and, according to the law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the eleventh day of July, A. D., one thousand nine hundred and six.

S. D. DICKINSON,

Clerk.

10

GUSTAV A. HUNZIKER,

Attorney.

20

30

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
Defendant in Error,

vs.

EMIL FIESS,
Plaintiff in Error.

10

Sur Indictment.—In Error.

Writ of Error.

Writ presented Nov. 24, 1905.

Clerk ordered to make proper returns.

20

F. SCOTT,
P. J.

NEW JERSEY, ss :

[SEAL.]

The State of New Jersey to the
Judge of the Court of Quarter
Sessions of the County of Pas-
saic, of the Term of September,
in the year of our Lord, one
thousand nine hundred and
five.

30

Because in the record and process, and also in
giving of judgment, upon a certain indict-
ment against Emil Fiess, late of the City of Pat-
erson, in the County of Passaic, for having un-

lawfully received certain goods and chattels, to-wit, one diamond ring of the value of twenty-five dollars and one diamond stick-pin of the value of five dollars, the property of Eliza Hornung, then and there well knowing the same to have been unlawfully stolen, taken and carried away, (pro ut the said indictment), whereof before you, he hath been indicted, and is thereof
 10 convicted by a certain jury of the County, taken between the State of New Jersey and the said Emil Fiess, as it is said, manifest error hath intervened to the great damage of the said Emil Fiess, 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 Emil Fiess, command you, that if judgment be thereon given, then that you distinctly
 20 and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Supreme Court, to be held at Trenton, on the second Tuesday of December next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

30 Witness, William S. Gummere, Esq., Chief Justice, at Trenton, this twenty-third day of November, A. D., nineteen hundred and five.

WILLIAM RIKER, JR.,

Clerk.

GUSTAV A. HUNZIKER,

Attorney.

The Court of Quarter Sessions in and for the County of Passaic does herewith in the schedule annexed send to the Justices of the Supreme Court of the State of New Jersey, the record and proceedings mentioned in the within writ of error, with all things touching and concerning, as is within commanded.

[SEAL.] Witness the seal of the said
Court of Quarter Sessions in 10
and for the County of Passaic,
and the hand of its Clerk this
twenty-eighth day of November, A. D., 1905.

JOHN J. SLATER,
Clerk.

20

30

Return to Writ.**STATE OF NEW JERSEY.**

PASSAIC COUNTY, TO-WIT :

Be it remembered that at Court of Quarter Sessions in and for the said County of Passaic, held at Paterson, on the twenty-seventh day of October, in the year of our Lord one thousand
 10 nine hundred and five, being the day on which the Grand Jury for Passaic County hertofore summoned to the Court of Oyer and Terminer in and for said County desire to present bills and, no Justice of the Supreme Court being present at the Court House in said County, before the Honorable Francis Scott, Judge of the said Court of Quarter Sessions in and for the said County of Passaic, according to the form of the statute in that case made and provided, by the oath of

20 Charles D. McKelvey,
 Frank E. Agnew,
 David Beam,
 John J. Brophy,
 James F. Coates,
 James H. Feeney,
 Robert H. Fordyce,
 George E. Hannah,
 Thomas J. Kane,
 Herman Kesse,
 30 John L. Leal,
 James J. Lamb,
 Charles Levy,
 George H. Michels,
 James Madden,
 Edward J. MacDonald,

Charles Pandolf,
Anton L. Pettersen,
Jacob Rutten,
Hamilton M. Ross, Sr.,
Frank S. Schnell,
Kryn Vanderwende,
Samuel Weinberger,

good and lawful men of the said County of Passaic,
duly summoned and then and there sworn and 10
charged to enquire 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 :

20

30

COURT OF OYER AND TERMINER IN AND
FOR THE COUNTY OF PASSAIC.

SEPTEMBER TERM, A. D., NINETEEN HUNDRED
AND FIVE.

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
10 Emil Fiess, late of the City of Paterson, in the
County of Passaic aforesaid, on the twentieth
day of September, in the year of our Lord, one
thousand nine hundred and five, with force and
arms, at the city aforesaid, in the county afore-
said, and within the jurisdiction of this court,
one diamond ring, of the value of twenty-five
dollars, and one diamond stick pin, of the value
of five dollars; in all, of the value of thirty dol-
lars, of the monies, goods and chattels of Eliza
20 Hornung, before then unlawfully stolen, taken and
carried away, unlawfully did receive and have
he, the said Emil Fiess, then and there well
knowing the goods and chattels aforesaid to
have been unlawfully stolen, taken and carried
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.

30 And thereupon the said Court of Quarter Ses-
sions, did receive such indictment and the clerk
of the said Court did file the same in the said
Court, and also did thereupon make entry there-
of in the minutes of said Court, at the then ses-
sion of said Court, and afterwards to wit, at the
same term of the said Court of Quarter Sessions,

holden at Paterson, in and for the County of Passaic aforesaid, to wit, on Monday, the thirtieth day of October, A. D., nineteen hundred and five, at a session thereof, before the Honorable Francis Scott, Esquire, judge of said Court, in and for the said County of Passaic, according to the statute in such case made and provided, came the said Emil Fliess 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 Eugene Emley, Esquire, who prosecutes for the state of New Jersey, in this behalf doth the like. 10

Therefore, let a jury come here before the judge aforesaid, at Paterson, in the County of Passaic, aforesaid, at the same session of the Court of Quarter Sessions aforesaid, on Wednesday, the first day of November, next ensuing, being as yet of the term of September in said year, of twelve good and lawful men of this state, and resident within the County of Passaic, above the age of twenty-one years and under the age of sixty-five years, by whom, etc., who neither, etc., to recognize, etc., because as well, etc., the same day is given to the said parties. 20

At which day, to wit, on Wednesday, the first day of November, A. D., nineteen hundred and five, being as yet of the term of September, of said Court for said year before the Court of Quarter Sessions aforesaid, holden by the Honorable Francis Scott, Esquire, judge of said Court in and for the County of Passaic afore- 30

said, come as well the said Eugene Emley, Esquire, Prosecutor of the Pleas as aforesaid, who prosecutes as aforesaid, as the said Emil Fiess, in his own person, and the jurors of the jury whereof mention is within made to wit:

10 Cornelius K. Berry.
 John T. Murn,
 Garret Garrabrant,
 Peter M. Ruffing,
 Gilbert Reitmulder,
 Samuel Stratton,
 Edmund Cuff,
 George M. Davis,
 Squire T. Radcliffe,
 William V. Senior,
 John V. Ernest,
 John Murphy,

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

30 And thereupon on Friday, the twenty-fourth day of November next ensuing, it was demanded of the said Emil Fiess, if he hath or knoweth anything to say wherefore 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.

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 Emil Fiess do pay a fine of One Hundred Dollars and stand committed until the said fine is paid.

FRANCIS SCOTT,

Judge.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC } ss.

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Emil Fiess convicted of receiving, in our Court of Quarter Sessions, on Wednesday, the first day of November, A. D., nineteen hundred and five, as the same is taken from and compared with original, recorded in book of Records of the Court of Quarter Sessions, now remaining on file and of record in my office. 10

In testimony whereof I have hereunto set my hand and affixed my official seal at Paterson, this twenty-eighth day of November, A. D., 1905. 20

JOHN J. SLATER,

Clerk.

PASSAIC COURT OF QUARTER SESSIONS.

STATE OF NEW JERSEY,

vs.

EMIL FIESS.

On Indictment.

10

Bill of Exceptions.

Be it remembered that on this first day of November, nineteen hundred and five, at the Court of Quarter Sessions holden at Paterson, in and for the County of Passaic, before Francis Scott, Judge of the said Court of Quarter Sessions, the indictment found in the Court of Oyer and Terminer in and for the County of Passaic, prout, said indictment came on to be tried by a jury for that purpose duly empanelled, and was concluded on the same day last aforesaid: Ralph Shaw, Esq., appearing for the state, and Gustav A. Hunziker as attorney for the defendant, and thereupon the state, by Ralph Shaw, Esq., and the said defendant by his attorney, aforesaid, and for evidence as to the truth or falsity of the allegations of said indictment, which, written out from stenographer's notes, was as follows :

30

PASSAIC QUARTER SESSIONS.

STATE	}	
vs.		
EMIL FIESS.		10

On Indictment for Receiving Stolen Goods.

Transcript of testimony taken before Hon. Francis Scott and a Jury at the Paterson Court House, November 1, 1905.

APPEARANCES.

20

RALPH SHAW, Esquire, in behalf of the State; and

GUSTAV A. HUNZIKER, for the defendant.

LIZZIE McCARTHY, sworn in behalf of the state.

Direct Examination by Mr. Shaw :

30

Q. How old are you Lizzie ?

A. Sixteen.

Q. How long have you been in this country ?

A. I was born here.

Q. Where is your home ?

A. 33 North Straight street.

Q. You know Mrs. Horning who lives here on Hotel street ?

A. Yes, sir.

Q. Did you work for her for awhile ?

A. Yes, sir ; for about four days.

Q. When was that ?

A. I could not just say what month.

10 Q. Was it last September, about the middle of the month ?

A. Yes, sir. I left on a Wednesday night.

Q. You worked there as a housemaid, doing housework at her house ?

A. Yes, sir.

Q. And her house is on Hotel street ?

A. Yes, sir.

Q. Did you take anything there ?

A. Yes, sir.

Q. What was it ?

20 A. A pin and a ring.

Q. What kind of a pin ?

A. It was a gold pin and had a big white stone in it.

Q. And what kind of a ring was the ring ?

A. The ring was a white stone in it, too.

Q. And was it a gold ring with a white stone ?

A. Yes, sir ; the jewelry man said it was.

Q. Were there any initials in the ring ?

A. Yes, sir.

30 Q. What were they ?

A. I could not say.

Q. What time of day was it that you took them ?

A. I took them towards night.

Q. What day ?

A. On a Wednesday.

Q. The day you left?

A. Yes, sir.

Q. What did you do with the ring?

A. I sold it to a jewelry man on the corner of Broadway and Main—next to a tea store.

Q. Who is that man?

A. I don't know his name.

Q. Do you know his face?

A. Yes, sir.

10

Q. Is he present in the Court House?

A. I don't know.

Q. Look around the table here amongst these gentlemen here and tell us if you see him.

A. There he sits over there (indicating the defendant).

Q. This one here next to Mr. Hunziker?

A. Yes, sir.

Q. That is the man?

A. Yes, sir.

20

Q. That was at the store at Main street, near Broadway?

A. Yes, sir; on the right hand side going down.

Q. What kind of store is it?

A. It looks like a hock shop.

Q. You were in the store?

A. Yes, sir.

Q. What time was it when you got there?

A. About half-past eight.

30

Q. Tell us what happened there; whom did you see?

A. I didn't see any one but that gentleman, and I went in and asked him if he bought jewelry, and he said "What have you got", and

I showed him the ring and then I showed him the pin, too ; when I showed him the ring he said the ring is good, but the stone is no good, and he gave me \$2.50 for the ring ; and when I showed him the pin he said "How much do you want for it?" And I did not know what I wanted for it, because I did not know what sort of pin it was, and I said "What is it worth", and he said, "I will give you \$2.50 for the ring and a quarter for the pin."

10

Q. 25 cents for the pin ?

A. Yes, sir.

Q. Were there any initials in the ring ?

A. Yes, sir.

Q. What were they ?

A. I don't know.

Q. Was there any talk with him about the initials ?

A. He said he could rub the initials out.

20

Q. You took the money ?

A. Yes, sir.

Q. \$2.75 ?

A. Yes, sir.

Q. And he took the ring ?

A. Yes, sir.

Q. What happened next about the ring and the pin after that ; what was the next thing that happened ?

30

A. I went down and bought a pair of shoes and one article of underwear, and a dollar I gave to my sister.

Q. What happened next after that ?

A. Nothing at all.

Q. Did you go back to the store ?

A. Yes, sir ; about a week after I went to the

store—the detective came after me, that gentleman there, Mr. Shane, (indicating the Prosecutor's detective).

Q. Whom did you see at the store then ?

A. I didn't see any one until the last time I went back, and then there was a little boy there.

Q. Did you see this defendant, Mr. Feiss there at the store any time since ?

A. Yes, sir.

Q. When ?

10

A. He stood behind the counter.

Q. When was that ?

A. I told him about the things, and he said that I was a liar and to take me out of the store.

Q. What did you tell him ?

A. I told him I sold him the ring and the pin, and he stood awhile thinking, and then he said "she is a liar, and I don't want her here, take her out of the store".

Q. Who was there then ?

20

A. Mr. Shane and Mrs. Horning were both there when he said that, and there was a young boy in there, too.

Q. Now at the time you sold the ring, whose clothes did you have on ?

A. I had on this skirt and this waist.

Q. And a jacket ?

A. No, sir ; I had on my white waist that night and a black skirt.

Q. How long were you in the store altogether ?

30

A. I don't know, I was not in there more than 20 minutes.

Q. Was there much talk between you and him about buying the things when you took them to him ?

A. He stood looking at them and then he weighed the ring, and then he said, "the ring is good, but the stone is not," and he said, "I will give you \$2.50 for the ring, and a quarter for the pin," and I said "All right," and he said "If I am ever able to do anything for you, step in, and I will help you;" but I never went back until Mr. Shane came after me.

10 Q. When he spoke about rubbing the initials out of the ring, what did you say to that?

A. I told him not to do it.

Q. Did you say anything to him about going back and redeeming them?

A. Yes, sir; I told him I would come back after the ring again.

By the Court :

Q. Did he buy the ring and pin from you?

20 A. Yes, sir.

Q. Or did he loan you money on them?

A. He did not say; he said I will give you \$2.50 for the ring and a quarter for the pin, but he did not say whether he loaned the money on them or whether he bought them.

Q. When you said you would go back for them what did he say?

A. Nothing.

30 *Cross Examination by Mr. Hunziker :*

Q. Are you married?

A. Yes, sir.

Q. How long have you been married?

A. Pretty nearly a year.

Q. What is your marriage name?

A. Greer.

Q. Do you live with your husband ?

A. No, sir.

Q. When did you leave him ?

A. I lived with him three weeks, then I left him.

Q. You have not lived with him since ?

A. No, sir.

Q. What have you been engaged in since you left your husband ? 10

A. I have been living out most of the time ?

Q. Where did you live out first after leaving your husband ?

A. I was home after I left my husband, and the first place I lived out was Mrs. Horning's.

Q. You stayed there four days ?

A. Yes, sir.

Q. Did you tell her you were going to leave ?

A. No, sir.

Q. Where did you find the ring and pin ? 20

A. Up in her room, on the top of a bureau.

Q. Before you went to work for Mrs. Horning what had you been doing before that ?

A. I was home all the while.

Q. With whom ?

A. With my sister.

Q. That is 33 North Straight street ?

A. Yes, sir.

Q. You say after you took this ring and pin from Mrs. Horning's house you went to this place on Main street ? 30

A. Yes, sir.

Q. And what did you tell the man when you first went in there ?

A. I said "do you buy any sorts of jewelry ?"

and he said, "What are they," and I said, "I have a pin and a ring," and he said, "Let me see them," and I showed him the ring first, and then afterwards I showed him the pin, and he said the ring was good, but the stone in the pin is no good, and I said, "What are they worth," and he said, "I will give you \$2.50 on the ring;" then I showed him the pin, and he said the pin was good but the stone was not any good, and and he could sell the same sort of a pin for 50 cents.

10 Q. Did you tell him anything about your husband?

A. I told him it was my engagement ring and said he was sick with pneumonia.

Q. Did you tell him you wanted to dispose of these things because you needed the money?

A. Yes, sir.

Q. Because your husband was sick?

20 A. Yes, sir.

Q. Did you tell him you were suffering for want of food?

A. No, sir.

Q. Did you tell him your husband was suffering from pneumonia and you needed the money?

A. Yes, sir.

Q. What time of night was it when you got to the store.

30 A. Half past eight.

Q. There was no one in the store but this gentleman here?

A. That is all.

Q. You say he weighed the stuff that you brought there?

A. Yes, sir ; he weighed the ring but not the pin.

Q. Now, after that time you went back to the store with Mr. Shane and Mrs. Horning, did you ?

A. Yes, sir.

Q. And that was last week ?

A. Yes, sir.

Q. And you told these people in Mr. Fiess's presence you had sold this stuff to him ?

10

A. Yes, sir.

Q. And he then told you you were a liar ?

A. Yes, sir.

Q. He denied he had ever bought these things from you ?

A. Yes, sir.

Q. Did Mr. Feiss at that time offer to show these people everything that he had there in stock ?

A. Well, he showed them 3 or 4 boxes of rings, and that is all he did show them.

20

Q. Now, Mrs. Greer, do you know a Mrs. Sutcliff ?

A. Yes, sir.

Q. Where does she live ?

A. On Highland street.

Q. You have been visiting her house recently ?

A. Yes, sir.

Q. When ?

A. I don't know just how long ago it was.

Q. Was it before you went to Mrs. Horning's or afterwards ?

30

A. I think it was before I went.

Q. Did you steal something there ?

A. Well, she pronounced and says I stole something.

The Court :—What is the object of that question ?

The Witness :—She says I stole a watch from her.

10 *The Court* :—It is admitted she took these things here ; isn't that quite sufficient for that purpose ?

Mr. Hunziker :—I think it makes it stronger.

The Court :—Is that the purpose, to show her character, I rule it out.

The Assistant Prosecutor :—I don't object to it.

20 Q. You have spoken to Mrs. Sutcliff today ?

A. Yes, sir.

Q. And the thing that you are accused of having stolen from her, was a watch ?

A. Yes, sir.

Q. And did you steal it ?

A. Well, I did not just steal it ; but she says I stole it ; she said if I didn't own up and say where I put it she would have me arrested ?

Q. Did you take it ?

30 A. No, sir ; I did not have it, but she wants me to say I took it and sold it.

Q. Didn't you tell Mrs. Sutcliff this morning where she could find the watch ?

A. Yes, sir ; I did, but it is a lie.

Q. So you lied to her this morning ?

A. I did not take the watch.

Q. You have been arrested on that charge ?

A. Yes, sir.

Q. Do you know a woman named Bostady, who lives at Riverside, on the corner of Fourth avenue and River street ?

A. Yes, sir ; I lived there for awhile.

Q. During what time did you live there.

A. It was quite warm in summer when I was there. 10

Q. This summer ?

A. Yes, sir.

Q. What were you doing there ?

A. I was boarding there.

Q. What occupation were you engaged in ; what work were you doing, if any ?

A. When I was not working I would stay home and make my bed and help her, and when I was working—

Q. What were you working at ? 20

A. Fringing.

Q. Didn't you say you didn't work until you went to Mrs. Hornings' ?

A. I was not working at all then ?

Q. Not while you lived at Riverside ?

A. No, sir.

Q. How did you pay your board ?

A. I did not pay any board.

Q. When did you live there ; what month was it ? 30

A. I don't know.

Q. Have you seen those people since ?

A. Yes, sir ; I was talking to the lady this morning.

Q. Where ?

A. Right here in the Court room.

Q. Now, when you left there, is this the first you have seen of them since then ?

A. Yes, sir.

Q. Did you steal anything there ?

A. No, sir.

Q. Were you accused of stealing anything when you left there ?

A. No, sir.

10 Q. Did you steal \$5 when you left there ?

A. No, sir.

MRS. ELIZA HORNING sworn.

Direct Examination by Mr. Shaw :

Q. You lived on Hotel street ?

A. Yes, sir.

Q. You keep a boarding house there ?

20 A. Yes, sir.

Q. And have done so for many years ?

A. Yes, sir.

Q. Do you know this girl, Lizzie McCarthy ?

A. Only by just having her employed in my house.

Q. When was she employed at your house ?

A. The 16th of September.

Q. From the 16th until how long ?

A. The 20th.

30 Q. Where did you get her, what employment agency ?

A. From Mr. Gilbert's employment office.

Q. And when she went did you miss some things ?

A. Yes, sir.

Q. What ?

A. A stick pin and a gold ring.

Q. Describe the stick pin to us ; what was the stick pin worth ?

A. I really could not say ; it was a present to me, but I know it was quite valuable, quite high, I should say.

Q. Was it worth 50 cents ?

A. More than that.

Q. To the best of your knowledge what was it worth ? 10

A. I could not say ; I would not set a price.

By the Court :

Q. Cannot you tell whether it was worth \$1 or \$50.

A. It was not worth \$50, I should judge about \$20 or \$25.

Q. Are you speaking of the pin ? 20

A. Yes, sir.

Q. What was the ring worth ?

A. I could not say ; that was my engagement ring and it had my initials inside—W. H. to E. L. ; that was a gold ring.

Q. What was the setting of that ?

A. Small diamond.

Q. You had had the ring how long ?

A. It was my engagement ring.

Q. You had had it some years ? 30

A. Yes, sir.

Q. You say you missed the ring and the pin ?

A. Yes, sir.

Q. Where had they been ?

By the Court :

Q. Cannot you give us an idea of the value of the ring ?

A. I am no judge of diamonds at all ; I have never bought any myself.

Q. Was it worth \$15 ?

A. I know it is worth more than that ; I know you could not go in a store and get one for \$15 or \$20 like that ; I don't understand diamonds at all ; but I know it is very valuable to me.

Q. How soon after Lizzie left you did you miss the ring and pin ?

A. I missed it that night when I went to bed.

Q. She had left you at what time ?

A. She left me about eight o'clock or a little before eight.

Q. Was she discharged by you ?

A. No, sir ; she never said she was going.

Q. She just departed without saying anything ?

A. Yes, sir.

Q. When you were going to bed around ten or half past ?

A. Yes, sir ; probably before ten.

Q. (Continued) You found these things were gone ?

A. Yes, sir.

Q. What did you do about it ?

A. I kept quiet because the next morning a boy came around and said Lizzie would not be to work as her father was dead, and he wanted her wages ; and I told him that when her father was buried to come and see me ; I said "I won't give you the money, but you tell her to come

and see me," and I never saw her until Mr. Shane brought her to me, or sent her to me ; I spoke to Mr. Shane about it.

Q. Well, after that, did you go to Fiess' store ?

A. Yes, sir.

Q. When was that ?

A. Well, now, I shall have to leave that to Mr. Shane, but it was last week some time.

Q. And whom did you see there ?

A. This gentleman.

10

Q. What happened there then—first, who was with you besides Mr. Shane ?

A. The girl.

Q. What happened ?

A. Well, Mr. Shane asked him if he had bought a stick pin and a diamond ring off this girl, and he said he did not remember ; so we brought the girl down, and he said that she was a liar and wanted her out of the store, then he called me back and asked me if there was anything there that looked like mine, and I did not see anything there that resembled mine at all.

20

Cross Examination by Mr. Hunziker :

Q. Mr. Fiess offered to let you examine everything in the store ?

A. He did not say that to me, but he brought out these trays and asked me if there was anything there, and I said "No, there was not."

30

Q. Was there anything said about the day on which this girl was supposed to have been there—the date ?

A. Why, she came there the 20th, she said herself—

Q. I mean in the store, while you were in Fiess' store, was anything said between you as to what time she was supposed to have been there with this property ?

A. I don't know that there was, but she said herself she was there about half past eight.

Q. On what day ?

A. It was on a Wednesday, the 20th.

10 *Re-direct Examination by Mr. Shaw :*

Q. When you were there in the store talking to the defendant, you and Mr. Shane and the girl, was anything said by the defendant with regard to you and he doing business, or any conversation like that ?

A. Yes, sir ; he said to Mr. Shane, "I will talk with this lady" and then he brought out the tray and asked me if there was any there that
20 looked like it.

Q. Where did you go to talk ?

A. Nowhere.

Q. In the store ?

A. Yes, sir ; and he said he had not bought anything, and Mr. Shane said he had because the girl said so, and he said "You go on and do what you want."

Q. Mr. Fiess was very indignant ?

A. Yes, sir ; just as if Mr. Shane had no right
30 to be there or to speak that way to him.

*Mr. Hunziker :—*Perhaps he had not.

*Mr. Shaw :—*Perhaps he had, if remarks of that kind are material in the case.

PROSECUTOR'S DETECTIVE SHANE,
sworn for the state.

Q. Do you live in Paterson ?

A. Yes, sir.

Q. You are the special officer to the Prosecutor
of the Pleas ?

A. Yes, sir.

Q. Do you know Mrs. Horning ?

A. Yes, sir.

10

Q. At her request you tried to find out what
had become of her ring and stick pin ?

A. Yes, sir; after Mrs. Horning had spoken
to me about losing the ring and pin I tried to
find out who this Lizzie McCarthy was, and I
did find out, and I found out she sometimes
stopped at her sister's and I went over and saw
her sister, and she said she had not seen her in
a month, and then I made arrangements with
another party to let me know when she came
around, and they did, and I went over and took
her to task about the ring and pin, and I tele-
phoned to Mrs. Horning that the girl would be
up there that afternoon to take her where the
pin and ring were.

20

Q. Get down to the story ?

A. I stopped in to see Mr. Fiess on my way
back and there was a colored girl in there, a
young girl, either buying or selling a watch, and
I walked to the rear of the store, and the de-
fendant came and said, "What can I do for
you ?" and I said, "Has there been two ladies in
here this afternoon looking after a stick pin and
diamond ring ?" and he said, "There was some
one in yesterday trying to buy one ;" and I said

30

"No, there is a lady lost a gold pin and a gold ring, and they claim it was sold here." "Well, now," he said, "I don't remember buying anything of that kind, but I have had a young man working for me who has been buying stuff here on his own hook and selling it, and I have discharged him this week;" he said, "He lives at 994 Garfield Road," and I said I would send for him and talk to him; I said, "A complaint should be made against him if he is that kind of man," and then I left him; and that night I went down to see why the girl had not come; this resulted in my going back to the store again, and I went down the next day; she came the next day, and she and I and Mrs. Horning went down to the store, and Mr. Fiess was not there, so I told them to come back after awhile, and then Mr. Fiess came in and said, "What do you want?" and I said, "The lady who said she sold you the pin will be here with the lady who lost it," and he said, "Don't you say that again," and he said "I don't care for you, you are nothing to me," and I said "I have not said that you bought it, Mr. Fiess, but the young lady says you bought it," and he said "Don't you say I bought it again or I will make a charge against you;" and by that time Mrs. Horning and this girl stepped in, and they walked up to him. Mrs. Horning stepped up to him and said "Have you done anything about the pin and the ring?" and he said "No," and she said to the girl "What did you do with the ring?" and the girl said "I sold it to him," and he said "Don't you say you sold it to me or I will have you ar-

rested," and she said "I told you also that I had a stick pin, and you said 'let me see it?' and you gave me a quarter for the stick pin and \$2.50 for the ring, and I told you my initials were in there and it was my wedding ring, and you said 'that is easy, I can take them out all right;'" and he said "You are a liar," and he said, "Now, I want you to take that girl out"; I did not pay any attention to what he said for I did not speak to him after that; and then he said to Mrs. Horning; he said, "Come down here," he said, "I can do business with you", and he pulled the tray out, and I said, "I don't want any influence from you; I have used you like a gentleman;" I said "There would have been a complaint against you three days ago if it had not been for me". So I turned the case over to Mr. Emley, and that is the last I know of it.

10

20

Cross Examination by Mr. Hunziker :

Q. Mr. Fiess was very indignant, wasn't he?

A. The first time I was there he was a perfect gentleman.

Q. But the second time that you came there he was very indignant?

A. I should say he was.

Q. Did he say to you that you were at perfect liberty to examine everything in his store? 30

A. No, sir.

Q. Did he say that at any time?

A. No, sir.

Q. Did you hear him say that to Mrs. Horning?

A. No, sir ; he said "I have not bought anything of that kind, I don't think."

Q. You were angry yourself at Mr. Fiess' conduct?

A. No, sir ; I was as cool as I can be ; he knows I never opened my mouth angrily.

Q. Immediately after leaving his place of business you went to the prosecutor's office with Mrs. Horning?

10 A. Yes, sir ; I turned them over to Mr. Emley, I don't know what he did.

Q. At any rate, shortly after that Mr. Fiess was arrested upon this charge?

A. He was indicted and arrested on a bench warrant.

Q. Did you look among the stock of Mr. Fiess to see if you could find this property?

A. No, sir.

Q. You made no effort at all to find it?

20 A. No, sir ; because he denied having it.

Q. Did you hear him say to Mrs. Horning that she should go outside and look at everything in the window?

A. No, sir ; he brought the tray out of the window.

Q. Did she go out and look in the window?

A. I think the first time she went down there she looked in the window before she went in.

30

STATE RESTS.

MOTION FOR DIRECTION OF A VERDICT.

Mr. Hunziker :—I move the Court to direct a verdict of acquittal of the defendant on the ground that the State has not shown, even if the evidence be true, that the defendant had any knowledge that these articles were stolen. The evidence is that she went there and told this defendant that her husband was sick with pneumonia, and she was very poor and needed money and that he bought these things then ; it is incumbent upon the State to prove, in order to make out this case, that the defendant knew, not that he had ground for suspicion, but that he knew that these goods were stolen, and having that knowledge he bought them. I move you, sir, that a verdict for acquittal be made.

The Court :—This crime is not committed unless the goods have been stolen in the first place, and known to have been stolen, by the receiver, in the second place, in order to make him guilty ; but the decisions allow the knowledge to be inferred from the circumstances of the case ; and if the circumstances of the case are such that the receiver must have known that the goods were stolen, then he is guilty of the crime charged ; and that question is entirely

for the jury. It is for them to determine whether or not under the circumstances of the case, when he received those goods he knew that they were stolen, and if the circumstances indicate that as a sensible man, and an intelligent business man, he must have known that they were stolen, then he is guilty of the crime charged.

10

That point being entirely for the jury, I refuse to grant the motion.

To which ruling of the Court the defendant's counsel prays an exception.

Exception allowed. Let it be sealed and it is sealed accordingly.

20

FRANCIS SCOTT,

J.

MRS. LAURA SUTLIFFE sworn for the defence.

Direct Examination by Mr. Hunziker :

Q. Do you know the young woman who has been on the witness' stand this morning, known as Lizzie Greer ?

30

A. Well, this is the third time I have seen her.

Q. You know enough of her, Mrs. Sutcliffe, to be competent to say what her reputation is

among the people among whom she is known, for telling the truth?

A. It aint much good as I hear of it.

By the Court :

Q. Do you know what the reputation of this woman is in the neighborhood in which she lives as to her reputation for telling the truth?

A. Well, I don't know where she lives half 10
the time, because she is living all over at different places, but people what knows her has told me since I lost my watch that her word was no good ; of course, I don't know the girl ; this is the third time I ever met her.

Q. Do you know many people that are acquainted with her?

A. Yes, sir.

Q. And what you have just stated is the general opinion held by these people that know her? 20

A. Yes, sir.

Cross Examination by Mr. Shaw :

Q. Whom do you know that knows her?

A. Well, a girl by the name of Louisa Strawmeyer, who lives at 88 Holland street, and one named Emma Bossett, who lives in the same house.

Q. Anybody else? 30

A. There was one living there but she has gone away now ; those are the only ones that ever told me anything about her, except her own sister, too, and the groceryman that I trade with, he has told me about her.

Q. All this was the result of a specific inquiry of yours, wasn't it?

A. Yes, sir.

Q. Because you made some claim that she had stolen something from you?

A. I lost my watch the same day that she was there, and there was no one else in the house but her.

10 Q. That is the reason you made the inquiry?

A. Yes, sir.

MRS. MARY BOSTADY sworn for the defence.

Direct Examination by Mr. Hunziker :

Q. Do you know this Lizzie McCarthy who was sitting here a little while ago.

20 A. Yes, sir.

Q. Under what name do you know her—is that the name she gave you?

A. No, sir ; Maggie.

Q. How long have you know her ?

A. Nine days.

Q. Are you acquainted with people that know her ?

A. Yes, sir.

Q. You keep a boarding house ?

30 A. Yes, sir.

Q. How many people do you have there in your boarding house ?

A. Probably 8 or 10.

Q. Do you know enough about this Lizzie, or

Maggie, to know her reputation in the community in which she lives for telling the truth ?

A. I don't know.

Q. You don't know ?

A. No, sir.

MR. EMIL FIESS sworn in his own behalf.

Direct Examination by Mr. Hunziker :

10

Q. You are the defendant here ?

A. Yes, sir.

Q. What is your business ?

A. Jeweler.

Q. How long have you been engaged in that business ?

A. 22 years.

Q. Where did you do business in Paterson ?

A. 123 Main street.

Q. How long have you been there ?

20

A. I opened that place on the first of April this year.

Q. Before you came to Paterson where were you engaged in business ?

A. New York city.

Q. On your own account ?

A. On my own account ; yes, sir.

Q. How long have you been in business on your own account ?

A. Two years.

30

Q. Before that where were you employed ?

A. By Tiffany, of New York, for fourteen years.

Q. What is the nature of the jewelry business that you conduct here in Paterson ?

A. Jewelry, diamonds, and antiques and curiosities.

Q. Do you remember having seen this young woman that was on the witness stand this morning, before ?

A. Yes, sir.

Q. When did you first see her ?

A. I saw her for the first time when she came in my store with Mrs. Horning.

10 Q. Who was with her at that time ?

A. Only Mrs. Horning.

Q. What was said when she came in there, what did she say to you ?

A. She said to me that I bought from her a diamond ring and a scarf pin—a ring and a pin I mean, and I told her I never saw her before in my life ; that she lied, and she said she was going to have me locked up, and then I told the officer to take that woman outside.

20 Q. Mr. Shane was there then ?

A. Yes, sir.

Q. That is the first time you ever saw her ?

A. Yes, sir.

Q. Did you ever buy a ring from her ?

A. No, sir.

Q. Or a stick pin ?

A. No, sir.

30 Q. When did you first speak to Mr. Shane about this matter—when did Mr. Shane first speak to you about it ?

A. About two days, I believe, previous to that day, I was talking to a colored lady ; I showed her some watches, and we were conversing about the movements, I believe, when Mr. Shane came in ; my young man was stand-

ing there, and I said, "Can I do anything for you?" and he said, "Has there been two ladies in here looking for a ring and a scarf pin?" and I said "Yes, there was some one in yesterday to buy something," and he said, "There has been a ring stolen and a scarf pin, and the lady claims she sold it here;" I said, "I will talk to you when I get through with this customer;" so when I got through I told him that I did not buy anything of the kind, and knew nothing about it, and anything like that would show in my book or in the stock that I had there; I told him that I had a young man in my employ who had left, and I said "possibly the young man knows something about it," but I did not charge the young man with dishonesty; I said possibly he had bought something there on his own hook and sold it on his own hook, I was referring to some fountain pens; and he said "Well, you had better let the man know," 10 and then Mr. Shane went out, and about two days afterwards I had just come from New York and Mr. Shane walked in there, and I said, "How about it?" and he said, "How do you do?" and he turned to my young man and said "Telephone to Mrs. Horning that Mr. Fiess is here," so I turned round and said "Now I want you to thoroughly understand that I am boss in here; if there are any orders to be given, I will give them, and as far as anything 20 else is concerned, if I have a customer in here I want you to act like a man in public office and tell me these things when my customers are gone, or I will make a charge against you"; then Mr. Shane stood aside and then Mrs. Horn-

ing came and Mr. Shane never interfered with the business, nothing more was said to him until I told him to take the girl out as I was very much provoked with being charged with a crime, which I would not have happen under any circumstances ; I said to Mrs. Horning "I think I can prove to you that I have not been here at all, but my young man has run the store for two or three days at a time" ; I was engaged to be married at that time and I often went to New York. I went over to my wife's house in the evening, and I was often not here for two or three days, and I said, "I think I can prove that I was not in the city at all at that time." I told Mrs. Horning that I wanted to show her anything that she wanted, and I said, "Look at my stock to see if you can see anything" ; I said, "Is there anything like it here ?" and by that Mr. Shane told Mrs. Horning to come on and they would make a charge, and I said, "You can do all you want" ; I was very indignant.

Q. Now, Mr. Fiess, can you tell us whether or not you were in Paterson on the 20th of September last ?

A. Yes, sir—the book will show.

Q. Just look at it and see.

Mr. Shaw :—May I look, also ?

The Court :—You have a right to do so.

A. All the numbers there specify just what the article is ; now, here is goods bought on the 19th, gold cuff buttons.

Q. Where did you buy these goods.

A. In the United States Auction rooms on the Bowery.

Q. Turn to September 20th?

A. They are goods bought.

Q. Just look through those items and say if you find any record of a gold ring and stick pin; turn to the 20th?

A. I can show the specified bill for those—they are bought from L. Fiorsky, 170 Bowery, auction room for pawnbrokers, which are sold at public action. 10

Q. Can you tell, Mr. Fiess, from the transactions that are entered in that book where you were on the 20th of September?

A. Yes, sir.

Q. Where?

A. In New York.

Q. Do you know what time, the exact time of day? 20

A. I was not here at all that evening or that night—those three days, the 19th, the 20th and 21st I was in New York, and in the evening I went over to Brooklyn to my intended wife at the time.

Q. Have you since got married?

A. Yes, sir.

Q. Now, among those articles there, do you find any record of this diamond ring and stick pin? 30

A. No, sir.

Cross Examination by Mr. Shaw :

By the Court :

Q. You buy goods from people around town here ?

A. Sometimes, yes.

Q. This book is a record of your stock in the store, isn't it ?

10 A. Yes, sir.

Q. And when you buy from this auction stock in the Bowery in large quantities you enter those things in this book ?

A. Yes, sir.

Q. You don't enter into that book the individual purchases from a single individual around town here ?

A. Yes, sir ; I do.

20 Q. Can you point to a single instance of that kind in the whole book ?

A. Yes, sir.

Q. Do it then.

A. There is a drum and two drum sticks, I bought that from a private individual, and I paid a party \$4 for this, my boy can prove that, it was bought on September 18th; a drum and two drum sticks that I paid \$4 for, and it was sold again.

Q. Did you make these entries yourself ?

30 A. Some part I enter, and sometimes they were entered by my intended wife ; my young man calls it out from the bill and it is entered at the same time ; the young man often had to stay late at night to enter them in the book.

Mr. Hunziker:—I should like to ask another question.

Further Direct :

Q. In whose handwriting are these entries of September 19th and 20th ?

A. September 19th—that is under my hand with the assistance of the young man, he was there that time.

10

Q. You entered them yourself ?

A. Yes, sir.

By the Court :

Q. When did you enter them, when did you make these entries ?

A. Those entries were made when the goods were called for.

Q. Those entries of the 19th and 20th of September, when were those entered in the book ?

20

A. They were entered maybe on the 22nd.

Q. When were they entered in the book, the purchase of September 19th and 20th ?

A. They were entered on September 22nd, because when I buy the goods, the bill says bought September 19th.

Q. Did you make those entries on September 22nd ?

A. Yes, sir ; those goods bought on September 19th.

30

Q. Did you say you made those entries on that book on the 22nd of September ?

A. Yes, sir.

Mr. Hunziker :—We offer the book in evidence.

Cross Examination by Mr. Shaw (continued) :

Q. Is that your whole business, buying goods at pawnbrokers' auctions ?

A. I buy goods from manufacturers and bankruptcy sales and I buy regular goods.

10 Q. And you say you deal in antiques ?

A. Yes, sir.

Q. What kind of antiques do you keep there in your store now ?

A. Oh, different things in jewelry.

Q. Antiques in jewelry ?

A. Yes, sir.

Q. What kind, Roman or Greek, or what ?

A. Articles that were manufactured about 50 or 100 years ago, which are not manufactured today.

20 Q. You call those antiques ?

A. Yes, sir.

Q. Have you anything of that kind now ?

A. Yes, sir.

Q. What have you got as the most interesting antique in your store, what specific antique have you there that is the most interesting ?

A. I have some brooches and some earrings.

Q. Made how long ago ?

30 A. Maybe 50 years ago.

Q. You call those antiques ?

A. Yes, sir.

Q. Don't you call those old fashioned jewelry ?

A. That is a new word for them.

Q. That drum you bought, was that an antique?

A. No, sir; it was not.

Q. Whom did you buy that from?

A. I bought that from two young men.

Q. How old young men?

A. About 22 years old.

Q. Did you buy it at night?

A. Well, no, sir; I think I bought it about noon time. 10

Q. Nobody else in your store buys anything but you?

A. Well, I give the young man the privilege if anything comes in, and the man can give full references, then the young man is allowed to buy it.

Q. You have the names of the boys who sold the drum to you?

A. No, sir; I have not the names.

Q. You have not the names of any one that you buy things from? 20

A. Yes, sir.

Q. Not recently?

A. I have not bought anything recently.

Q. You deal also in curiosities?

A. Yes, sir.

Q. What kind of curiosities?

A. Japanese things and so on.

Q. You have been in Paterson since last April?

A. Yes, sir. 30

Q. Where were you in business before that?

A. 12 and 16 John street, New York City.

Q. 12 and 16 John street is a big office building?

A. I know that.

Q. Did you occupy the whole building ?

A. No, sir ; I had an office there and a workshop.

Q. Were you then dealing in diamonds and jewelry and antiques and curiosities ?

A. No, sir, I dealt in diamonds, precious stones, pearls, etc.

Q. You still have another establishment besides the one here in Paterson ?

10 A. In Paterson.

Q. How long since you have another place ?

A. Well, it is about since I opened that place out here.

Q. This is one of your current cards ?

A. Yes, sir.

Q. You still have headquarters in New York ?

A. At that time I had.

Q. That is your official card now ?

A. Yes, sir.

20 Q. You are president of the company ?

A. Yes, sir.

Q. And have entire charge and management of its business ?

A. Yes, sir.

Q. You say you did not tell Mr. Shane that your young man sometimes bought things and that you discharged him because he had been buying things ?

30 A. I told him the young man was not with me any more but that sometimes he bought things ; that is the way I explained it to him.

Q. Didn't you say you had caught him buying fountain pens and things of that kind ?

A. No, sir ; I said the young man sold fountain pens on his own account, but I did not say

he bought them; I did not know where he got them from.

Q. Can you show me anything else in that book that has been bought from an individual, besides that drum?

A. No, sir.

Q. Here is an entry here under "American revolver"?

A. That is bought regular goods, right from the manufacturer. 10

Q. That drum is the only thing that you recollect ever buying that you entered in your book?

A. Yes, sir; and I did not buy anything else.

Q. You would buy old silver and spoons and things of that kind?

A. If they would come in I would buy them.

Q. Well, you cannot show it in that book?

A. I have not bought any.

Q. Then you mean you would buy them? 20

A. Yes, sir; like any jeweler, if the people can give references.

Q. But you have not bought any?

A. No, sir.

Q. Then your place looked like a hock shop, like the young lady said?

Mr. Hunziker :—Objected to.

Card marked Exhibit S 1. 30

BOTH SIDES REST.

Charge to the Jury.

SCOTT, *J.*

10 GENTLEMEN OF THE JURY:—This defendant is charged with being the receiver of stolen goods. The charge is that on the 20th of last September, which was on Wednesday, he received from this young woman who was on the witness stand a ring and a pin, alleged in the indictment to be worth about \$30, for which he gave the girl \$2.75, \$2.50 for the ring and 25 cents for the pin, and that when he received the goods from her he knew they were stolen.

20 In order to be guilty of this crime, Gentlemen of the Jury, in the first place, the goods must be stolen, and in the second place the defendant must know that they were stolen. Those are the two essential elements of the crime. As counsel for the defense admits, and it is not disputed, that the goods were stolen; that is admitted, so you will have no trouble with that part of the question.

The next point is whether the defendant knew that the goods were stolen. Let us deal, now, with the State's case.

30 As has already been intimated, upon the motion made by the counsel of the defendant to dismiss this indictment, the jury have a right to infer from the circumstances surrounding the transaction, as to whether or not the defendant must have known that the goods were stolen. Now, you have heard her story. Perhaps you will be able to recall all the circumstances besides those that I mention, from which you can make the inference that the defendant, being an

intelligent business man and accustomed to deal in this kind of business, would be able to conclude from appearances; from what took place, whether or not he was justified in the purchase of those articles, and whether or not he should make an investigation where the circumstances were suspicious. In other words, were the circumstances surrounding this transaction, conceding the State's case, in the first place, to be true, were the circumstances surrounding this transaction and the purchase of these two articles of jewelry such that the defendant must have known that they were stolen. 10

She says that she got this ring and this pin from her employer's home on Wednesday, September 20th, the day she left that employment, and in the evening, after her work was done, at about eight or half past eight, she went down Main street into this jewelry store and sold these articles to the defendant. You will recollect, 20
Gentlemen of the Jury, that looking about this room she pointed to the defendant as the man to whom she sold these articles. She says that she got \$2.50 for the ring and twenty-five cents for the pin. She tells you what occurred during the sale of these articles. She said that there were some initials on the ring, which appears to be true—that is corroborated by Mrs. Horning. She tells you just what the initials were, but the girl says that when she made reference to 30
the initials on the ring the defendant said he could rub them out, and she says that she said to him, "Don't do that," and then she says that when she was about to leave the store the defendant said, "If I can do anything for you at

any time I shall be glad to help you," or words to that effect.

Now, these are the details of this interview which she relates to you ; and notwithstanding that she is a thief and a liar, the details of that recital may be such as to commend themselves to you, and to bear the ear-marks of truth, notwithstanding her general reputation in the community in which she lived for truth and honesty.

Now, Gentlemen of the Jury, it used to be the law years ago, and is in some states yet, that an accomplice must be corroborated by at least some circumstance before the jury have a right to conclude that she is telling the truth ; but the law now is in this state that while you should be careful about it, yet if you believe in your hearts, in your minds, that she is telling a true story notwithstanding she is a thief, and in that sense an accomplice with the defendant, you have a right to believe her story ; you have that right then, if that story is corroborated by circumstances ; if you believe that the circumstances indicate that she is telling the truth, then, of course, you have the right to conclude that the defendant is guilty ; and that, Gentlemen of the Jury, is a way to ascertain the truth in cases of this kind. You, perhaps would have considerable hesitation in believing the story of a confirmed thief and liar, notwithstanding the law is that you have that right ; yet, perhaps in nine cases out of ten, yes, 99 cases out of a hundred, you would hesitate to convict any man, upon the story of a thief and a liar ; so you look into the circumstances. If the circum-

stances that have been detailed by other witnesses convince you that the girl is telling the truth, it will aid you in determining whether or not the charge is true.

Gentlemen of the Jury, the defendant says that he did not buy these things, H. 1 and H. 2; that he was not there—that he could not have bought them, because on September 19th, 20th and 21st, he was out of town, and on September 20th, the day that this sale was made, about 10 which there appears to be no dispute, he says he was not in the city at all; that he was not there either day or evening. Now, Gentlemen of the Jury, I may fail to recall exactly and accurately, just what was said while the testimony was being given, but as I recall the testimony, this young woman was asked by counsel for the defendant whether, when she was selling these things, was not she asked by him, or did not she say to him that her husband had the 20 pneumonia and that she was poor. It may be that I do not recollect that testimony accurately, but it looks very much as if I did recollect it accurately, when I say that question was asked of her at the time she was selling these goods, for what was the reason for asking those questions, or that kind of a question at any other time: “Didn’t you say, perhaps as a reason for wanting to dispose of these articles, that you wanted 30 the money, that your husband was sick with pneumonia and you were poor.” Well, the asking of a question does not necessarily bind the defendant, Gentlemen of the Jury, but in dealing with that part of the case, you have a

right to consider that element in it. The defendant says he was not there on that day. You have a right to consider this circumstance, Gentlemen of the Jury, that if he was not there, he was in New York, coming in contact with all sorts of people, doing business on that day with people known by him, and he known to them, you have a right to consider whether or not that alibi was not easy of proof on his part. While
 10 that is not affirmative proof of that circumstance, yet negatively, it may suggest to your minds that here was an opportunity that has not been taken advantage of by the defendant ; but while you have not the right to resolve anything against him on that account, yet you may ask the question whether that element in the case is not easy of proof.

Now, Gentlemen of the Jury, you consider this case from the beginning to the end, all the
 20 circumstances of it, and if you conclude that these goods were stolen and were bought by the defendant, knowing them to have been stolen, or that the circumstances were such that he must have inferred that they were stolen, why, he is guilty of the crime charged. However, if he was not there that day, he could not have bought the goods ; or if you conclude that if he did buy the goods and did not know that they were stolen, then it is your duty to acquit
 30 him ; and of course he is entitled to the benefit of a reasonable doubt.

Defendant's Exception.

Mr. Hunziker :—I ask for an exception to that part of your Honor's charge in which you say that the jury have a right to infer under the circumstances whether or not the defendant knew the goods were stolen.

Exception allowed. Let it be sealed, and it is sealed accordingly.

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FRANCIS SCOTT,

J.

Second : Also I ask for an exception to your Honor's statement of your recollection of the evidence as to the question asked by counsel, where you said, "This young woman was asked by counsel for the defendant whether when she was selling these things was not she asked by him or did not she say to him that her husband had the pneumonia and that she was poor," whatever your Honor said on that branch of the case.

20

Exception allowed. Let it be sealed, and it is sealed accordingly.

FRANCIS SCOTT,

J.

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Third : I also ask for an exception to that part of your Honor's charge where you say that the jury have a right to believe whether the

alibi was not susceptible of proof, or that element of the case was not easy of proof.

The Court :—As to the alibi it may be that the jury have no right to make an inference against him from the fact that he failed to produce witnesses. I will recall the jury.

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Jury Recalled.

SCOTT, J.

GENTLEMEN OF THE JURY :—Counsel for the defendant takes exception, among other exceptions, to the Court's charge, to that part of it, where the Court gave you some instructions about the proof of an alibi, about the ease or difficulty with which he could have obtained witnesses.

10

As one of the jurymen has just returned, I will repeat: I have just said, Gentlemen of the Jury, that counsel takes exception to that part of the judge's charge in respect to the susceptibility of the proof of alibi, and it may be that the Court is not justified in speaking upon that part of the case, that is, as to the ease or difficulty with which an alibi can be proven, so that part of the case, and the remarks of the Court upon that part of the question, as to the ease or difficulty with which an alibi should be proved, should be disregarded, and you will consider the case eliminating from the Court's charge what it said upon that point. You may retire.

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I certify that the foregoing is the entire record of the proceedings during the trial of the defendant, Emil Fiess, the evidence and exception thereto; the charge of the judge to the jury and the exceptions to such charge.

30

FRANCIS SCOTT,

P. J.

Exhibit S-1.

Tel. 1133-w

Emil Fiess, Pres.

THE FIESS PALIHNICH CO.

(Incorporated.)

Diamonds, Jewelry, Clocks, Watches,
Silverware, Antiques, Curiosities.

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New York Office, 123 Main Street,
12-16 John Street. Paterson, N. J.

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NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,

Defendant in Error,

vs.

EMIL FIESS,

*Plaintiff in Error.**In Error to the
Passaic Quarter
Sessions.*

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**Specification of the Causes for
Reversal.**

First—Because the said Court erred in permitting the witness Lizzie McCarthy to answer the following question :

Question—What kind of a store is it ?

Second—Because the said Court erred in permitting the witness Eliza Hornung to answer the following question :

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Question—(*By the Court*) Cannot you tell whether it was worth \$1 or \$50 ?

Third—Because the said Court erred in permitting the witness Eliza Hornung to answer the following question :

Question :—Was it worth \$15 ?

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Fourth—Because the Court, at the close of the State's case, erred in refusing to direct a verdict of acquittal of said defendant.

Fifth—Because the Court erred in instructing the jury as follows :

10 “ As has already been intimated, upon the motion made by the counsel of the defendant to dismiss this indictment, the jury have a right to infer from the circumstances surrounding the transaction as to whether or not the defendant must have known that the goods were stolen. Now, you have heard her story. Perhaps you will be able to recall all the circumstances be-
 21 sides those that I mention, from which you can make the inference that the defendant, being an intelligent business man and accustomed to deal in this kind of business, would be able to conclude from appearances, from what took place, whether or not he was justified in the purchase of those articles, and whether or not he should make an investigation where the circumstances were suspicious. In other words, were the cir-
 21 cumstances surrounding this transaction, conceding the State's case, in the first place, to be true, were the circumstances surrounding this transaction and the purchase of these two articles of jewelry such that the defendant must have known that they were stolen ?”

Sixth—Because the Court erred in instructing the jury as follows :

30 “ Now, gentlemen of the jury, I may fail to recall exactly and accurately just what was said while the testimony was being given, but as I recall the testimony, this young woman was asked by counsel for the defendant whether, when she was selling these things, was not she asked by

him, or did she not say to him, that her husband had pneumonia and that she was poor. It may be that I do not recollect that testimony accurately, but it looks very much as if I did recollect it accurately when I say that question was asked of her at the time she was selling these goods, for what was the reason for asking those questions, or that kind of a question, at any other time : ‘ Didn’t you say perhaps, as a reason for wanting to dispose of these articles, that you wanted the money, that your husband was sick with pneumonia and that you were poor ?’ Well, the asking of a question does not necessarily bind the defendant, gentlemen of the jury, but in dealing with that part of the case, you have a right to consider that element in it.” 10

Seventh—Because the Court erred in instructing the jury as follows : 20

“The defendant says he was not there on that day. You have a right to consider this circumstance, gentlemen of the jury, that if he was not there, he was in New York, coming in contact with all sorts of people, doing business on that day with people known by him, and he known to them, you have a right to consider whether or not that alibi was not easy of proof on his part. While that is not affirmative proof of that circumstance, yet negatively, it may suggest to your minds that here was an opportunity that has not been taken advantage of by the defendant ; but while you have not the right to resolve anything against him on that account, 30

you may ask the question whether that element in the case is not easy of proof."

GUSTAV A. HUNZIKER,

Attorney for and of Counsel with Plaintiff in Error.

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NEW JERSEY SUPREME COURT.

THE STATE,
vs.
 EMIL FIESS.

On Error to the Passaic Quarter Sessions.

Argued before Gummere, Chief Justice and
 Justice Hendrickson.

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For plaintiff in error, Gustav A. Hunziker.

For the State, Eugene Emley, Prosecutor of the
 Pleas.

Per Curiam.

The plaintiff was convicted upon an indictment charging him with having received certain goods and chattels of the value of thirty dollars, knowing them to be stolen. The case comes up on strict bill of exceptions, and not under the statute which allows a review of the proceedings had at the trial.

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The first error assigned is to the admission of the testimony of Mrs. Hornung, the prosecuting witness, on the question of the value of the stolen property. No objection was made to the admission of this testimony when it was offered, and consequently, no error can be assigned upon its admission.

The second assignment of error is that the Court, at the close of the State's case, refused to direct a verdict of acquittal. But, as was stated by the Court of Errors and Appeals in *State v. Jagers*, 42 Vr., 283, "This motion was addressed to the dis-

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cretion of the Court, and the action of the Court, is not reviewable on error."

10 The other assignments argued are directed at the charge of the Court. The first is that the Court in its charge assumed as a fact that the defendant had purchased the stolen goods ; and that the circumstances attending the purchase were suspicious. The assignment is based upon a mis-
 20 apprehension of the effect of the charge as a whole. At its close the Court instructed the jury as follows: "If you conclude that these goods were stolen, and were bought by the defendant, knowing them to have been stolen, or that the circumstances were such that he must have inferred that they were stolen, he is guilty of the crime charged. However, if he were not there that day he could not have bought
 20 the goods. Or, if you conclude, he did buy the goods, and did not know that they were stolen, it is your duty to acquit him." It is plain from this language that neither of the facts referred to in this assignment were assumed by the Court in its charge.

30 The next assignment is that the Court instructed the jury that they "have a right to infer from the circumstances surrounding the transactions whether or not the defendant must have known that the goods were stolen." Counsel for the plaintiff in error contends that this instruction was, in its legal effect, the same as that which was delivered to the jury in the case of *State v. Goldman*, 36 Vr., 394, and which was there held to be erroneous. But a comparison of the instruction in

the case cited, and that which is now under consideration, shows that they are entirely dissimilar, and that the reason which led this Court, in the Goldman case, to declare that the instruction there complained of, was erroneous, has no application to the excerpt from the charge which is attacked by this assignment.

The last assignment of error is that the Court misstated to the jury certain of the evidence in the case. Our examination of the testimony satisfies us that the assignment is not supported by the fact. The Court did not attempt, in this part of the charge, to repeat the questions of counsel, and the answers of the witness, but to state the testimony in narrative form, and, in what was said, we find no misstatement of the evidence. 10

The conviction under review must be affirmed.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

	STATE OF NEW JERSEY,	) In Error.
	<i>Defendant in Error,</i>	
	<i>vs.</i>	
10	EMIL FIESS,	
	<i>Plaintiff in Error.</i>	

Assignment of Errors.

20 Afterwards, to wit, on the twenty-eighth day of July, A. D., nineteen hundred and six, before the Judges of the said Court of Errors and Appeals in the last resort in all causes, at Trenton, comes the said Emil Fiess, by Gustav A. Hunziker, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: Because the said court affirmed the judgment of the Court of Quarter Sessions in and for the County of Passaic, rendered against the defendant in error, Emil Fiess, whereas by the law of the land the said Court should have reversed the said judgment of the said Court of Quarter Sessions of the County of Passaic.

30 Therefore, the said plaintiff in error prays that the judgment aforesaid, by reason of the aforesaid error and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing, and that the said plaintiff in error may be restored to all things which he had

lost on occasion of the said judgment, and that the said defendant in error, State of New Jersey, may join to the said errors.

GUSTAV A. HUNZIKER,

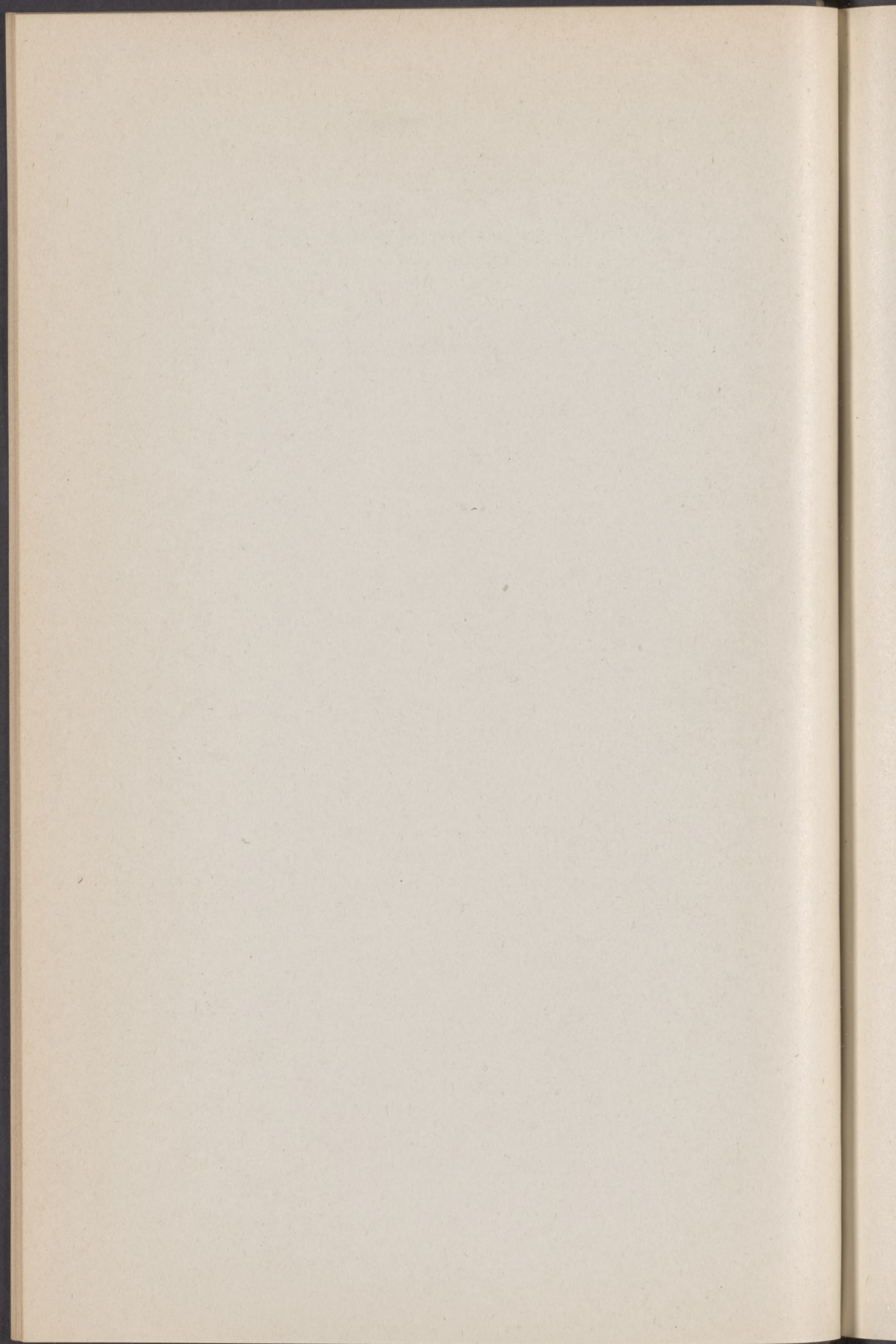
Attorney for and of Counsel with Plaintiff in Error.

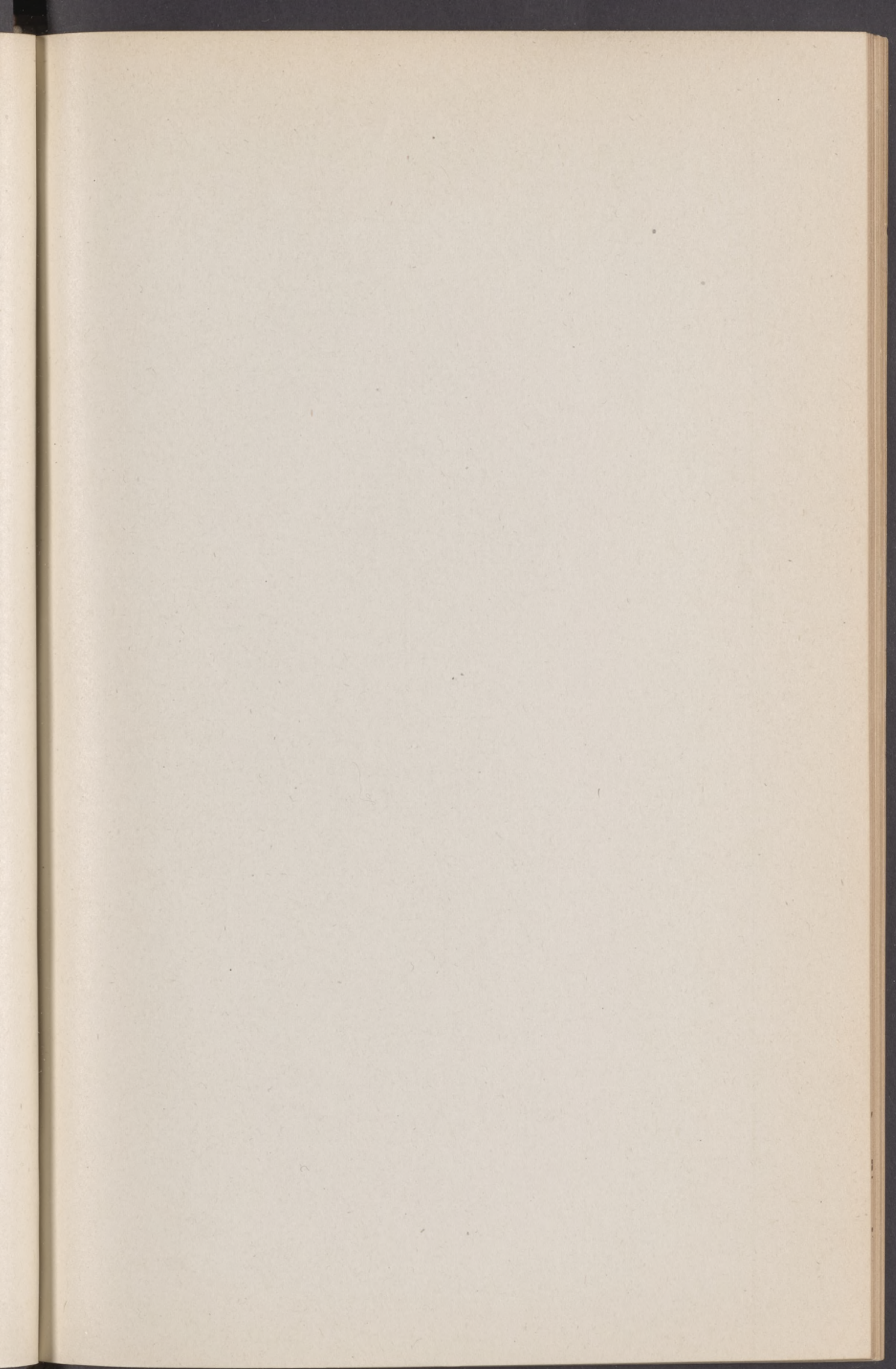
Joinder in Error in usual form.

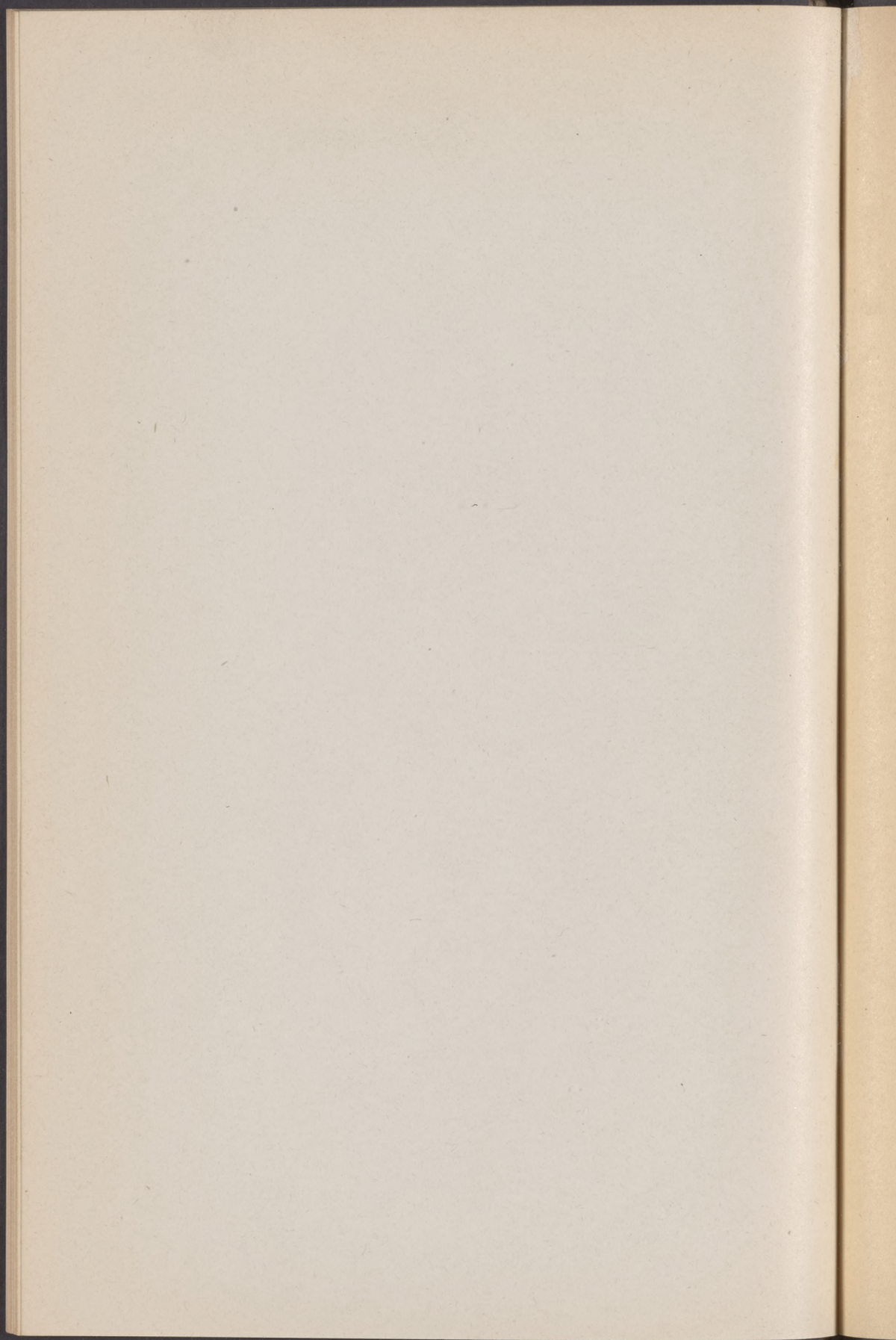
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NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY

IN SENATE

JANUARY 10, 1907

REPORT

OF THE

COURT OF ERRORS AND APPEALS

FOR THE YEAR 1906

ALBANY

WATKINS PUBLISHING COMPANY

THE COURT OF ERRORS AND APPEALS, created by the act of the Legislature of 1844, has the honor to submit herewith its report for the year 1906. The Court has the pleasure to announce that during the year it has received and decided 1,000 cases, of which 1,000 were appeals from the Superior Court, 1,000 from the County Courts, and 1,000 from the Municipal Courts. The Court has also received and decided 1,000 cases of error and appeal from the Superior Court, 1,000 from the County Courts, and 1,000 from the Municipal Courts. The Court has also received and decided 1,000 cases of error and appeal from the Superior Court, 1,000 from the County Courts, and 1,000 from the Municipal Courts.

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